

Syllabus

IN THE MATTER OF

NATIONAL COLLEGE OF AUDIOMETRY 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 5917. Complaint, Aug. 17, 1951—Decision Apr. 7, 1952

A college, as that term is understood in the educational field and by the general public, is an institution of higher learning, including subjects in the arts, sciences and professions—such as law, medicine and theology—laboratories, libraries, and dormitories for resident students, with sufficient financial resources to operate and maintain such an institution; and with an adequate and competent faculty of learned persons qualified and trained to teach the respective subjects offered, and possessing degrees from recognized universities and colleges.

A degree is an academic rank recognized by colleges and universities having a reputable character as institutions of higher learning and recognized as such by standard accrediting organizations, which conveys to the ordinary mind the idea of some collegiate, university or scholastic distinction.

Academic degrees are conferred by duly authorized, accredited and recognized educational institutions of higher learning as evidence and in recognition of prescribed scholastic attainments by students of such institutions, and, unless so earned and conferred, do not constitute degrees in the accepted meaning of the term. Moreover, degrees granted solely for work done by correspondence are not accredited and recognized by colleges and universities or by examining boards of the different professions.

Where a corporation and its president, engaged in the interstate sale and distribution of a correspondence course in audiometry or the fitting of hearing aids; in circulars distributed to prospective students, and advertisements in various magazines of national circulation devoted to the healing arts—

(a) Represented, directly or by implication, that said corporation was a recognized and accredited college or institution of higher learning;

The facts being that it had none of the facilities, equipment, or faculty possessed by such institutions, but was operated by said individual who also constituted its faculty;

(b) Represented that said individual was a holder of a number of degrees pertaining to the subject of audiometry; that their course included basic physics, anatomy, physiology and pathology of the ear, the psychology of hearing, the physics of sound, abnormal psychology, etiology and pathology of diseases of the ear, and the fitting of hearing aids; and that students might obtain either the degree of Bachelor of Science in Audiometry or Doctor of Audiometry;

The facts being that the degree of "Doctor of Audiometry" is not known, accepted or recognized by reputable schools and colleges and is wholly without validity, and, insofar as said individual was concerned, was conferred by him upon himself; while said individual did possess the earned degree of Doctor of Optometry, and the honorary degree of Doctor of Optometric Science, he was not qualified by training or experience to teach either general anatomy or physiology, or the specific anatomy, physiology and pathology.

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of the human ear, or any other subject in medical science with the exception of optometry, in which he had had training and experience; and while it is necessary to receive certain practical training, it is not necessary to acquire any academic degrees in order to fit hearing aids properly; and

- (c) Falsely represented that the aforesaid corporation was accepted or recognized by the Treasury Department of the United States as a non-profit educational institution;

With tendency and capacity to confuse, mislead and deceive a substantial portion of the purchasing public with respect to their school and its courses and their purported academic degrees; and thereby to cause such public to purchase their course:

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. William L. Pack*, hearing examiner.

Mr. William L. Pencke for the Commission.

Mr. John S. Kavanaugh, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that National College of Audiometry, a corporation, and Frank Keefe, 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 National College of Audiometry is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois. Respondent Frank Keefe is the president of said corporate respondent and as such, formulates, controls, and directs the policies and practices of said corporation and is responsible for the operation and management thereof. The office and principal place of business of both respondents is located at 5024 North Broadway in the city of Chicago and State of Illinois.

PAR. 2. Respondents are now, and for more than two years last past have been, engaged in the sale and distribution in commerce between and among the various States of the United States of a course of study and instruction in audiometry or the art of fitting hearing aids, which is pursued by correspondence through the medium of the United States mails.

During the time aforesaid respondents have caused and do now cause their said course of study and instruction to be transported

from their said place of business in the State of Illinois to purchasers thereof located in various States of the United States other than the State of Illinois. The conduct of said business contemplates and results in, and has resulted in the transportation of lesson sheets and other documents, money orders, checks and other forms of money, from respondents' place of business in Illinois, through and into other States and from respondents' customers located in various States into the State of Illinois. There is now and has been at all times mentioned herein, a course of trade in said course of instruction so sold and distributed by said respondents in commerce between and among the various States of the United States, and such course of trade has been and is substantial.

PAR. 3. A college, as that term is understood in the educational field and by the general public, is an institution of higher learning, including subjects in the arts, sciences and professions, such as law, medicine and theology, with adequate equipment in the form of buildings, laboratories, libraries and dormitories for resident students, and sufficient financial resources to operate and maintain such institution; with an adequate and competent faculty of learned persons qualified and trained to teach the respective subjects offered by such institutions and possessing degrees from recognized universities and colleges.

A degree is an academic rank recognized by colleges and universities having a reputable character as institutions of higher learning and which are so recognized and accredited by standard accrediting organizations, and which degree conveys to the ordinary mind the idea of some collegiate, university or scholastic distinction.

PAR. 4. Respondents, in soliciting the sale of and in selling said course of study and instruction in audiometry, have made and are making use of printed advertising matter including circulars mailed and distributed to prospective students located in the various States of the United States, and of advertisements inserted in various magazines devoted to the healing arts and having a national circulation, in and by which numerous representations have been and are made in regard to said course of study and matters and things connected therewith. Typical of such representations are the following:

National College of Audiometry.

Frank Keefe, O. D., D. O. S., D. A., President.

This program deals with Basic Physics, with the Anatomy, Physiology and Pathology of the human ear; the Psychology of hearing and the Physics of Sound, with audiometry, the measurement of hearing loss and the proper prescription of an individual hearing aid.

If desired a D. A. (Doctor of Audiometry) Degree or a Bachelor of Science in Audiometry will be awarded without further payment.

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Hearing Aid Consultants—Do You Know That THE NATIONAL COLLEGE OF AUDIOMETRY is chartered as a non-profit Educational Institution under the laws of the State of Illinois;

Is accepted as a non-profit educational institution by the Treasury Department of the United States;

Is the only institution of its kind (as far as we know) which teaches the complete science of audiometry;

The anatomy, physiology and pathology of the human ear; General, abnormal psychology and the psychology of hearing; general pathology and the etiology and pathology of diseases of the ear; the physics of sound and audiometry which is the measurement of the ability to hear; and the proper fitting of hearing aids;

Has the power to confer degrees in Audiometry upon graduation through home study course by correspondence.

A LARGER INCOME assured because of more satisfied patients

A greater PERSONAL satisfaction because of more education.

PAR. 5. By means of the foregoing representations and others of similar import and effect not herein specifically set out, respondents have represented and implied and do represent and imply that the corporate respondent is a recognized and accredited college or institution of higher learning in which is taught the science of audiometry; that the president, Frank Keefe, is the holder of a number of degrees pertaining to the subject of audiometry, that the course of study and instruction by correspondence includes basic physics, anatomy, physiology and pathology of the ear, the psychology of hearing, and the physics of sound; abnormal psychology, etiology, and pathology of diseases of the ear and the fitting of hearing aids; that students may obtain either the degree of Bachelor of Science in Audiometry or Doctor of Audiometry, the latter indicated by the letters D. A.; that they are assured of a larger income and greater personal satisfaction by reason of having taken said course of instruction and that the Treasury Department of the United States accepts said corporate respondent as a non-profit educational institution.

PAR. 6. All of the foregoing statements and representations, and others similar thereto, are false, deceptive and misleading. In truth and in fact the corporate respondent is not a college in the accepted sense of that term and is not a recognized, accredited and accepted institution of higher learning. It has none of the facilities, equipment, or faculty described in Paragraph Three hereof but on the contrary, is operated by respondent Frank Keefe who also constitutes the faculty. The letters "O. D." and "D. O. S." used by said respondent signify that he is a Doctor of Optometry and an Honorary Doctor of Optometric Science. The degree "Doctor of Audiometry" is not known, accepted or recognized by reputable schools and colleges, and is of no validity whatever, and moreover, insofar as respondent is concerned was conferred by him upon himself.

Said respondent Frank Keefe is not qualified by training or experience adequately to teach either the fundamental and general subjects of anatomy and physiology, nor the specific subjects of anatomy, physiology and pathology of the human ear, nor psychology, abnormal psychology, or any other subject dealing with medical science, with the exception of optometry or the scientific examination of the eyes for the purpose of fitting glasses, in which said respondent has had training and experience. While it is necessary to receive certain practical training in connection with the fitting of hearing aids, it is not necessary to have extensive training in medical science nor is it necessary to acquire any academic degrees in order to fit hearing aids properly to persons in need of such equipment. The Treasury Department of the United States has not accepted said corporate respondent as a non-profit educational institution with the implication that such acceptance means a recognition and approval of the educational qualifications of said school by an agency of the United States Government. In truth and in fact, the Treasury Department has merely accepted the existence of said corporate respondent as a non-profit institution in connection with its tax records.

PAR. 7. Academic degrees as defined in Paragraph Three hereof are conferred by duly authorized, accredited and recognized educational institutions of higher learning as evidence and in recognition of prescribed, scholastic attendance by students of such institutions and unless so earned and conferred, do not constitute degrees in the accepted meaning of said terms; moreover, "degrees" granted solely for work done by correspondence are not accredited and recognized by colleges and universities or by examining boards of the different professions.

PAR. 8. The practices and use by respondents of the statements and representations aforesaid have had and now have the tendency and capacity to and do confuse, mislead and deceive members of the public into the erroneous and mistaken belief that such statements and representations are true, and to induce them to purchase respondents' courses of study and instruction in said commerce on account thereof.

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 April 7, 1952, the initial

decision in the instant matter of hearing examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 17, 1951, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After the filing by respondents of their answer to the complaint, a hearing was held before the above named hearing examiner, theretofore duly designated by the Commission, at which a stipulation of facts was entered into by counsel supporting the complaint and counsel for respondents and incorporated in the record, which was duly filed in the office of the Commission. The stipulation provided that the facts set forth therein should constitute the statement as to the facts in the proceeding, and be the basis for findings as to the facts and conclusion and an order disposing of the proceeding. Thereafter, the proceeding regularly came on for final consideration by the hearing examiner upon the complaint, answer and stipulation (the stipulation having been approved by the hearing examiner) (counsel having elected not to submit proposed findings and conclusions for consideration by the hearing examiner or to argue the matter orally), and the hearing 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 National College of Audiometry is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois. Respondent Frank Keefe is president of the corporation and formulates, controls and directs its policies and practices and is responsible for its operation and management. The office and principal place of business of both respondents was formerly located in Antioch, Illinois, but is presently located at 5204 North Broadway, Chicago, Illinois. Respondents are engaged in the sale and distribution of a course of study and instruction in audiometry or the art of fitting hearing aids, the course being pursued by correspondence through the medium of the United States mails.

PAR. 2. Respondents cause and have caused their course of study and instruction, when sold, to be transported from their places of business in the State of Illinois to purchasers located in various other States of the United States. Respondents maintain and have maintained a course of trade in their course of study and instruction in commerce between and among various States of the United States.

PAR. 3. A college, as that term is understood in the educational field and by the general public, is an institution of higher learning, including subjects in the arts, sciences and professions, such as law, medicine and theology, with adequate equipment in the form of buildings, laboratories, libraries, and dormitories for resident students, and with sufficient financial resources to operate and maintain such an institution; and with an adequate and competent faculty of learned persons qualified and trained to teach the respective subjects offered by such institutions and possessing degrees from recognized universities and colleges.

A degree is an academic rank recognized by colleges and universities having a reputable character as institutions of higher learning and which are so recognized and accredited by standard accrediting organizations, and which degree conveys to the ordinary mind the idea of some collegiate, university or scholastic distinction.

PAR. 4. In soliciting the sale of their course of study and instruction, respondents make use of printed advertising material, including circulars, mailed and otherwise distributed to prospective students, and of advertisements inserted in various magazines devoted to the healing arts and having a national circulation. Among and typical of the statements appearing in respondents' advertising are the following:

National College of Audiometry.

Frank Keefe, O. D., D. O. S., D. A. President.

This program deals with Basic Physics, with the Anatomy, Physiology and Pathology of the human ear; the Psychology of hearing and the Physics of Sound, with audiometry, the measurement of hearing loss and the proper prescription of an individual hearing aid.

If desired a D. A. (Doctor of Audiometry) Degree or a Bachelor of Science in Audiometry will be awarded without further payment.

Hearing Aid Consultant—Do You Know That THE NATIONAL COLLEGE OF AUDIOMETRY is chartered as a non-profit Educational Institution under the laws of the State of Illinois;

Is accepted as a non-profit educational institution by the Treasury Department of the United States; Is the only institution of its kind (as far as we know) which teaches the complete science of audiometry;

The anatomy, physiology and pathology of the human ear; General, abnormal psychology and the psychology of hearing; general pathology and the etiology and pathology of diseases of the ear; the physics of sound and audiometry which is the measurement of the ability to hear; and the proper fitting of hearing aids;

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Has the power to confer degrees in Audiometry upon graduation through home study course by correspondence.

A LARGER INCOME assured because of more satisfied patients.

A greater PERSONAL satisfaction because of more education.

PAR. 5. Through the use of these statements and others of similar import, respondents have represented, directly or by implication, that the corporate respondent is a recognized and accredited college or institution of higher learning in which is taught the science of audiometry; that the individual respondent is the holder of a number of degrees pertaining to the subject of audiometry; that the course of study and instruction includes basic physics, anatomy, physiology and pathology of the ear, the psychology of hearing, the physics of sound, abnormal psychology, etiology, and pathology of diseases of the ear, and the fitting of hearing aids; that students may obtain either the degree of Bachelor of Science in Audiometry or Doctor of Audiometry, the latter being indicated by the letters D. A.; that students are assured of a larger income and greater personal satisfaction by reason of having taken such course of instruction; and that the corporate respondent is accepted or recognized by the Treasury Department of the United States as a non-profit educational institution.

PAR. 6. These representations are erroneous and misleading. The corporate respondent is not in fact a college in the accepted sense of that term, and is not a recognized, accredited and accepted institution of higher learning. It has none of the facilities, equipment, or faculty described in Paragraph Three hereof but, on the contrary, is operated by the individual respondent who also constitutes the faculty. The letters "O. D." and "D. O. S." used by such respondent signify that he is a Doctor of Optometry and an Honorary Doctor of Optometric Science. The degree "Doctor of Audiometry" is not known, accepted or recognized by reputable schools and colleges, is wholly without validity, and insofar as the individual respondent is concerned, the degree was conferred by him upon himself.

The individual respondent does possess the earned degree of Doctor of Optometry and is also the possessor of the honorary degree of Doctor of Optometric Science. He is not, however, qualified by training or experience adequately to teach either the fundamental or general subjects of anatomy or physiology, nor the specific subjects of anatomy, physiology and pathology of the human ear, nor is he qualified to teach psychology, abnormal psychology, or any other subject in medical science, with the exception of optometry or the scientific examination of the eyes for the purpose of fitting glasses, in which subject he has had training and experience. While it is neces-

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sary to receive certain practical training in connection with the fitting of hearing aids, it is not necessary to have extensive training in medical science nor is it necessary to acquire any academic degree in order to fit hearing aids properly. The Treasury Department of the United States has not recognized or accepted respondents' school as a non-profit educational institution.

PAR. 7. Academic degrees as defined in Paragraph Three hereof are conferred by duly authorized, accredited and recognized educational institutions of higher learning as evidence and in recognition of prescribed scholastic attainments by students of such institutions and unless so earned and conferred, do not constitute degrees in the accepted meaning of the term. Moreover, degrees granted solely for work done by correspondence are not accredited and recognized by colleges and universities or by examining boards of the different professions.

PAR. 8. The record indicates that much of the advertising in question has already been discontinued by respondents.

PAR. 9. The acts and practices of respondents, as described above, have the tendency and capacity to confuse, mislead and deceive a substantial portion of the purchasing public with respect to respondents' school and its course of study and instruction and the purported academic degrees conferred by it, and the tendency and capacity to cause such portion of the public to purchase respondents' course of study and instruction as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of 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, National College of Audiometry, a corporation, and its officers, and Frank Keefe, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondents' course of study and instruction, do forthwith cease and desist from:

1. Representing by offering to grant or confer or through granting or conferring upon purchasers of respondents' course of home study

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and instruction through correspondence any so-called academic degrees, or by any other means, that corporate respondent is an accredited and standard college or institution of higher learning.

2. Using the word "college" or any abbreviation or simulation thereof, to designate, describe or refer to respondents' school; or otherwise representing directly or by implication, that the business conducted by respondents is a college or institution of higher learning.

3. Representing, directly or by implication, that respondent Frank Keefe is the holder of any accredited and recognized academic degrees pertaining to the subject of audiometry.

4. Representing that respondents' school is recognized and accepted or approved as a non-profit educational institution by the Treasury Department of the United States.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of April 7, 1952].

Order

IN THE MATTER OF
HAMILTON MANUFACTURING COMPANY

MODIFIED CEASE AND DESIST ORDER

Docket 3944. Order, April 9, 1952

Order modifying the words "which are to be used or may be used" in the Commission's order directed against the sale of lottery devices, on September 7, 1950, 47 F. T. C. 116 at 127, in accordance with the opinion of the Court of Appeals for the District of Columbia on January 24, 1952, in *Hamilton Manufacturing Company vs. Federal Trade Commission*, 194 F. (2d) 346, and the final decree of February 27, 1952, so as to read, "selling," etc., push cards, etc., "which are designed or intended to be used", as below set out.

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

Guesmer, Carson & MacGregor, of Minneapolis, Minn., and *Mr. J. Bond Smith* and *Mr. Joseph A. Padway*, of Washington, D. C., for respondent.

Mr. Joseph A. Padway and *Mr. Herbert S. Thatcher*, of Washington, D. C., for Minneapolis Printing Pressmen and Assistants Union No. 20; Bookbinders and Bindery Women, Twin City Local No. 12, I. B. of B.; and Stenographers, Bookkeepers, Typists, and Assistants Union, Minneapolis Local No. 17661; intervenors.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondent's substitute answer thereto, in which answer said respondent admitted, with certain exceptions, all of the allegations of fact set forth in the complaint, and briefs and oral argument of counsel, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act, on September 7, 1950, issued its order to cease and desist; and

Respondent Hamilton Manufacturing Company, having filed in the United States Court of Appeals for the District of Columbia Circuit its petition to review and set aside the order to cease and desist issued herein, and that Court having heard the matter on briefs and oral argument, having fully considered the matter, and having, thereafter on February 27, 1952, entered its final decree modifying, and affirming and enforcing, as modified, the aforesaid order to cease and desist pursuant to its opinion announced on January 24, 1952; and

Thereafter, the Commission having reconsidered the matter, and being of the opinion that its order should be modified so as to accord

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with the aforesaid opinion and final decree of the United States Court of Appeals for the District of Columbia Circuit;

It is hereby ordered, That the respondent, Hamilton Manufacturing Company, and said respondent's officers, 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 designed or intended to 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 within the period of time allowed by the aforesaid final decree of the United States Court of Appeals for the District of Columbia Circuit, the respondent shall file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

Order

IN THE MATTER OF
AMERICAN TOBACCO COMPANY

MODIFIED CEASE AND DESIST ORDER

Docket 4827. Order, April 9, 1952

Order modifying, in accordance with stipulation of counsel and order of the Court of Appeals for the Seventh Circuit on March 11, 1952, Commission's original order issued on June 20, 1951, 47 F.T.C. 1393—which required respondent, “and its officers, representatives, agents, and employees”, to cease and desist from specified misrepresentation in connection with the offer and sale of its Lucky Strike cigarettes—so as to delete from said order the words above quoted, as below set forth.

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

Mr. John R. Phillips, Jr. for the Commission.

Chadbourne, Wallace, Parke & Whiteside, of New York City, and *Covington, Burling, Rublee, O'Brian & Shorb*, of Washington, D. C., for respondent.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the respondent's answer thereto, testimony and other evidence in support of and in opposition to the allegations of said amended complaint, the Trial Examiner's recommended decision and exceptions thereto, and briefs and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act, and having issued an order to cease and desist; and

The American Tobacco Company, a corporation, the respondent, having filed in the United States Court of Appeals for the Seventh Circuit its petition to review and set aside the order to cease and desist issued herein; and thereafter counsel for respondent and the Commission having entered into a stipulation filed in said Court on March 10, 1952, providing that said petition to review shall be dismissed without hearing on the merits; that upon said dismissal the Commission shall modify said order to cease and desist by eliminating therefrom the words “and its officers, representatives, agents and employees” after the words “IT IS ORDERED that the respondent, The American Tobacco Company, a corporation”; and that said voluntary dismissal of said petition to review shall be without prejudice to any subsequent application by respondent to the Commission for any

modification of any other provisions of said order to cease and desist and shall not be construed by the Commission to limit its power to make any such modification pursuant to section 5 of the Federal Trade Commission Act and Rule XXVII of the Commission's Rules of Practice; and the Court having on March 11, 1952, entered an order dismissing the petition to review, without hearing upon the merits, in accordance with the terms of the stipulation of counsel; and

Thereafter, the Commission having reconsidered the matter, and being of the opinion that its order should be modified so as to accord with the aforesaid stipulation of counsel and order of the United States Court of Appeals for the Seventh Circuit;

It is ordered, That the respondent, The American Tobacco Company, a corporation, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of its Lucky Strike brand of cigarettes, do forthwith cease and desist from representing, by any means, directly or by implication:

(1) That among independent tobacco experts, Lucky Strike cigarettes have twice as many smokers as all other brands of cigarettes combined; or that any greater proportion or number of independent tobacco experts or of any other group or class of people smoke Lucky Strike cigarettes than is the fact.

(2) That independent tobacco experts who smoke Lucky Strike cigarettes do so because of their knowledge of the grades or quality of the tobacco purchased by the respondent for use in the manufacture of Lucky Strike cigarettes.

(3) That Lucky Strike cigarettes or the smoke therefrom contains less acid than do the cigarettes or the smoke therefrom of any of the other leading brands of cigarettes.

(4) That Lucky Strike cigarettes or the smoke therefrom is less irritating to the throat than the cigarettes or the smoke therefrom of any of the other leading brands of cigarettes.

(5) That Lucky Strike cigarettes or the smoke therefrom is easy on one's throat or will provide any protection against throat irritation or coughing.

(6) That Lucky Strike cigarettes or the smoke therefrom contains less nicotine than do the cigarettes or the smoke therefrom of any of the four other leading brands of cigarettes.

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

Syllabus

IN THE MATTER OF
MALLEABLE CHAIN MANUFACTURERS INSTITUTE
ET AL.

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

Docket 5657. Complaint, May 18, 1949—Decision, Apr. 10, 1952

Where an unincorporated trade association and its eight corporate members, who manufactured over two-thirds of the malleable iron chain produced in the United States—

Unlawfully combined and conspired between and among themselves and others to restrain and eliminate competition in the sale and distribution of said product in commerce; and pursuant to said combination and conspiracy—

(a) Cooperatively effected agreements to fix and maintain, and did fix and maintain, prices at which various types of malleable iron chain were sold and offered for sale by said member manufacturers; and

Where said Institute, in the course of said combination and conspiracy—

(b) Functioned through its "Classification Committee", "Factors Committee" and "Committee on List Prices", the activities of which were, respectively, to establish standards and specifications of products, to devise factors or multipliers to be applied against average costs for the purpose of determining selling list prices, and to propose for use by its members list prices for malleable iron chain; and

Where each of said member manufacturers, as a part of the aforesaid combination and conspiracy—

(c) For pricing purposes maintained two geographic territories or divisions—namely, the Western or Pacific Coast Territory and an Eastern Territory— which were substantially identical for all and within which their trade discounts were substantially identical; with the result that delivered price quotations and prices calculated in accordance with said zone delivered price system were identical for all customers of the same class located in the same geographic zone;

(d) Adopted and used the practice of allowing freight charges to destination on shipments of various types of malleable iron chain in excess of 100 pounds, which aided in the attainment of identical delivered prices; and

Where one member, one of the largest manufacturers of malleable iron chain in the United States and a leader in the industry—

(e) In many instances announced and published prices and changes in prices and in trade discounts on certain items, determined by a formula or system previously agreed upon by all, which were thereafter followed by the other member manufacturers; and

Where said corporate members—

(f) Filed and exchanged among their competitor members, and through the medium of said Institute, current or future prices or conditions of sale, and made bids and quoted prices consistent with such price information; and

(g) Similarly exchanged information which concerned prices charged particular customers and volume of product, sales and shipments, where the identity

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of the purchasers could be determined from such information, so as to aid in securing compliance with prices, terms or conditions of sale; and

(h) Through the medium of their said Institute collected, compiled, circulated, and exchanged between or among themselves rates or transportation charge information which was used in computing prices and price quotations:

Held, That such combination, understandings, acts, practices, etc., under the circumstances set forth, were all and singularly unfair and to the prejudice of the public and against public policy because of their dangerous tendency unduly to hinder competition in the sale in commerce of said product, and create monopoly in themselves therein, and, therefore, constitute unfair methods of competition in commerce and unfair or deceptive acts or practices therein.

Mr. L. E. Creel, Jr., and *Mr. Leslie S. Miller* for the Commission.
Covington & Burling, of Washington, D. C., for Malleable Chain Manufacturers Institute, and its officers.
Pope & Ballard, of Chicago, Ill., for Link-Belt Co., and various other respondents.
Mr. Harker H. Hittson and *Porter, Stanley, Treffinger & Platt*, of Columbus, Ohio, for The Jeffrey Manufacturing Co.
Wood, Warner, Tyrrell & Bruce, of Milwaukee, Wisc., for Chain Belt Co. and Badger Malleable & Manufacturing Co.
Mr. John B. Nordholt, Jr., of Tiffin, Ohio, for Webster Manufacturing Co., Inc.
Hunter, Kavanagh, McLaughlin & Bond, of Peoria, Ill., for Peoria Malleable Castings Co.
Sidley, Austin, Burgess & Smith, of Chicago, Ill., for Moline Malleable Iron Co.
Bell, Boyd, Marshall & Lloyd, of Chicago, Ill., for Deere & Co.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the 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 as follows:

PARAGRAPH 1. The charges as hereinafter set forth are to the effect that respondents have combined and conspired to lessen competition and to restrain trade and commerce, as "commerce" is defined in the Federal Trade Commission Act, in the sale of malleable iron chain; that said respondents accomplished the combination and conspiracy

through agreements, understandings and concerted action among themselves and with others; and that each respondent named herein has used and is using trade restraining and unfair methods of competition and unfair or deceptive acts or practices in commerce in furtherance of and to make more effective the objectives of said combination and conspiracy.

PAR. 2. (1) Malleable Chain Manufacturers Institute, hereinafter referred to as respondent Institute, is an unincorporated trade association with its office and principal place of business at 11 South La Salle Street, Chicago, Illinois. The membership of respondent Institute is made up of eight manufacturers of malleable iron chain, hereinafter referred to as corporate respondents.

The following is a description of the corporate respondents, including their respective corporate status and their principal office and place of business: (2) Link-Belt Company, an Illinois corporation, 307 No. Michigan Avenue, Chicago, Illinois; (3) The Jeffrey Manufacturing Company, an Ohio corporation, First Avenue and Fourth Street, Columbus, Ohio; (4) Chain Belt Company, a Wisconsin corporation, 1600 West Bruce Street, Milwaukee, Wisconsin; (5) Webster Manufacturing Company, Inc., an Ohio corporation, Tiffin, Ohio; (6) Badger Malleable & Manufacturing Company, a Wisconsin corporation, 223 North Chicago Avenue, South Milwaukee, Wisconsin; (7) Peoria Malleable Castings Company, an Illinois corporation, at the foot of Alexander Street, Peoria, Illinois; (8) Moline Malleable Iron Company, an Illinois corporation, St. Charles, Illinois; (9) Deere & Company, an Illinois corporation, 230 South Clark Street, Chicago, Illinois, operating a wholly owned unincorporated subsidiary, trading as Union Malleable Iron Works of Deere & Company, East Moline, Illinois.

The following individual respondents are officers of respondent Institute: (10) A. C. Fellingner, Chairman, c/o Link-Belt Company, 519 Holmes Street, Indianapolis, Indiana; (11) L. E. Brill, Vice-Chairman, c/o The Jeffery Manufacturing Company, First Avenue and Fourth Street, Columbus, Ohio; (12) Mark Patterson, Secretary, 11 South La Salle Street, Chicago, Illinois; (13) Gorton Fauntleroy, Treasurer, c/o Moline Malleable Iron Company, St. Charles, Illinois.

PAR. 3. The corporate respondents, in the course and conduct of their business, have regularly sold and shipped malleable iron chain to purchasers at points in the several States of the United States, and in the District of Columbia, other than the State of origin of the shipment, in a regular current and flow of commerce, as "commerce" is defined in the Federal Trade Commission Act.

Respondent Institute, though not engaged in commerce, is and has been cooperating as a co-conspirator with corporate respondents and individual respondents herein in carrying out the unlawful acts in commerce as are herein alleged.

Respondent corporations are the only manufacturers in the United States engaged in manufacturing malleable iron chain and because of the adoption and use of methods, practices and policies hereinafter described, active and substantial competition in the sale of malleable iron chain has been lessened or eliminated.

PAR. 4. Respondents have unlawfully combined and conspired and are now parties to an unlawful combination and conspiracy between and among themselves and others to hinder, frustrate, suppress, restrain and eliminate competition in the sale and distribution of malleable iron chain in commerce.

Among the acts, methods, practices and policies engaged in by respondents pursuant to and in furtherance of the combination and conspiracy hereinabove alleged are the following:

1. Respondents have agreed to fix and maintain and have fixed and maintained prices at which malleable iron chain is sold and offered for sale by corporate respondents.

2. The aforesaid agreements to fix and maintain prices was effected through the co-operative activities of corporate respondents, among themselves and through the operation of their trade association, respondent Institute, and its officers.

3. Respondent Institute, in the course of the combination and conspiracy alleged, has functioned through its "Classification Committee," "Factors Committee" and "Committee on List Prices," the activities of which were to establish standards and specifications of products, to devise factors or multipliers to be applied against average costs for the purpose of determining selling prices, and to propose for adoption, publication and use by members of respondent Institute list prices for malleable iron chain.

4. Respondents have agreed to fix and maintain and have fixed and maintained substantially identical trade discounts and identical territorial divisions for the application of trade discounts in the territories designated by respondents as the Eastern Territory, the Rocky Mountain Territory, and the Western or Pacific Territory of the United States, each of which has its own schedule of trade discounts and all of which serve the purpose of devising a zone pricing system.

5. Respondents have agreed upon and, pursuant thereto, have placed into use substantially the same terms and conditions of sale, and have

adopted and used the practice of allowing freight charges to destination on shipments in excess of one hundred (100) pounds, in order to establish identical delivered prices.

6. Respondents, by agreement and understanding, have adopted and used, and now use, a price leadership plan whereby generally respondent Link-Belt Company, one of the dominant manufacturers of malleable iron chains, leads in the announcement and publication of price and trade discount changes in connection with the sale of malleable iron chain. Pursuant thereto, such prices and changes in prices and trade discounts as announced and used by said Link-Belt Company have been and are adopted and followed by the other corporate respondents herein.

PAR. 5. The inherent effects of the adoption and use by respondents of the practices and activities hereinabove alleged are that:

1. Price competition is and has been eliminated and trade is and has been restrained between corporate respondents in the sale of malleable iron chain.

2. Identical list prices, trade discounts, territorial divisions for the application of trade discounts, terms and conditions of sale, and delivered prices have resulted.

3. Unreasonable hardships and burdens have been and are placed upon the purchasing public because the public is deprived of the right and opportunity to purchase malleable iron chain from any corporate respondent at prices competitive to, at variance with, and lower than the prices quoted and charged by other corporate respondents.

4. The adoption and use by corporate respondents of the practice of allowing freight charges, the establishment of arbitrary geographical zones, and the use of certain trade discounts applicable to customers within the boundaries of these geographical zones have resulted in purchasers being denied natural advantages and benefits which would have otherwise accrued to them.

PAR. 6. The combination, conspiracy, agreements and understandings of the respondents and the acts, practices, pricing methods, devices and policies herein alleged are unfair and to the prejudice of the public; deprive the public of the benefit of competition; have dangerous tendencies and capacities to unlawfully restrain commerce in said products; have actually hindered, frustrated, suppressed, and eliminated competition in the sale of said products in commerce, and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

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CONSENT SETTLEMENT¹

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 18, 1949, issued and subsequently served its complaint on the respondents named in the caption hereof, charging said respondents with the use of unfair methods of competition and unfair or deceptive acts or practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

The respondents desiring that this proceeding be disposed of by the Consent Settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purpose of this proceeding, any review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the Consent Settlement hereinafter set forth, and in lieu of the answers to said complaint heretofore filed and which, upon acceptance by the Commission of this settlement, are to be withdrawn from the record, hereby:

1. Admit all the jurisdictional allegations set forth in the complaint.
2. Consent that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist. It is understood that the respondents, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrain from admitting or denying that they have engaged in any of the acts or practices stated therein to be in violation of law.
3. Agree that this Consent Settlement may be set aside in whole or in part under the conditions and in the manner provided in Paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful, the conclusion based thereon, and the order to cease and desist, all of which the respondents consent may be entered herein in final disposition of this proceeding, are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. (1) Malleable Chain Manufacturers Institute, hereinafter referred to as respondent Institute, is an unincorporated trade

¹The Commission's "Notice" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on April 10, 1952, and ordered entered of record as the Commission's findings as to the facts, conclusions, and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.

association with its office and principal place of business at 11 South La Salle Street, Chicago, Illinois. The membership of respondent Institute at all times referred to in the complaint was made up of eight manufacturers of malleable iron chain, hereinafter referred to as corporate respondents.

The following is a description of the corporate respondents, including their respective corporate status and their principal office and place of business: (2) Link-Belt Company, an Illinois corporation, 307 N. Michigan Avenue, Chicago, Illinois; (3) The Jeffrey Manufacturing Company, an Ohio corporation, First Avenue and Fourth Street, Columbus, Ohio; (4) Chain Belt Company, a Wisconsin corporation, 1600 West Bruce Street, Milwaukee, Wisconsin; (5) Webster Manufacturing, Inc., an Ohio corporation, Tiffin, Ohio, referred to in the complaint as Webster Manufacturing Company, Inc.; (6) Badger Malleable & Manufacturing Company, a Wisconsin corporation, 223 North Chicago Avenue, South Milwaukee, Wisconsin; (7) Peoria Malleable Castings Company, an Illinois corporation, at the foot of Alexander Street, Peoria, Illinois; (8) Moline Malleable Iron Company, an Illinois corporation, St. Charles, Illinois; (9) Deere & Company, an Illinois corporation, Moline, Illinois, trading as Union Malleable Iron Works of Deere & Company, East Moline, Illinois.

The following individual respondents are now or were during the time referred to in the complaint officers of respondent Institute: (10) A. C. Fellingner, Chairman, % Link-Belt Company, 519 Holmes Street, Indianapolis, Indiana; (11) L. E. Brill, Vice-Chairman, % The Jeffrey Manufacturing Company, First Avenue and Fourth Street, Columbus, Ohio; (12) Mark Patterson, Secretary, 11 South La Salle Street, Chicago, Illinois; (13) Gorton Fauntleroy, Treasurer, % Moline Malleable Iron Company, St. Charles, Illinois.

PAR. 2. At all times referred to in the complaint the corporate respondents, in the course and conduct of their business, have regularly sold and shipped malleable iron chain to purchasers at points in the several States of the United States, and in the District of Columbia, other than the State of origin of the shipment, in a regular current and flow of commerce, as "commerce" is defined in the Federal Trade Commission Act.

Respondent Institute, though not engaged in commerce, at all times referred to in the complaint cooperated as a co-conspirator with corporate respondents and individual respondents herein in carrying out the unlawful acts in commerce **as are herein found.**

PAR. 3. Respondent corporations manufacture substantially in excess of 66% of the malleable iron chain produced in the United States, and because of the adoption and use of methods, practices, and policies

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hereinafter described, active and substantial competition in the sale of malleable iron chain has been lessened or eliminated.

PAR. 4. Respondents, at all times referred to in the complaint, have unlawfully combined and conspired between and among themselves and others to hinder, frustrate, suppress, restrain and eliminate competition in the sale and distribution of malleable iron chain in commerce.

Among the acts, methods, practices and policies engaged in by respondents pursuant to and in furtherance of the combination and conspiracy hereinabove found are the following:

1. Respondents have agreed to fix and maintain, and have fixed and maintained, prices at which various types of malleable iron chain have been sold and offered for sale by corporate respondents.

2. The aforesaid agreements to fix and maintain prices were effected through the cooperative activities of corporate respondents among themselves and through the operation of their trade association, respondent Institute, and its officers.

3. Respondent Institute, in the course of the aforesaid combination and conspiracy, has functioned through its "Classification Committee," "Factors Committee" and "Committee on List Prices," the activities of which were to establish standards and specifications of products, to devise factors or multipliers to be applied against average costs for the purpose of determining selling prices, and to propose for adoption, publication and use by members of respondent Institute list prices for malleable iron chain.

4. Each of the corporate respondents, for pricing purposes, has maintained two geographic territories or divisions, each of which has had a different schedule of trade discounts and has served the respondent in its maintenance of a zone pricing system. The two geographic territories or divisions so maintained by each of the corporate respondents have been a Western or Pacific Coast Territory and an Eastern Territory. At all times referred to in the complaint, the Western or Pacific Coast Territory of all the corporate respondents, except Badger Malleable & Manufacturing Company and Deere & Company, trading as Union Malleable Iron Works of Deere & Company, has been comprised of the States of Oregon, Washington, California, Idaho, Nevada, and Arizona, and the Eastern Territory has been comprised of the remainder of the continental United States. The Western or Pacific Coast Territory of respondent Badger Malleable & Manufacturing Company has been comprised of only the States of Oregon, Washington, and California. However, this respondent has not made sales to customers located in the States of Idaho, Nevada, and Arizona. The Western or Pacific Coast Territory of respondent

Deere & Company, trading as Union Malleable Iron Works of Deere & Company, included, in addition to the six States above named, the States of Utah, Montana, and New Mexico. However, this respondent's sales during the past ten years to customers in its Western Territory, outside the States of Oregon, Washington, and California, have not been consequential. In each geographic area where two or more of the respondents have been making quotations and transacting business, their discounts, terms and conditions of sale have been substantially identical.

From the foregoing, the Commission concludes that the geographic territories or divisions of all the corporate respondents were therefore substantially identical; the trade discounts applicable within each of the aforesaid geographic territories or divisions were also substantially identical for all the respondents; prices calculated and determined pursuant to and in accordance with this zone delivered price system resulted in identical delivered price quotations and prices by all the corporate respondents to all customers of the same class located in the same geographic zone; and the adoption and maintenance of the aforesaid zone pricing system constituted a part and parcel of and a supplement to the over-all combination, conspiracy, and planned common course of action by which the price fixing agreements hereinbefore described were effectuated.

5. Each of the corporate respondents adopted and used the practice of allowing freight charges to destination on shipments of various types of malleable iron chain in excess of 100 pounds, although some respondents adopted the practice before others adopted it. The Commission concludes that this practice aided the respondents in the attainment of identical delivered prices and constituted a part of and supplement to the over-all conspiracy hereinabove found.

6. Respondent Link-Belt Company was one of the dominant manufacturers of malleable iron chain in the United States from the standpoint of size and was a leader in the industry. Prices and changes in prices and in trade discounts on certain items, determined by a formula or system previously agreed upon by all the respondents were, in many instances, announced and published by respondent Link-Belt Company and thereafter adopted, used, and followed by the other corporate respondents manufacturing those items.

7. Respondents have filed, exchanged, distributed, and relayed among their competitors, named herein as corporate respondents, and through the medium of the respondent Institute, price information showing current or future prices or conditions of sale, and have bid and made price quotations consistent with the price information which

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was filed, exchanged, distributed, and relayed among corporate respondents and through the medium of respondent Institute.

8. Respondents have filed, exchanged, distributed, and relayed among their competitors, named herein as corporate respondents, and through the medium of the respondent Institute, information concerning prices charged particular customers and information concerning volume of production, sales, and shipments where the identity of the purchasers could be determined from such information so as to aid in securing compliance with announced prices, terms or conditions of sale.

9. Respondents, through the medium of respondent Institute, have collected, compiled, circulated, and exchanged between or among corporate respondents rate or transportation charge information which was used in computing prices and price quotations.

PAR. 5. The combination, conspiracy, and the agreements, understandings, acts, practices, pricing methods, systems, devices, and policies, as hereinbefore found, have been all and singularly unfair and to the prejudice of the public and against public policy because of their dangerous tendency unduly to hinder competition and create monopoly, and because they have in fact tended to restrain competition in the sale in commerce of malleable iron chain, and therefore constitute unfair methods of competition and unfair or deceptive acts or practices in commerce within the meaning of Section 5 of the Federal Trade Commission Act, as amended.

CONCLUSION

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

ORDER TO CEASE AND DESIST

It is ordered, That respondents, Malleable Chain Manufacturing Institute, an unincorporated trade association, its directors, its officers, and its members; the members of its Classification Committee, the members of its Factors Committee, the members of its Committee on List Prices, or the members of any other Committee or Committees, however named, designated, or described, the purpose, function, or operation of which is to do any of the acts or things which are prohibited by the terms of this order; A. C. Fellingner, L. E. Brill, Mark Patterson, Gorton Fauntleroy, individually or as officers of respondent Institute, and Link-Belt Company, The Jeffrey Manufacturing

Company, Chain Belt Company, Webster Manufacturing, Inc., referred to in the complaint as Webster Manufacturing Company, Inc., Badger Malleable and Manufacturing Company, Peoria Malleable Castings Company, Moline Malleable Iron Company, Deere & Company, trading as Union Malleable Iron Works of Deere & Company, corporations, and their respective officers, representatives, agents and employees, in, or in connection with, the offering for sale, sale and distribution of malleable iron chain in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination or conspiracy between any two or more of said respondents, or between any one or more of said respondents and another or others not parties hereto, to do or perform any of the following things:

1. Quoting or selling at prices calculated or determined pursuant to, or in accordance with, any zone delivered price system; or quoting or selling at prices calculated or determined pursuant to, or in accordance with, any other system or formula which produces identical price quotations or prices, or which prevents purchasers from finding any advantages in price in dealing with one or more of the respondents as against any of the other respondents;
2. Establishing, fixing, or maintaining prices, discounts, terms or conditions of sale or adhering to any prices, discounts, terms or conditions of sale;
3. Formulating, devising, adopting or using uniform list prices or uniform delivered prices for malleable iron chain;
4. Establishing or maintaining geographical areas or zones wherein purchasers are quoted uniform prices, discounts or terms of sale;
5. Establishing or maintaining price differentials or discount differentials between different geographical areas;
6. Filing, exchanging, distributing, or relaying among the corporate respondents, or any of them, or any of their representatives, or through respondent Malleable Chain Manufacturers Institute, or through any other medium or central agency, price information showing current or future prices or conditions of sale of any particular respondent, or bid or price quotation submitted or to be submitted on any prospective piece of business, other than in particular single transactions involving the sale of malleable iron chain by one corporate respondent to another corporate respondent where neither the price to be charged by either respondent to the ultimate customer, nor the identity of such customer, is specified;

7. Filing, exchanging, distributing or relaying among the corporate respondents, or any of them or any of their representatives, or through respondent Malleable Chain Manufacturers Institute, or through any other medium, central agency or publication, information concerning prices charged particular customers or information concerning volume of production, sales or shipments where the identity of the purchaser can be determined from such information and which has the capacity or tendency of aiding in securing compliance with announced prices, terms, or conditions of sale;

8. Collecting, compiling, circulating or exchanging between or among respondents or any of them rates or transportation charges used or to be used in computing prices or price quotations; or using, directly or indirectly, any such information so collected, compiled, or received, in computing price quotations;

9. Adopting, using, or in any way following any price quotations announced by particular respondents, or any of them, whereby quotations are made uniform or matched;

10. Establishing standards or specifications when the action taken or information exchanged is for the purpose of fixing or maintaining prices or has the tendency to fix or maintain prices or otherwise secure compliance with announced prices, terms, or conditions of sale;

11. Doing or causing any of the things listed in the preceding paragraphs (1) to (10) and the doing of which is forbidden in this order through action of respondent Malleable Chain Manufacturers Institute, or any subdivision or committee of said Institute, or any other individual, corporation or organization;

Provided, however, 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 the officers, directors, agents or employees of any corporate respondent and relating solely to the carrying on of that corporation's sole and separate business, or between any corporate respondent and any of its wholly-owned subsidiaries, when not for the purpose or with the effect of restraining trade and when for the purpose and effect of promoting competition.

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

MALLEABLE CHAIN MANUFACTURERS INSTITUTE ET AL. 1175

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MALLEABLE CHAIN MANUFACTURERS INSTITUTE,
(sgd) COVINGTON AND BURLING,
By (sgd) J. HARRY COVINGTON,
Title: *Counsel.*

Date: February 28, 1952.

A. C. FELLINGER,
(sgd) COVINGTON AND BURLING,
By (sgd) J. HARRY COVINGTON,
Title: *Counsel.*

Date: February 28, 1952.

L. E. BRILL,
(sgd) COVINGTON AND BURLING,
By (sgd) J. HARRY COVINGTON,
Title: *Counsel.*

Date: February 28, 1952.

WEBSTER MANUFACTURING, INC.
By (sgd) J. B. NORDHOLT, JR.,
Title: *V.-Pres. and Counsel.*

Date: Feb. 21, 1952.

(sgd) Badger Malleable & Manufacturing Company,
BADGER MALLEABLE & MANUFACTURING COMPANY,
(sgd) WOOD, WARNER, TYRRELL & BRUCE,
By (sgd) RICHARD H. TYRELL,
Title: *Counsel.*

Date: Feb. 14, 1952.

PEORIA MALLEABLE CASTINGS COMPANY,
By (sgd) J. C. SCULLY, JR.,
Title: *Counsel.*

Date: Feb. 19, 1952.

(sgd) Moline Malleable Iron Company,
MOLINE MALLEABLE IRON COMPANY,
(sgd) SIDLEY, AUSTIN, BURGESS & SMITH,
By (sgd) JAMES E. S. BAKER,
Title: *Counsel.*

Date: February 15, 1952.

(sgd) Deere & Company, Trading as Union Malleable
Iron Works of Deere & Company,
DEERE & COMPANY, TRADING AS UNION MALLEABLE
IRON WORKS OF DEERE & COMPANY,
(sgd) BELL, BOYD, MARSHALL & LLOYD,
By (sgd) GLEN A. LLOYD,
Title: *Counsel.*

Date: February 16, 1952.

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MARK PATTERSON,
(sgd) COVINGTON AND BURLING,
By (sgd) J. HARRY COVINGTON,

Title: *Counsel.*

Date: February 28, 1952.

GORTON FAUNTLEROY,
(sgd) COVINGTON AND BURLING,
By (sgd) J. HARRY COVINGTON,

Title: *Counsel.*

Date: February 28, 1952.

LINK-BELT COMPANY,
By (sgd) POPE & BALLARD,

Title: *Counsel.*

Date: February 11, 1952.

THE JEFFREY MANUFACTURING COMPANY,
By (sgd) HARKER H. HITTSON,

Title: *Legal Counsel.*

Date: 2/25/52.

(sgd) Chain Belt Company,
CHAIN BELT COMPANY,
(sgd) WOOD, WARNER, TYRRELL & BRUCE,
By (sgd) RICHARD H. TYRRELL,

Title: *Counsel.*

Date: Feb. 14, 1952.

The foregoing Consent Settlement is hereby accepted by the Federal Trade Commission and ordered entered of record this 10th day of April, 1952.

Syllabus

IN THE MATTER OF
DEJAY STORES, INC.

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

Docket 5793. Complaint, June 29, 1950—Decision, Apr. 10, 1952

Although the collection of honest and legitimate debt is a legal and even worthy aim, it does not justify or make legal the use of means which are false, misleading or deceptive.

As regards the respondent's appeal from the hearing examiner's initial decision in the instant matter, for reasons below set forth, the Commission was of the opinion that all the findings as to the facts contained in the initial decision were supported by reliable, probative, and substantial evidence in the record; that the conclusions contained therein were correct; that the order to cease and desist was proper upon the record and was required to provide proper relief from respondent's unfair and deceptive acts and practices; that the initial decision was proper in all respects to dispose of the proceeding; and accordingly denied the appeal.

Where a corporation engaged in the retail sale of clothing and other merchandise through a large number of stores in some twenty eastern, southeastern and midwestern states operated by its wholly-owned subsidiaries;

In seeking to obtain information as to current addresses and employment of persons to whom it had thus sold merchandise on credit through the managers of its retail stores and who were delinquent in their payment, by means of certain form letters—

- (a) Falsely represented through the use of the words "Personnel Bureau" in double postcards which they addressed to delinquent debtors at their last known address and which stated that "due to the shortage of transportation and manpower, we are unable to interview you personally" and requested the recipient to fill out and mail in the detachable portion which called for his name, address, employment and marital status and other information, that it was engaged in the business of operating a personnel management bureau or employment agency and that the information desired was to be used in connection with employment of personnel;
- (b) Thereafter represented through the use of another double postcard—upon which it displayed the words "DEJAY SERVICE CO." along with the legend "NOTICE OF GOODS FOR DELIVERY", followed by the statement "We are holding a package addressed to ----- which we have been unable to deliver because of incorrect address" and "Same will be forwarded upon receipt of the attached postal card properly filled in", in which provision was made, under the caption "CONSIGNEE'S NAME AND ADDRESS AS SHOWN ON SHIPMENT", for the name, address, and employer of the delinquent—that it had a package for the addressee and that the information requested was necessary to forward the package to such person; when in fact the only package available for delivery was one prepared by it; and

Where said corporation, following discontinuance of the use of the aforesaid postcards, in addressing references furnished by a delinquent debtor at the

time of his purchase from it, and after return by the Post Office of requests for payment, because the delinquent addressee could not be located—

- (c) Deceptively and misleadingly represented that a certain "J. King", living in New York, had an important personal letter for the delinquent debtor which had somehow been left with or misdelivered to him by means of a form letter, in simulated hand writing which, addressed to one or more of the delinquent's references over the aforesaid name, stated "I understand that you are a friend of ----- I have an important letter for ----- so please let me have the correct address, . . . mail it to me in the enclosed envelope;" when in fact "J. King" was its credit manager and the only letter was the dun returned by the Post Office:

With the result that persons who received said letters and postcards were led to believe erroneously that it would be to their advantage to furnish information desired by said corporation which they would not have supplied had the true facts been revealed:

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

As respects the discontinuance of the use of the double postcards above described, the voluntary cessation of the practices involved was neither permanent nor in good faith, since the same practice, for the same purpose and with the same effect, although milder in form and reduced from sheer falsity to the level of "misleading and deceptive," was carried on through respondent's use of the form letter in simulated handwriting above described; and the public interest required that such continuing, although less vicious, course of conduct be stopped.

As respects respondent's appeal from the initial decision of the hearing examiner in the instant matter and respondent's objection to those findings which have to do with the use of the form letter in simulated personal handwriting: no recipient of ordinary or less than average intelligence would apprehend its real purpose, namely, to obtain information for the purpose of collecting money, but would naturally believe that the signature was that of an individual living in New York at an address not known to anyone except someone intimately familiar with that city to be a business address, with an important personal letter for the delinquent debtor, as above set out, and the facts in the record fully supported the examiner's findings that the letter and the circumstances surrounding its use were deceptive and misleading to the recipient, and that respondent itself recognized said letter as a subterfuge and decoy.

As respects said appeal and respondent's objection to the examiner's conclusion that its voluntary cessation of the use of the forms above referred to "was neither permanent nor complete nor . . . in good faith, since the same practice for the same purpose and with the same effect, although milder in form and reduced from sheer falsity to the level of 'misleading and deceptive' " was carried on through the use of the letter above described and that the public interest required that such "continuing, although less vicious, course of conduct be stopped", it appeared that the respondent did not cease the practice at which the complaint was directed, but merely changed the manner in which it engaged in the practice; and the Commission agreed with the examiner's conclusion.

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Complaint

Before *Mr. Henry P. Alden* and *Mr. Frank Hier*, hearing examiners.
Mr. J. W. Brookfield, Jr. for the Commission.
Gallop, Climenko & Gould, 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 Dejay Stores, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Dejay Stores, Inc. is a corporation organized and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 114 East 23rd Street, in the city of New York, New York.

PAR. 2. Respondent is now, and for more than three years last past has been, engaged in the retail sale of clothing and other merchandise through a large number of retail stores located in practically all of the Eastern, Southeastern and Midwestern States. Such stores are operated by wholly-owned subsidiary corporations also organized under the laws of the State of Delaware. The officers of said subsidiaries are the same as the parent corporation. In the course of its business, Dejay Stores, Inc. causes and has caused its goods and merchandise to be shipped in commerce between and among the various States of the United States and there is now and has been for more than three years last past a course of trade in such merchandise by said respondent in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of its business Dejay Stores, Inc., sells large quantities of its merchandise on a credit basis, and when sales are made on credit the managers of respondent's retail stores secure information from the purchaser as to the purchaser's place of employment, residence address, and names and addresses of references. Thereafter, respondent frequently desires to obtain information as to the current addresses and employments of persons to whom respondent has sold merchandise on credit and who are delinquent in their payments. In order to obtain such information respondent registered the fictitious names, "Personnel Management Bureau," "Dejay Service Company" and "J. King" in the State of New York and under such names uses and has used and has authorized its various subsidiaries to use certain form letters or communications with

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return envelopes or return postcards, typical of which are the following:

A form letter written in simulated handwriting is sent to one or more of the references furnished by the purchaser and reads as follows:

I understand that you are a friend of
 ----- I have an important
 letter for-----so please let
 me have the correct address. Thanks.
 J. King

P. S. Please write in the address on this
 line: -----
 and mail it to me in the enclosed envelope.

A second form of communication consists of a double postcard addressed to the last known address of the delinquent debtor and reads as follows:

DEJAY SERVICE CO.
 114 East 23rd St. New York, N. Y.

NOTICE OF GOODS FOR DELIVERY

We are holding a package addressed to
 ----- which we have been
 unable to deliver because of incorrect
 address.

Same will be forwarded upon receipt of
 the attached postal card properly filled in
 with the correct address of the above party.

DEJAY SERVICE CO.

Charge C.O.D.
 \$

with return card addressed as follows:

BUSINESS REPLY CARD
 DEJAY SERVICE CO.
 114 East 23rd Street, New York, N. Y.

(Reverse of return card)

DEJAY SERVICE CO.
 114 East 23rd St., New York, N. Y.

Date-----
 Shipment No. Charge C.O.D.
 \$

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CONSIGNEE'S NAME AND ADDRESS AS SHOWN ON SHIPMENT

Name _____ Address _____

We will deliver this shipment only to the above named person when the information requested below is properly filled in.

Name _____ Name in full of consignee
Residence _____ Street and No.
City _____ State _____
Employer _____
Address _____

Package will be sent direct to the person intended for only at their address, and not in care of anyone else.

NO POSTAGE NECESSARY

A third form of communication consists of a double postcard addressed to the delinquent debtor at his last known address and reads as follows:

Due to the shortage of transportation and man power, we are unable to interview you personally. So please fill out detachable card and mail in.

Respectfully yours, PERSONNEL MANAGEMENT BUREAU.

(Return card)

Personnel Management Bureau
P. O. Box 1599
Savannah, Ga.

(Reverse of return card)

Name _____
Address _____
City _____ State _____
Employed: Yes _____ No _____ Where _____
Race _____ Married _____ Single _____
Dependents _____ Phone _____

Detach and mail immediately.

Respondent has used other similar means of locating delinquent debtors, but the above cards are typical of the methods used.

PAR. 4. Through the use of the letter signed "J. King," respondent represented that it has a personal or business letter for the person named in the letter and that the information was desired in order to forward the letter to the person named. In truth and in fact, respondent did not have a letter of any kind for delivery to the addressee at the time of the mailing of the letter so signed.

Through the use of the name "Dejay Service Company" and the statement "Notice of Goods for Delivery" and the statement "We are holding a package which we have been unable to deliver because of incorrect address," respondent represented to the addressee thereof that it had a package for the addressee and that the information requested was desired in order to forward the package to addressee. In truth and in fact, the only package available for delivery was one prepared by respondent.

Through the use of the name "Personnel Management Bureau" and the statement mailed by respondent using that name, respondent represented that it was engaged in the business of operating a personnel management bureau or employment agency and that the information desired from the addressee was to be used in connection with employment of personnel. In truth and in fact, respondent does not, nor did it at the time such communications were mailed, operate a personnel management bureau or an employment agency.

The sole and only purpose of sending out the aforesaid letters and cards was an attempt to obtain the addresses and places of employment of persons owing delinquent accounts to respondent.

PAR. 5. Persons who received said letters and postcards above described were led to erroneously believe that respondent had a package or letter addressed to them or to the person named therein or that respondent maintained an employment office or personnel management bureau and that it would be to their advantage to furnish the requested information, and as a result of such mistaken and erroneous belief furnished information desired by respondent which they would not have otherwise supplied had the true facts been revealed.

PAR. 6. The 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 in violation of the Federal Trade Commission Act.

ORDERS AND DECISION OF THE COMMISSION

Order denying appeal from initial decision of hearing examiner and decision of the Commission and order to file report of compliance, Docket 5793, April 10, 1952, follows:

This matter came on to be heard by the Commission upon the respondent's appeal from the initial decision of the hearing examiner herein and upon briefs and oral argument of counsel in support of and in opposition to said appeal.

Respondent makes two contentions in its brief. First, that the form letter presently used by the respondent in its attempt to obtain information as to the current addresses of delinquent debtors does not constitute false, misleading, or deceptive statements or representations and that, therefore, the use of such form letter does not constitute unfair or deceptive acts or practices. Second, that because the respondent voluntarily ceased using certain forms it previously used, no order against their use is warranted. Specific exception is taken to Paragraphs Eight and Nine of the findings as to the facts; to paragraphs 1 and 2 of the conclusions; and to the order in the initial decision.

The hearing examiner's findings to which specific exception is taken are to the effect that the form letter presently used by the respondent in its efforts to obtain information as to the addresses of delinquent debtors, and the circumstances surrounding its use, are misleading and deceptive to the recipient of such form letter, and that the respondent itself recognizes such letter as a subterfuge and a decoy. The form letter presently used by the respondent is in simulated handwriting and is signed by "J. King." The letter contains the statements, "I understand that you are a friend of _____. I have an important letter for _____ so please let me have the correct address." When the local manager of one of respondent's retail stores is unable to locate a delinquent customer, he sends to the respondent's New York office a "Decoy Request." Respondent then sends the above-described form letter to references furnished by the delinquent customer at the time credit was obtained. There is nothing in the letter to indicate its real purpose or that the sender is in any way connected with the respondent. The only letter the respondent has for the delinquent debtor is one which respondent has sent to the delinquent debtor and which has been returned. These and other facts in the record fully support the hearing examiner's findings that the letter and the circumstances surrounding its use are deceptive and misleading to the recipient and that the respondent recognizes said letter as a subterfuge and decoy.

Respondent does not except to the hearing examiner's findings to the effect that the forms previously used by the respondent contained false, deceptive, and misleading representations, but does except to his conclusion that respondent's voluntary cessation of the use of such forms "was neither permanent nor complete nor was it in good faith, since the same practice for the same purpose and with the same effect,

although milder in form and reduced from sheer falsity to the level of 'misleading and deceptive,' has been and is being carried on by it through its use of the letter described in Paragraph Six of the * * * Findings as to the Facts. The public interest requires that this continuing, although less vicious course of conduct, be stopped." The Commission agrees with this conclusion. The respondent did not cease the practice at which the complaint was directed, but merely changed the manner in which it engaged in the practice.

The Commission is of the opinion that all of the findings as to the facts contained in the initial decision are supported by reliable, probative, and substantial evidence in the record; that the conclusions contained therein are correct; and that the order to cease and desist is proper upon this record and is required to provide proper relief from respondent's unfair and deceptive acts and practices.

The Commission, therefore, being of the opinion that the respondent's appeal is without merit and that the initial decision of the hearing examiner is appropriate in all respects to dispose of this proceeding:

It is ordered, That the respondent's appeal from the initial decision of the hearing examiner be, and it hereby is, denied.

It is further ordered, That the initial decision of the hearing examiner, a copy of which is attached, shall, on the 10th day of April, 1952, become the decision of the Commission.

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

Said initial decision, thus adopted by the Commission as its decision, follows:

INITIAL DECISION BY FRANK HIER, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 29, 1950, issued and subsequently served its complaint in this proceeding upon Dejay Stores, Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondent's answer thereto, a hearing was held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before Henry P. Alden, a trial examiner theretofore duly designated by the Commission. Thereafter, on May

21, 1951, the said trial examiner formally closed the proceeding and on May 31, 1951, he retired from the Government service. On June 6, 1951, the Commission designated Frank Hier as trial examiner in the place and stead of the said Henry P. Alden. Thereafter, the proceeding regularly came on for final consideration by the undersigned substituted trial examiner on the complaint, answer thereto, testimony and other evidence, proposed findings as to the facts and conclusion presented by counsel and proposed order presented by counsel in support of the allegations of the complaint, and said substituted 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 Dejay Stores, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 114 East 23d Street, in the City of New York, New York.

PAR. 2. Respondent is now, and for more than three years last past has been, engaged in the retail sale of clothing and other merchandise through a large number of retail stores located in approximately twenty of the Eastern, Southeastern and Midwestern States. Such stores are operated by wholly-owned subsidiary corporations also organized under the laws of the State of Delaware. The officers of said subsidiaries are the same as the parent corporation. In the course of its business, Dejay Stores, Inc., causes and has caused its goods and merchandise to be shipped in commerce between and among the various States of the United States and there is now and has been for more than three years last past a course of trade in such merchandise by said respondent in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of its business, Dejay Stores, Inc., sells large quantities of merchandise on a credit basis, and when sales are made on credit, the managers of respondent's retail stores secure information from the purchaser as to the purchaser's place of employment, residence address and names and addresses of references. Thereafter, respondent frequently desires to obtain information as to current addresses and employment of persons to whom respondent has sold merchandise on credit and who are delinquent in their payments. To obtain said information the respondent has used certain form letters.

PAR. 4. Prior to 1943, but not since, respondent has thus used a double post card addressed to a delinquent debtor at his last known address which reads as follows:

Due to the shortage of transportation and man power, we are unable to interview you personally.

So please fill out detachable card and mail in.

Respectfully yours,

PERSONNEL MANAGEMENT BUREAU.

(Return card)

Personnel Management Bureau
P. O. Box 1599
Savannah, Ga.

(Reverse of return card)

Name
Address
City State
Employed: Yes No Where
Race Married Single
Dependents Phone
Detach and mail immediately.

PAR. 5. Prior to 1946, but not since, respondent has thus used a double post card addressed to a delinquent debtor at his last known address which reads as follows:

DEJAY SERVICE CO.
114 East 23rd St. New York, N. Y.
NOTICE OF GOODS FOR DELIVERY

We are holding a package addressed to
which we have been unable to deliver because of incorrect address.

Same will be forwarded upon receipt of the attached postal card properly filled in with the correct address of the above party.

DEJAY SERVICE CO.

Charge C. O. D.

\$

with return card addressed as follows:

BUSINESS REPLY CARD
DEJAY SERVICE CO.
114 East 23rd Street, New York, N. Y.
(Reverse of return card)

DEJAY SERVICE CO.
114 East 23rd St., New York, N. Y.

Shipment No. Charge Date
\$ C. O. D.

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CONSIGNEE'S NAME AND ADDRESS AS SHOWN ON SHIPMENT

Name -----

Address -----

We will deliver this shipment only to the above named person when the information requested below is properly filled in.

Name -----

Name in full of consignee

Residence -----

Street and No.

City ----- State -----

Employer -----

Address -----

Package will be sent direct to the person intended for only at their address, and not in care of anyone else.

NO POSTAGE NECESSARY

PAR. 6. Respondent has thus used, and now uses, a form letter in simulated handwriting, addressed to one or more references furnished by a delinquent debtor at the time of his purchases from respondent, which reads as follows:

I understand that you are a friend of ----- I have an important letter for ----- so please let me have the correct address. Thanks.

J. KING.

P. S. Please write in the address on this line: ----- and mail it to me in the enclosed envelope.

Both the enclosed envelope and the transmittal envelope bear the address of

J. King, 10th Floor, 114 East 23rd St., New York 10, N. Y.

PAR. 7. Respondent's practice, in the use of the form letter described above in Paragraph Six, has been, where credit has been extended and payments are delinquent for two months or more, to write the delinquent customer urging him to make prompt payment. If this dun is returned by the post office because the addressee cannot be located, then respondent sends the form letter described in Paragraph Six above to the references originally supplied by the customer at the time he made his purchases and obtained credit for their payment. "J. King" is, in fact, John King, the comptroller of respondent, who has supervision and responsibility for collections of unpaid balances due respondent. The purpose of such form letter is to obtain the current address of the delinquent customer from the addressee, whose name was given as a credit reference. Respondent had no letter of any kind awaiting delivery to the delinquent customer, except the "dun letter" originally sent him, which was returned by the post office as undeliverable.

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PAR. 8. Although there is no representation or statement in this form letter described in Paragraph Six above which is literally false, nevertheless, it and the circumstances surrounding its use are deceptive and misleading to the recipient. About 500 of these letters are sent out every month by respondent, resulting in about 15% replies. Respondent's merchandise is sold to medium or lower income purchasers. Instead of being typed as a business communication, it is in simulated personal handwriting, and gives the impression of being a personal communication, rather than a commercial communication. No recipient of ordinary or less than average intelligence would apprehend its real purpose—to obtain information for the purpose of collecting money. Such a recipient would naturally believe that "J. King," an individual living in New York, at an address not known to anyone except someone intimately familiar with that city to be a business address, had an important personal letter for the delinquent debtor, which had somehow been left with or misdelivered to J. King. The letter is a subterfuge, concealing its real purpose by giving a misleading and deceptive impression of an entirely different purpose.

PAR. 9. Respondent, in spite of the denial of its credit manager, recognizes the letter described in Paragraph Six as a subterfuge and a decoy. When a local store manager is unable to locate a delinquent customer to enforce collection of an unpaid balance, he as a regular and current practice sends into respondent's New York office a printed form as follows:

F 115
STORE ----- Date -----

DECOY REQUEST

Home Office:

The following account moved or skipped and I cannot trace it from here. Send decoys as indicated below. Needless delay may kill all chances to locate the account.

Acct. No. -----	Mrs. -----
	Mr. -----
	Miss Print or Type Full Name
Bal. \$-----	Former -----
	N. G. -----
DLP. -----	Address -----
	City and State

PLEASE DECOY THE FOLLOWING:

1. -----

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Conclusions

2. -----

Make Notation of This Request on Your Lease Card so That You Won't Duplicate Request Using Same Decoys. Write Additional Decoys on Reverse Side.

TYPEWRITE, WRITE OR PRINT LEGIBLY

Under the legend "Please decoy the following" is filled in the names and addresses of references previously given with any notation as to their blood or marital relationship to the delinquent customer, whereupon respondent from its New York office initiates and uses the procedure hereinabove described in Paragraph Seven.

PAR. 10. Through the use of the double post card described in Paragraph Five, supra, respondent has represented to the addressee thereof that it had a package for the addressee and that the information requested was necessary in order to forward the package to addressee, whereas the only package available for delivery was one prepared by respondent.

PAR. 11. Through the use of the name "Personnel Management Bureau" and the statement mailed by respondent using that name, respondent represented that it was engaged in the business of operating a personnel management bureau or employment agency and that the information desired from the addressee was to be used in connection with employment of personnel. In truth and in fact, respondent does not, nor did it at the time such communications were mailed, operate a personnel management bureau or an employment agency.

PAR. 12. The sole purpose of the use of the cards described in Paragraphs Four and Five, supra, was an attempt to obtain the addresses and places of employment of persons owing delinquent accounts to respondent.

PAR. 13. Persons who received said letters and post cards above described were led to erroneously believe that respondent had a package addressed to them or to the person named therein or that respondent maintained an employment office or personnel management bureau and that it would be to their advantage to furnish the requested information, and as a result of such mistaken and erroneous belief furnished information desired by respondent which they would not have otherwise supplied had the true facts been revealed.

CONCLUSIONS

1. The aforesaid acts and practices of respondent Dejay Stores, Inc., as hereinabove found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce

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within the intent and meaning of the Federal Trade Commission Act.

2. Respondent's voluntary cessation of the practices hereinabove described in connection with the cards described in Paragraphs Four and Five of the above Findings as to the Facts was neither permanent nor complete nor was it in good faith, since the same practice for the same purpose and with the same effect, although milder in form and reduced from sheer falsity to the level of "misleading and deceptive," has been and is being carried on by it through its use of the letter described in Paragraph Six of the above Findings as to the Facts. The public interest requires that this continuing, although less vicious course of conduct, be stopped.

3. Although the collection of honest and legitimate debt is a legal and even worthy aim, it does not justify nor make legal the use of means which are false, misleading or deceptive.

ORDER.

It is ordered, That respondent Dejay Stores, Inc., a corporation, its officers, employees, agents and representatives, directly or through any corporate or other device, in connection with the use in commerce, as "commerce" is defined in the Federal Trade Commission Act, of double reply postal cards, letters, or any other printed or written material of a substantially similar nature, do forthwith cease and desist from:

1. Using the name "Personnel Management Bureau," or any other word or words of similar import, to designate, describe or refer to respondent's business, or otherwise representing, directly or by implication, that respondent is engaged in operating a personnel management bureau or employment or placement agency.

2. Using the name "Dejay Service Company," or any other word or words of similar import, to designate, describe or refer to respondent's business, or otherwise representing, directly or by implication, that respondent is connected with or in the business of transporting or delivering goods or packages to the proper recipient thereof.

3. Using post cards, form letters or other material which represents, directly or by implication, that respondent's business is other than that of retailing merchandise.

4. Representing, directly or by implication, that persons concerning whom information is sought through respondent's post cards or other material are, or may be, consignees of goods or packages, C. O. D., prepaid or otherwise, in the hands of respondent or that the information sought through such means is for the purpose of enabling respondent to make delivery of goods or packages to such persons.

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5. Using letters, whether printed, typewritten or in simulated handwriting, for the purpose of obtaining the current addresses of delinquent customers, which represent that any person, firm or corporation other than respondent, or respondent's store from which the customer purchased the merchandise on which the debt is owing, has a letter for delivery to such delinquent customer when his current address is furnished.

ORDER TO FILE REPORT OF COMPLIANCE

It is further ordered, That the respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with in the order to cease and desist [as required by aforesaid order and decision of the Commission].

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IN THE MATTER OF
SEWING MACHINE EXCHANGE, INC. ET AL.

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

Docket 5887. Complaint, June 27, 1951—Decision, Apr. 15, 1952

When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public not marked or not adequately marked showing that they are of foreign origin, or if marked and the markings are covered or otherwise concealed, such public understands and believes such articles to be wholly of domestic origin.

There is among the members of the purchasing public a substantial number who have a decided preference for products originating in the United States over products originating in whole or in part in foreign countries, including sewing machine heads.

Where a corporation and its three officers, engaged in the competitive interstate sale to distributors and retailers of sewing machine heads imported by them from Japan, and of complete sewing machines assembled through attachment of a motor to said imported heads, in which process the words "Made in Occupied Japan" and "Japan" became covered—

Failed adequately to disclose that said heads were made in Japan, notwithstanding the presence upon the front of some of them of a medallion which bore in small and indistinct words the legend "Made in Occupied Japan" or "Japan"; and thereby placed in the hands of dealers a means and instrumentality whereby they might mislead and deceive the purchasing public as to place of origin of said heads;

With tendency and capacity to lead members of the purchasing public into the erroneous belief that their said products were of domestic origin and thereby induce purchase of sewing machines of which said heads were a part; whereby trade was unfairly diverted to them from competitors:

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

Before *Mr. James A. Purcell*, hearing examiner.

Mr. William L. Taggart and *Mr. J. C. Williams* for the Commission.

Mr. Leonard L. Creskoff, of Philadelphia, Pa., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Sewing Machine Exchange, Inc., a corporation, and Willis Harris, Jerry Fineman and Manual Harris, 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 Sewing Machine Exchange, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania with its office and principal place of business located at 4233-35 Parrish Street, Philadelphia, Pennsylvania. Respondents Willis Harris, Jerry Fineman and Manual Harris are President, Treasurer and Secretary, respectively of corporate respondent and acting as such officers formulate, direct and control the policies, acts and practices of said corporation. The post office address of the individual respondents is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and have been for several years last past, engaged in the sale of sewing machine heads imported by them from Japan, and completed sewing machines of which said heads are a part, to distributors and also to retailers who in turn sell to the purchasing public. In the course and conduct of their business respondents cause their said products, when sold, to be transported from their place of business in the State of Pennsylvania to the purchasers thereof located in various other States and maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States. Their volume of trade in said commerce has been and is now substantial.

PAR. 3. When the sewing machine heads are imported by respondents the words "Made in Occupied Japan" or "Japan" appear on the back of the vertical arm. Before the heads are sold to the purchasing public as a part of a complete sewing machine it is necessary to attach a motor to the head in the process of which the aforesaid words are covered by the motor so that they are not visible. In some instances said heads, when received by respondents, are marked with a medallion placed on the front of the vertical arm upon which the words "Made in Occupied Japan" or "Japan" appear. These words are, however, so small and indistinct that they do not constitute adequate notice to the public that the heads are imported.

PAR. 4. When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public and such articles are not marked or are not adequately marked showing that they are of foreign origin or if marked and the markings are covered or otherwise concealed, such purchasing public understands and believes such articles to be wholly of domestic origin.

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There is among the members of the purchasing public a substantial number who have a decided preference for products originating in the United States over products originating in whole or in part in foreign countries, including sewing machine heads.

PAR. 5. Respondents by placing in the hands of dealers their said sewing machine heads and completed sewing machines provide said dealers a means and instrumentality whereby they may mislead and deceive the purchasing public as to the place of origin of said heads.

PAR. 6. Respondents in the course and conduct of their business are in substantial competition in commerce with the makers and sellers of domestic sewing machines and also sellers of imported sewing machines some of whom adequately inform the public as to the source of origin of their said products.

PAR. 7. The failure of respondents to adequately disclose on the sewing machine heads that they are manufactured in Japan has the tendency and capacity to lead members of the purchasing public into the erroneous and mistaken belief that their said product is of domestic origin, and to induce members of the purchasing public to purchase sewing machines of which these heads are a part because of such erroneous and mistaken belief. As a result thereof, trade has been unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce.

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

ORDERS AND DECISION OF THE COMMISSION

Order denying motion to stay decision of the Commission and decision of the Commission and order to file report of compliance, Docket 5887, April 15, 1952, follows:

The initial decision of the hearing examiner in this proceeding having been filed, and service thereof having been completed on March 15, 1952, and no notice of an appeal having been filed, and the respondents having filed a motion on March 31, 1952, that the Commission stay its decision in this matter until decisions are rendered by the Commission in certain other proceedings; and

It appearing that the grounds relied upon by the respondents in support of said motion are that the initial decision of the hearing examiner was filed prior to the issuance by the Commission of its order permitting the withdrawal of a certification of question to the

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Decision

Commission by the hearing examiner, and that the respondents are in close competition with the respondents in certain other proceedings pending before the Commission and that a decision adverse to the respondents at this time will prejudice the business interest of the respondents and create an inequitable situation; and

The Commission having duly considered said motion and the record herein and it appearing that the respondents were in no way prejudiced as a result of the hearing examiner having filed his initial decision prior to the issuance by the Commissioner of its order permitting withdrawal of the certification of question and further that there is no sufficient reason to warrant the staying of the decision in this proceeding until decisions in certain other matters have been rendered; and

The Commission being of the opinion that the initial decision of the hearing examiner is appropriate in all respects to dispose of this proceeding:

It is ordered, That the motion of the respondents that the Commission stay its decision in this proceeding be, and it hereby is, denied.

It is further ordered, That the initial decision of the hearing examiner, a copy of which is attached, shall on the 15th day of April, 1952, become the decision of the Commission.

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

Said initial decision, thus adopted by the Commission as its decision, follows:

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 27, 1951, issued and subsequently served its complaint in the above-entitled proceeding upon respondents Sewing Machine Exchange, Inc., a corporation, Willis Harris, Jerry Fineman and Manual Harris, individually and as officers of said corporation, charging them with unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of said Act. On August 20, 1951, respondents filed their answer to the complaint. Thereafter, at a hearing held in Philadelphia, Pennsylvania, on October 24, 1951, respondents moved the Hearing Examiner for leave to withdraw the aforesaid answer and to file in substitution thereof an answer admitting all of the material allegations of fact set forth in the complaint, which motion was

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granted on the record and confirmed by formal order filed herein on October 26, 1951. Such substituted answer reserved to respondents the right to submit proposed findings and conclusions, as provided by Rule XXI of the Commission's Rules of Practice, and also certain other reservations to respondents not necessary to be here set forth. Testimony and exhibits were received, which have been retained of record, no motion to strike having been made by any party, which testimony and exhibits are not herein considered because of the filing of the admission answer as above set out. Thereafter the proceeding regularly came on for final consideration by the above-named Hearing Examiner, theretofore duly designated by the Commission, upon said complaint and substituted answer thereto, proposed findings and conclusions not having been submitted on behalf of any party to the proceeding; and said Hearing 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 Sewing Machine Exchange, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania with its office and principal place of business located at 4233-35 Parrish Street, Philadelphia, Pennsylvania. Respondents William (*alias dictus* Willis) Harris, Jerome (*alias dictus* Jerry) Fineman and Emanuel (*alias dictus* Manual) Harris are President, Treasurer and Secretary, respectively of corporate respondent and acting as such officers formulate, direct and control the policies, acts and practices of said corporation. The post office address of the individual respondents is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and have been for several years last past, engaged in the sale of sewing machine heads imported by them from Japan, and completed sewing machines of which said heads are a part, to distributors and also to retailers who in turn sell to the purchasing public. In the course and conduct of their business respondents cause their said products, when sold, to be transported from their place of business in the State of Pennsylvania to the purchasers thereof located in various other States and maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States. Their volume of trade in said commerce has been and is now substantial.

PAR. 3. When the sewing machine heads are imported by respondents the words "Made in Occupied Japan" or "Japan" appear on the back of the vertical arm. Before the heads are sold to the purchasing public as a part of a complete sewing machine it is necessary to attach a motor to the head in the process of which the aforesaid words are covered by the motor so that they are not visible. In some instances said heads, when received by respondents, are marked with a medallion placed on the front of the vertical arm upon which the words "Made in Occupied Japan" or "Japan" appear. These words are, however, so small and indistinct that they do not constitute adequate notice to the public that the heads are imported.

PAR. 4. When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public and such articles are not marked or are not adequately marked showing that they are of foreign origin or if marked and the markings are covered or otherwise concealed, such purchasing public understands and believes such articles to be wholly of domestic origin.

There is among the members of the purchasing public a substantial number who have a decided preference for products originating in the United States over products originating in whole or in part in foreign countries, including sewing machine heads.

PAR. 5. Respondents by placing in the hands of dealers their said sewing machine heads and completed sewing machines provide said dealers a means and instrumentality whereby they may mislead and deceive the purchasing public as to the place of origin of said heads.

PAR. 6. Respondents in the course and conduct of their business are in substantial competition in commerce with the makers and sellers of domestic sewing machines and also sellers of imported sewing machines some of whom adequately inform the public as to the source of origin of their said products.

PAR. 7. The failure of respondents to adequately disclose on the sewing machine heads that they are manufactured in Japan has the tendency and capacity to lead members of the purchasing public into the erroneous and mistaken belief that their said product is of domestic origin, and to induce members of the purchasing public to purchase sewing machines of which these heads are a part because of such erroneous and mistaken belief. As a result thereof, trade has been unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found are all to the prejudice and injury of the public and of respondents'

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competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondents, Sewing Machine Exchange, Inc., a corporation, and its officers, and William (*alias dictus* Willis) Harris, Jerome (*alias dictus* Jerry) Fineman and Emanuel (*alias dictus* Manual) Harris, individually and as officers of said corporation, and said respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of sewing machine heads for sewing machines in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Offering for sale, selling or distributing foreign made sewing machine heads, or sewing machines of which foreign made heads are a part, without clearly and conspicuously disclosing on the heads, in such a manner that it will not be hidden or obliterated, the country of origin thereof.

ORDER TO FILE REPORT OF COMPLIANCE

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

Complaint

IN THE MATTER OF

WARREN W. BURGESS ET AL. DOING BUSINESS AS THE
KNOX COMPANYCOMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT 26, 1914*Docket 5881. Complaint, May 16, 1951—Decision, Apr. 18, 1952*

Where three partners engaged in the interstate sale and distribution of a number of medicinal preparations including their "Chinaroid" rectal balm and "Romind" tablets compound for relief of rheumatic aches and pains; in advertising by various means, directly and by implication—

- (a) Falsely represented that said "Chinaroid" constituted an adequate and competent treatment for hemorrhoids and their underlying causes;

The facts being that it would have merely an emollient effect and temporarily relieve symptoms of said conditions in simple cases;

- (b) Falsely represented that use of said preparation would serve to shrink sore, swollen tissues, help nature heal irritated membranes and allay nervousness induced by and accompanying hemorrhoids; and

- (c) Falsely represented that said "Romind" preparation was a competent and effective relief for arthritis, neuritis, rheumatism, swollen joints, neuralgia, sciatica, and lumbago, and would afford permanent relief from pain thereof;

- (d) Falsely represented that it was a fast-acting medicine which brought new hope, happiness and comfort to sufferers from the pain of said conditions;

The fact being that any comfort derived from it would be solely due to the temporary relief of minor pains afforded by its analgesic effect, and it was not fast-acting;

With capacity and tendency to mislead a substantial portion of the purchasing public into the erroneous belief that its said representations were true, and thereby into the purchase of substantial quantities of aforesaid preparations:

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

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

Mr. R. P. Bellinger for the Commission.

Davies, Richberg, Tydings, Beebe & Landa, of Washington, D. C., and *Sampson & Dryden*, of Los Angeles, Calif., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Warren W. Burgess, Linn D. Johnson and Richard T. Aldworth, copartners doing business under the firm name of The Knox Company, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof

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

PARAGRAPH 1. Respondents Warren W. Burgess, Linn D. Johnson, and Richard T. Aldworth are individuals trading as copartners under the name of The Knox Company, with their principal place of business located at 1651 North Argyle Street, Los Angeles, California.

PAR. 2. Respondents are now, and for several years last past, have been engaged in selling and distributing a number of medicinal preparations, among which are two certain drug preparations, as "drug" is defined in the Federal Trade Commission Act, and which are designated by respondents as Chinaroid and Romind.

The formula for Chinaroid as originally furnished by the respondents is as follows:

<i>Each 100 grams contain—</i>	<i>Grams</i>
Tannic Acid -----	3.00
Benzocaine -----	1.00
Glycerin -----	3.00
Lanolin Anhydrous-----	30.667
Petrolatum Light amber-----	61.583
Phenol (Carbolic Acid)-----	0.75
	100.00

The formula for this preparation as now constituted is slightly changed to include 0.25% quinine and urea hydrochloride. Directions for the use of Chinaroid are as follows:

Use Twice Daily

Remove rubber nipple. Attach key to bottom of tube and turn slightly until salve reaches end of applicator and exudes. Insert applicator gently into rectum and turn key attached to tube one-quarter turn. This provides the proper dose of Chinaroid. Repeat morning and night as needed to relieve rectal discomfort. If satisfactory relief is not obtained after using for 2 weeks, or if undue bleeding exists, consult a physician. To avoid soiling: Should there be any difficulty from the standpoint of Chinaroid leaking and soiling clothing and linen this may largely be overcome in most cases through the use of a small cotton plug, or the wearing of a sanitary napkin. The money back guarantee covers two tubes of Chinaroid to each user.

The preparation Romind is completed as a tablet; the formula and directions for using the same are as follows:

FORMULA

Each tablet contains:

Acetphenetidin	.095 gram or 1.47 grains per tablet
Sodium salicylate	.256 gram or 3.95 grains per tablet
Caffeine (anhydrous)	.014 gram or .22 grains per tablet

DIRECTIONS FOR USE

ADULTS: Take two Tablets four times daily: after each meal and immediately before retiring, washed down with a full glass of water. Do not take more than four doses a day. In responsive cases, when not needed for pain, discontinue use. Children over 12 years of age, follow adult dose. Children 6 to 12 years old, one Tablet. Not for children under 6 years old.

Respondents cause the said preparations, Chinaroid and Romind, when sold, to be transported from their place of business in the State of California to purchasers thereof located in other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said preparations in commerce between and among the various States of the United States and in the District of Columbia. Respondents' volume of business in such commerce is substantial, the annual sales of each of said preparations being in excess of \$10,000.

PAR. 3. In the course and conduct of their business respondents, subsequent to March 21, 1938, have disseminated and have caused the dissemination of certain advertisements concerning Chinaroid and Romind by the United States mails, and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase thereof.

These advertisements with respect to Chinaroid include, but are not limited to those which appeared as follows:

- Page 7 of the Houston, Tex., Post for January 22, 1950; and
- Page 10 of the same newspaper for March 5, 1950;
- Page 6 of the Raleigh, N. C., News and Observer for October 23, 1949;
- Page 14, Sec. IV of the Dallas, Tex., News for January 10, 1950; and
- Page 3, Sec. V of the same newspaper for April 16, 1950;
- Page 2 of the Amarillo, Tex., Sunday News Globe for September 17, 1950;
- Page 44 of the Shreveport, La., Times for March 12, 1950; and
- Page 45 of the same newspaper for October 1, 1950;
- Page 4, Sec. A of the Little Rock, Ark., Gazette, for November 20, 1949; and
- Page 6, sec. A of the same newspaper for September 17, 1950;
- Page 27 of the Charleston, W. Va., Gazette for November 6, 1949;
- Page 12 of the San Antonio, Tex., Express for September 11, 1949;
- Page 12, Sec. B of the Cleveland, Ohio, Plain Dealer for May 15, 1949;
- Page 3, Sec. 2 of the Dallas, Tex., Daily Times Herald for October 9, 1949;
- Page 13 of the Editorial Section of the Portland, Oreg., Sunday Oregonian for December 4, 1949;
- Page 31, Sec. A of the Oklahoma City Daily Oklahoman for December 4, 1949;
- Page 2, Sec. 3 of the New Orleans Times Picayune and States for August 27, 1950;
- Page 19 of the Jacksonville, Fla., Times Union for October 23, 1949; and
- Page 10 of the same newspaper for February 26, 1950;
- Page 4, Sec. A of the San Antonio, Tex., Evening News for November 15, 1949;
- Page 10 of the Savannah, Ga., Morning News for September 10, 1950;

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Page 11 of the Greensboro, N. C., Daily News for October 15, 1950;
Page 18 of the Toledo, Ohio, Blade for December 12, 1949;
Page 9, Sec. A of the Knoxville, Tenn., Journal for March 26, 1950.

The advertisements concerning Romind include, but are not limited to those which appeared as follows:

Page 7, Sec. A of the Miami, Fla., Daily News for October 25, 1949;
Page 17 of Grier's Almanac for 1949;
Page 6, Sec. B of the Albany, N. Y., Times Union for May 21, 1950;
Page 7, Sec. D of the St. Louis, Mo., Globe-Democrat for October 23, 1949; and
Page 7, Sec. B of the same newspaper for June 25, 1950;
Page 36, News Section Cincinnati Enquirer for October 23, 1949;
Page 11, Sec. 5 of the Louisville, Ky., Courier-Journal for October 23, 1949;
Page 7, Sec. 3 of the Dallas, Tex., Daily Times-Herald for October 9, 1949;
Page 23 of the San Francisco Chronicle for October 9, 1949;
Page 11, Sec. 1 of the Fort Worth, Tex., Star-Telegram for October 9, 1949;
Page 8 of the Greensboro, N. C., Daily News for October 2, 1949;
Page 2 of the Winston-Salem, N. C., Journal and Sentinel for September 11, 1949;
Page 3, Sec. A of the San Antonio, Tex., Express for September 11, 1949;
Page 10 of the Shreveport, La., Times for January 16, 1949; and
Page 42 of the same newspaper for May 15, 1949;
Page 47 of the New York Sunday Mirror for November 6, 1949;
Page 2 of the Raleigh, N. C., News and Observer for November 27, 1949;
Page 4-A of the Little Rock, Ark., Gazette for November 14, 1948; and
Page 10, Sec. A of the same newspaper for November 20, 1949;
Page 22, Sec. 1 of the Chicago Sunday Tribune for February 26, 1950;
Page 11, Sec. 2 of the Dallas, Tex., Morning News for April 16, 1950; and
Page 8, Sec. 2 of the same newspaper for May 15, 1950;
Page 10, Sec. B of the Asheville, N. C., Citizen for April 16, 1950;
Page 11, Sec. A of the Atlanta, Ga., Constitution for May 7, 1950;
Page 9, Sec. IV of the Norfolk Virginian Pilot for April 16, 1950;
Page 25 of the Terra Haute, Ind., Tribune-Star for June 11, 1950;
Page 12, Sec. B of the Buffalo, N. Y., Courier Express for June 25, 1950;
Page 8 of the Houston, Tex., Post for June 25, 1950;
Page 54 of the Savannah, Ga., Morning News for May 14, 1950;
Page 12, Sec. 3 of the Jackson, Miss., Daily News for November 10, 1949;
Page 6, Sec. C of the Rochester, N. Y., Democrat and Chronicle for January 22, 1950;
Page 12, Sec. A of the Peoria, Ill., Journal-Star for February 26, 1950;
Page 10-B of the Akron, Ohio, Beacon-Journal for March 12, 1950;
Philadelphia Enquirer for March 6, 1949;
Page 10, Sec. F of the Los Angeles Examiner for March 28, 1948;
Page 1, Sec. D of the Knoxville, Tenn., Journal for November 7, 1948;
Page 12 of the Cleveland, Ohio, Press for March 2, 1949;
Page 8, Sec. IV of the Erie, Pa., Dispatch for November 7, 1948;
Page 6, Sec. A of the Spartanburg, S. C., Herald-Journal for April 11, 1948;
Page 3, Magazine Section of the Salt Lake City Tribune for May 9, 1948;
Page 19 of the Seattle, Wash., Times for May 9, 1948;
Page 12 of the Huntington, W. Va., Herald-Advertiser for May 9, 1948;
Page 16, Sec. A of the Tampa Sunday Tribune for May 9, 1948;
Page 12, Sec. 1 of the Sioux City, Iowa, Sunday Journal for April 25, 1948.

Subsequent to January 1, 1948, similar advertisements of Romind were broadcast as radio continuities at the instance of respondents by W. H. B. Broadcasting Company from Stations KRKD of Los Angeles, KBON of Omaha, Nebraska, and others.

Respondents have also disseminated and caused the dissemination of the advertisements referred to above for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of the said preparations, Chinaroid and Romind, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Through the use of the said advertisements respondents have made, directly and by implication, the representations shown in the following subparagraphs, with respect to Chinaroid, and identified as A and B, and with respect to Romind, identified as C to I inclusive. The said advertisements, by reason of such representations, are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act by reason of the facts set forth below, with respect to Chinaroid, in subparagraphs One and Two, and with respect to Romind, in Subparagraphs Three to Nine inclusive.

A. That Chinaroid constitutes an adequate and competent treatment for hemorrhoids and the underlying causes thereof.

1. Chinaroid does not constitute an adequate or competent treatment for hemorrhoids, and would be of no benefit to any of the underlying causes thereof, nor would it lessen their severity or duration, except that when applied as directed to simple uncomplicated hemorrhoids, this preparation, may, by reason of its local anesthetic, astringent and emollient effect, temporarily relieve such symptoms as pain, itching, burning, and irritation.

B. That the use of Chinaroid will serve to shrink sore, swollen tissues, help nature heal irritated membranes and allay nervousness induced by and accompanying hemorrhoids.

2. The use of Chinaroid will not serve to shrink sore, swollen tissues; it will not assist nature in healing irritated membranes, and it will not allay nervousness, regardless of the cause.

C. That Romind is a competent and effective treatment for arthritis, rheumatism, swollen joints, neuritis, neuralgia, sciatica and lumbago, and its administration will exert a remedial effect upon the underlying causes of such ailments and conditions to the extent of affording permanent relief from pain.

3. Romind is not a competent and effective treatment for arthritis, rheumatism, swollen joints, neuritis, neuralgia, sciatica, or lumbago, and its administration will not exert a remedial effect upon the underlying causes of these ailments and conditions to the extent of affording

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permanent relief from pain. It is an ordinary analgesic with essentially the same therapeutic effect as aspirin, and taken as directed, it is limited in its analgesic effect to the temporary relief of minor aches and pains.

D. That Romind is a fast acting medicine, which brings new hope, happiness and comfort to sufferers from the pains of arthritis, rheumatism, neuritis, sciatica and lumbago.

4. Romind has no therapeutic properties which could give hope, happiness or comfort to those suffering from the pains of arthritis, rheumatism, neuritis, sciatica and lumbago. This preparation is not a fast acting medicine; moreover, its use could provide only minor and temporary analgesic effects, and its enteric coating indicates that any such relief would be delayed in onset for at least two to four hours.

E. That Romind is an effective remedy for soreness and stiff muscles, will help nature remove excess uric acid from the system, and will aid one to work and sleep more comfortably.

5. Romind is not an effective remedy for soreness or stiff muscles; it will not assist nature in removing uric acid from the system, and it will not help one to work or sleep more comfortably.

F. That Romind will cleanse the body and blood of irritating wastes, poisons and acids, thus inducing a remedial effect upon the underlying causes of arthritis and kindred ailments.

6. Romind will not cleanse the body or blood of irritating wastes, poisons or acids, and will exert no beneficial influence upon the underlying causes of arthritis or kindred ailments.

G. That Romind will stimulate the cleansing action of the kidneys.

7. Romind will not stimulate the cleansing action of the kidneys, nor will it otherwise exercise any beneficial effect upon the kidneys or their activities.

H. That Romind is an effective pain killer, and will enable one to successfully combat, fight and obtain relief from nerve-racking, stabbing, throbbing pains of arthritis, rheumatism, neuritis, sciatica, neuralgia, swollen joints and lumbago, and will relieve pains of one to ten years duration.

8. Romind is not an effective pain killer, and is only mildly palliative; it will not enable one to successfully combat, fight or obtain relief from the miseries of arthritis, rheumatism, neuritis, sciatica, neuralgia, swollen joints or lumbago, and it will not afford relief from pains of one to ten years duration.

I. That Romind consists of a new formula, and is a new kind of treatment.

9. Romind does not consist of a new formula and does not constitute a new kind of treatment.

PAR. 5. The use by respondents of the said false advertisements with respect to Chinaroid and Romind has had the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations contained therein were true, and into the purchase of substantial quantities of each of the aforementioned preparations by reason of said erroneous and mistaken belief.

PAR. 6. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair 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 April 18, 1952, the initial decision in the instant matter of hearing examiner Everett F. Haycraft, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 16th day of May 1951 issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondents' answer thereto, a hearing was held in Los Angeles, California, on July 31, 1951, at which evidence in support of the allegations of said complaint was introduced before the above-named hearing examiner theretofore duly designated by the Commission. Thereafter, on February 4, 1952, a Partial Stipulation of Facts was entered into whereby it was stipulated and agreed that the said Partial Stipulation of Facts, signed and executed by counsel for respondents and the attorney supporting the complaint, is to supply the scientific facts in this proceeding and is supplemental to and to be considered in connection with the evidence incorporated in the record at the hearing held in Los Angeles, California, on July 31, 1951. Said evidence, including the Partial Stipulation of Facts, was duly recorded

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and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said hearing examiner on the complaint, the answer thereto, and the evidence, including said Partial Stipulation of Facts, counsel having waived the filing of proposed findings as to the facts, and conclusions and oral argument not having been requested; and said hearing 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. Respondents Warren W. Burgess, Linn D. Johnson, and Richard T. Aldworth are individuals trading as copartners under the name of The Knox Company, with their principal place of business located at 1651 North Argyle Street, Los Angeles, California.

PAR. 2. Respondents are now, and for several years last past have been, engaged in selling and distributing a number of medicinal preparations, among which are two certain drug preparations, as "drug" is defined in the Federal Trade Commission Act, and which are designated and described by respondents as "Chinaroid," a rectal balm in a tube with applicator for relief of piles and hemorrhoids, and "Romind," a compound in tablet form to be taken internally for relief of rheumatic aches and pains. Respondents cause the said preparations "Chinaroid" and "Romind," when sold, to be transported from their place of business in the State of California to purchasers thereof located in other States of the United States and in the District of Columbia. Respondents maintain, and at all times herein mentioned have maintained, a course of trade in said preparations in commerce between and among the various States of the United States and in the District of Columbia. Respondents' volume of business in such commerce is substantial, the annual sales of each of said preparations being in excess of \$10,000.

PAR. 3. In the course and conduct of their business, respondents, subsequent to 1948, have disseminated, and have caused the dissemination of, certain advertisements concerning "Chinaroid" by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase thereof, as follows:

HELP YOUR PILES

Don't suffer from painful itching Piles another hour without trying CHINAROID. In a few minutes CHINAROID usually starts curbing Pile miseries 3

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ways: 1. Eases pain and itching. 2. Helps shrink sore, swollen tissues. 3. Helps nature heal irritated membranes and allay Pile nervousness. Money back guaranteed unless satisfied. Ask your druggist for CHINAROID today.

KILL YOUR PILES?

If the misery of Piles and rectal itching drive you wild, don't wait, get wonder-soothing CHINAROID from your druggist right now. See how quickly it usually brings wonderfully soothing relief for fiery piles, then helps Nature heal irritated membranes and shrink and reduce swelling of tissues, thus alleviating Pile nervousness. Demand CHINAROID. Money back guarantee.

How to Treat
PAINFUL PILES

For fast, blessed relief from sore, fiery, itching, simple Piles, get CHINAROID from your druggist. See how fast it usually soothes away pain, soreness, itching, nervousness. See how it cools fiery burning and helps shrink and heal swollen tissues. Wonder-soothing CHINAROID must prove a blessing to you or money back is guaranteed.

Through the use of said advertisements, respondents have made, directly and by implication, the representations:

(a) That "Chinaroid" constitutes an adequate and competent treatment for hemorrhoids and the underlying causes thereof.

(b) That the use of "Chinaroid" will serve to shrink sore, swollen tissues, help nature heal irritated membranes and allay nervousness induced by and accompanying hemorrhoids.

The said advertisements, by reason of such representations, are misleading in material respects and constitute "false advertisements," as that term is defined in the Federal Trade Commission Act, for the reason that, in truth and in fact, respondents' preparation "Chinaroid," containing tannic acid, benzocaine, quinine, urea hydrochloride, phenol, petrolatum and lanolin, is a palliative ointment constituting an astringent and local anesthetic and, when used in accordance with directions in simple cases of hemorrhoids, it will have an emollient effect and will temporarily relieve such symptoms thereof as pain, itching, burning and irritation. However, "Chinaroid" does not affect the underlying causes of hemorrhoids and, therefore, is neither an adequate nor competent treatment for hemorrhoids, nor would it influence the severity or duration thereof, except for the palliative relief of the symptoms above mentioned in simple hemorrhoids.

This preparation, however used, will not serve to shrink sore, swollen tissues and will not aid nature in healing irritated membranes and will have no effect upon nervousness, regardless of the cause.

PAR. 4. In the course and conduct of their business, respondents, subsequent to 1948, have disseminated, and have caused the dissemina-

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tion of, certain advertisements concerning "Romind" by the United States mails and by various means, including radio broadcasts, in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of including and which were likely to induce, directly or indirectly, the purchase thereof, as follows:

ARTHRITIS

Neuritis

Sciatica

Rheumatism PAINS

A fast acting internal medicine called ROMIND, recently developed by the Knox Control Laboratory, is now bringing new hope, happiness and comfort to thousands of sufferers from the pains of Arthritis, Rheumatism, Neuritis, Sciatica, Neuralgia and Lumbago. ROMIND dissolves in the small intestine; then the ingredients are absorbed into the blood and thus can reach every part of the body. That's why it works so fast in helping 3 ways: 1. First dose starts curbing pain. 2. Helps Nature remove excess Uric Acid which often aggravates pains, soreness and stiff muscles. 3. Helps you work and sleep in greater comfort. Get ROMIND from your druggist today. Quick satisfaction or money back guaranteed.

Would You Pay \$1
To Curb Your

ARTHRITIS PAINS

If so don't waste a minute but send to your drug store right now for ROMIND. This great medicine was recently developed in the world-famed Knox Control Laboratory of California to bring joyous comfort and relief for the pains of Arthritis, Rheumatism, Neuritis, Sciatica, Neuralgia, Bursitis and Lumbago. ROMIND usually works with great speed because it dissolves in the intestines so that the ingredients may be absorbed into the blood and carried quickly to every muscle and joint in the body. And as it fights pain ROMIND also helps Nature clear out excess uric acid which often makes muscles so sore, stiff and painful. Don't wait and let your pains make you sorry. Start taking ROMIND right now and see how quickly it may put you on the road to happier, more comfortable days and restful nights.

DO THIS IF
ARTHRITIS PAINS
DRIVE YOU WILD

Don't waste a minute but send to your drug store right now for ROMIND. This great medicine was recently developed in the world-famed Knox Control Laboratory of California to bring joyous comfort and relief for the pains of Arthritis, Rheumatism, Neuritis, Sciatica, Neuralgia, Bursitis and Lumbago. ROMIND usually works with great speed because it dissolves in the intestines so that the ingredients may be absorbed into the blood and carried quickly to every muscle and joint in the body. And as it fights pain ROMIND also helps Nature clear out excess uric acid which so often makes muscles so sore, stiff and painful. Don't wait and let your pains make you sorry. Start taking ROMIND

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right now and see how quickly it may put you on the road to happier, more comfortable days and restful nights.

ARTHRITIS PAINS CURBED

By Scientifically Tested Formula

Recent medical tests by a prominent Chicago physician on a large group who had suffered from one to ten years prove that most people who suffer from nerve-racking aches and pains in the back, hands, legs, arms, shoulders and neck, due to Rheumatism, Arthritis, Neuritis, Lumbago, Neuralgia, or Sciatica may expect quick and extremely satisfying help from the scientifically laboratory tested formula called ROMIND.

ROMIND is one of the latest formulas to be developed in the Knox Testing Laboratory and is a tasteless internal medicine that is absorbed by the blood and thus reaches every part of the body, usually giving fast help in 3 ways: 1. First dose starts right to work curbing pain. 2. Helps nature remove excess acids and wastes which often cause many aches and pains. 3. Helps you to work, sleep and enjoy life in greater comfort.

If you have suffered a lot and have tried many things without really satisfying relief you owe it to yourself to try ROMIND before another day goes by. Ask your druggist for ROMIND. Your money back guaranteed unless completely satisfied.

Thousands of sufferers from the nagging pains of Arthritis, Rheumatism, Neuritis and Sciatica are gaining new hope, comfort, and happiness with a recently-developed internal medicine called Romind—ROMIND. Romind has a special coating so that it goes through the stomach and is dissolved in the small intestine, where the ingredients may be absorbed into the blood and thus can reach every part of the body. That's why it usually works so fast in helping three ways: 1. The first dose starts combating the pains of Arthritis and Rheumatism. 2. It helps Nature remove excess Uric acid which often aggravates pains and stiffness, and 3. Romind thus helps you to work and sleep in greater comfort. So don't suffer another day from the pains of Arthritis and Rheumatism without trying Romind. Unless you find Romind entirely satisfactory your money back is guaranteed. To fight the pains of Arthritis, Rheumatism, and Neuritis remind yourself to get Romind—ROMIND—from your druggist today.

Through the use of the said advertisements, including radio broadcasts, respondents have made, directly and by implication, the representations:

(a) That "Romind" is a competent and effective treatment for arthritis, rheumatism, swollen joints, neuritis, neuralgia, sciatica and lumbago and its administration will exert a remedial effect upon the underlying causes of such ailments and conditions to the extent of affording permanent relief from pain.

(b) That "Romind" is a fast-acting medicine which brings new hope, happiness and comfort to sufferers from the pains of arthritis, rheumatism, neuritis, sciatica and lumbago.

The said advertisements and radio broadcasts, by reason of such representations, are misleading in material respects and constitute "false advertisements," as that term is defined in the Federal Trade

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Commission Act, for the reason that, in truth and in fact, respondents' preparation "Romind," a drug compound in tablet form containing acetphenetidin, sodium salicylate and caffeine, is not an adequate or competent treatment for arthritis, rheumatism, swollen joints, neuritis, neuralgia, sciatica or lumbago and, taken as directed, it will not afford permanent relief from pain accompanying the said conditions and ailments. Its two active ingredients are sodium salicylate and acetphenetidin which are present in sufficient amounts to provide an analgesic and antipyretic effect, and are commonly used for the temporary relief of the minor pains of the above-mentioned conditions for the limited period of time in which such analgesics are effective. Accordingly, "Romind" cannot be correctly described as a pain killer.

"Romind" possesses no therapeutic properties which could hold out hope of happiness to sufferers from arthritis, rheumatism, neuritis, sciatica or lumbago; and any degree of comfort derived from taking Romind would be due solely to the temporary relief of such minor aches and pains afforded by its analgesic effect. These tablets resist solution in dilute acid but are soluble in dilute alkali and their enteric coating would delay their effects for about three hours, and thus any relief at the outset of use would be delayed to this extent, and it is not a fast-acting medicine.

"Romind" is not an effective remedy for soreness, except for the symptomatic relief due to the analgesic action of its ingredients; "Romind" is not an effective remedy for stiff muscles. It will not assist nature or otherwise help in removing uric acid from the system and, aside from its analgesic effect in possibly allaying certain minor aches and pains temporarily, it will not help one to work or sleep more comfortably.

"Romind" will not cleanse the body or blood of irritating wastes, poisons or acids, and will exert no beneficial influence upon the underlying causes of arthritis or kindred ailments; neither will this preparation stimulate the cleansing action of the kidneys, nor otherwise exercise any beneficial effect upon the kidneys or their activities.

"Romind" is not an effective pain killer. It contains only commonly known and widely-used analgesics with gentle and temporarily palliative properties. The value of "Romind" in cases of nerve-racking, stabbing, throbbing pains of arthritis, rheumatism, neuritis, sciatica, neuralgia, swollen joints or lumbago, and in cases where the individual has suffered such pains for a period of one to ten years, is limited to the temporary and partial relief of pain afforded by its analgesic ingredients.

All ingredients of "Romind" and their consequent analgesic and antipyretic action have been well known to the medical profession for many years; hence, these ingredients in this preparation do not constitute a new formula nor a new sort of treatment.

PAR. 5. The use by respondents of the said false advertisements, including radio broadcasts, with respect to "Chinaroid" and "Romind" has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations contained therein were true and into the purchase of substantial quantities of each of the aforementioned preparations by reason of said erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of the respondents, as hereinabove set out, 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

It is ordered, That respondents Warren W. Burgess, Linn D. Johnson and Richard T. Aldworth, individually and as copartners doing business in the name of The Knox Company or in any other name, their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce of the drug preparations designated as "Chinaroid" and "Romind," or any preparations of substantially similar compositions or possessing substantially similar properties, whether sold under the said names or any other names, do forthwith cease and desist from:

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

(a) That "Chinaroid" constitutes a competent or adequate treatment for piles or hemorrhoids or would be of any benefit to the underlying causes thereof.

(b) That said preparation could exert any influence upon the severity or duration of piles or hemorrhoids, beyond that of an astringent and local anesthetic in affording temporary relief to such symptoms as pain, itching, burning and irritation which accompany simple, uncomplicated cases of piles or hemorrhoids.

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(c) That said preparation, however used, will result in any shrinkage of sore, swollen tissues, or will assist nature in healing irritated membranes, or will have any effect upon nervousness, irrespective of the cause.

(d) That "Romind" constitutes an adequate or competent treatment for arthritis, rheumatism, swollen joints, neuritis, neuralgia, sciatica or lumbago, or will permanently relieve pain accompanying said conditions and ailments.

(e) That "Romind" is a pain killer, or possesses any therapeutic value in treating the nerve-racking, stabbing, throbbing pains of arthritis, rheumatism, neuritis, sciatica, neuralgia, swollen joints or lumbago, regardless of their duration, or is of any therapeutic value in these conditions, in excess of such temporary and partial relief of minor pains and fever accompanying said ailments and conditions as may be afforded by its analgesic and antipyretic action.

(f) That "Romind" possesses any therapeutic properties which could hold out hope of cure or happiness to persons afflicted with arthritis, rheumatism, neuritis, sciatica, lumbago or kindred ailments.

(g) That "Romind" is fast acting in its effects, or that one taking said preparation could anticipate any comfort therefrom, in excess of such temporary relief of minor aches, pains and fever accompanying the diseases above mentioned as its analgesic and antipyretic properties may afford.

(h) That said preparation constitutes an effective remedy or treatment for soreness in excess of the temporary symptomatic relief due to its analgesic action.

(i) That said preparation constitutes an effective remedy or competent treatment for stiff muscles, or will help in any manner to remove uric acid from the system.

(j) That taking said preparation will be of any value or benefit in enabling a person to work or sleep more comfortably aside from its temporary analgesic effects.

(k) That "Romind" will serve to cleanse the body or blood of waste, poisons or acids, or otherwise stimulate the cleansing action of the kidneys, or exercise any beneficial effect upon the kidneys or their activities, or will exert any beneficial influence upon the underlying causes of arthritis or kindred ailments.

(l) That the ingredients compounded in "Romind" constitute a new formula or a new kind of treatment.

2. Disseminating or causing to be disseminated by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of the drug preparations "Chinaroid"

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and "Romind," any advertisement which contains any of the representations prohibited in Paragraph 1 of this order.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of April 18, 1952].

IN THE MATTER OF
NATIONAL COACHING SERVICE INSTITUTE, 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 5876. Complaint, May 2, 1951—Decision, Apr. 21, 1952

Where a corporation and its president, who also operated a branch under a similar trade name in another city, engaged in the interstate sale and distribution of correspondence courses to prepare students for Civil Service examinations; in promoting the sale of their courses through printed postal cards mailed to prospective purchasers, and through traveling sales agents, to whom they referred inquiries received—

- (a) Falsely represented through their said agents that said corporation and business were connected with the United States Civil Service or some other Government agency, and that said agents had official connection therewith;
- (b) Falsely represented that completion of their courses assured students of appointment to Civil Service positions or made them eligible for such appointment;
- (c) Falsely represented that they would hold positions open for students who failed to pass Civil Service examinations, that prospective students must take their courses of study in order to obtain Civil Service positions, and that the examinations given by them were examinations for specific positions in Civil Service;
- (d) Falsely represented that students would receive Civil Service positions immediately or within a few days after successfully completing their courses and that they might obtain employment in or near the cities or towns in which they resided;

The facts being that the time of actual employment for those who have passed a Civil Service examination depends upon a number of factors, such as availability of eligible persons in various Civil Service districts, the rating of eligibles, veterans' preferences and other conditions over which neither they nor the applicants have any control; and neither they nor applicants can determine the place of employment;

- (e) Falsely represented that students who did not possess the experience, physical, mental or educational qualifications, or veterans' status required for many positions for which they offered training, might nevertheless find employment in such positions; and
- (f) Falsely represented that the United States Civil Service Commission was looking to or relying upon them to locate and place employees; and

Where said corporation and individual—

- (g) Falsely implied and represented through the use of the word "Institute" in their corporate and trade names, that their school was a resident institution of higher learning;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to said school and its courses, and with respect to positions in the United States Civil Service, and thereby induce its purchase of their said courses:

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.

Complaint

Before *Mr. William L. Pack*, hearing examiner.
Mr. William L. Pencke for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that National Coaching Service Institute, Inc., a corporation, and Archie K. Babson, individually and as an officer of National Coaching Service Institute, Inc., and also doing business as National Service Institute and Career Institute, 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 National Coaching Service Institute, Inc., is a corporation organized and existing under the laws of the State of Colorado with its principal office and place of business at 412 Bank Block Building, 1026 17th Street, Denver, Colorado.

Respondent Archie K. Babson is an individual and president of said corporation and as such formulates, controls and manages all of the affairs of said corporation. Said respondent has also done business under the trade name of National Service Institute and is presently operating a branch of National Coaching Service Institute, Inc., under the trade name of Career Institute located at 110 Market Street, San Francisco, California, which is also the address of said respondent Archie K. Babson.

PAR. 2. For more than one year last past, respondents have been and are now engaged in the sale and distribution of courses of study and instruction intended for preparing students thereof for examination for certain civil service positions under the United States Government, which said courses are pursued by correspondence through the medium of the United States mails. Respondents, in the course and conduct of said business, cause said courses of study and instruction to be transported from their respective places of business in the States of Colorado and California to, into and through States of the United States other than Colorado and California to the purchasers thereof located in such other States and the District of Columbia. There has been at all times mentioned herein a course of trade in said courses of instruction so sold and distributed by respondents in commerce between and among the various States of the United States, and said course of trade has been and is substantial.

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PAR. 3. In connection with the sale of said courses of study and instruction respondents have made and are making use of printed advertising matter distributed to prospective students throughout the United States, in and by which numerous representations have been and are made in regard to said courses of study and matters and things connected therewith. Typical of such representations, made on postal cards distributed to rural route or Post Office Box holders are the following:

I AM VERY MUCH INTERESTED IN CIVIL SERVICE

Please Send Full Information and List of Positions

* *

* *

MANY THOUSANDS OF

OPPORTUNITIES

RURAL MAIL CARRIER

GOVERNMENT

POST MASTER

POSITIONS

MEN AND WOMEN

2nd CLASS

AGES 18 to 50

Preparatory Train-

3rd CLASS

ing for Civil Service

4th CLASS

(To \$4479.00 Yearly to Start) (To \$4479.00 Yearly to Start)

HERE IS YOUR OPPORTUNITY!!!

CIVIL SERVICE POSITIONS OFFER CHANCES FOR ADVANCEMENT AND INCREASED EARNINGS IN GRADE PAY RAISES, LIBERAL PENSIONS, SICK LEAVE WITH PAY and PAID VACATIONS. INSTRUCTIONS NOW BEING GIVEN IF YOU QUALIFY.

Postal Clerks
Mail Clerks
Customs Service
Storekeepers
Veterans
Administration

Asst. Meat Inspectors
Railway Mail Clerks
Immigration Service
Weather Bureau
Reclamation Service
Many Others

Mail Attached Card TODAY
For Full Information

PAR. 4. By means of the foregoing statements and representations and others to the same effect not herein set out and by the use of the corporate and trade names National Coaching Service Institute, Inc., National Service Institute and Career Institute, respondents represent and imply that their said business is a branch of or connected with the United States Government or the U. S. Civil Service Commission; that many positions in the United States Civil Service, including those specifically named in said advertisement, are vacant, or available to all applicants; that men and women are needed to fill said vacancies and are wanted by the United States Government to prepare for civil service positions, and that said positions may be obtained

through respondents' National Coaching Service Institute, Inc., or Career Institute; and that the starting salaries for the positions listed run as high as \$4479.00 per annum.

PAR. 5. In the course and conduct of said business as aforesaid, respondents employ numerous sales agents or representatives who call on prospective purchasers of said courses of study. By means of oral statements and representations made by said sales agents respondents represent and imply to prospective students and purchasers of their said courses of study:

1. That National Coaching Service, Inc., National Service Institute and Career Institute are connected with, or are branches of, the U. S. Civil Service or the United States Government or some agency thereof;

2. That respondents' said sales agents are representatives or employees of the U. S. Civil Service or have some official connection therewith;

3. That the completion of said courses of study makes enrollees eligible for appointment to, or assures them of, or guarantees U. S. Civil Service positions;

4. That enrollees failing to pass Civil Service examinations will have positions held open for them by respondents;

5. That enrollees must take respondents' course of study in order to obtain Civil Service positions;

6. That the examinations given by respondents are examinations for specific positions in the Civil Service;

7. That enrollees will receive Civil Service positions immediately or within a few days after successfully completing said courses;

8. That enrollees may obtain employment at or near their homes or within a short distance therefrom;

9. That enrollees who do not have the experience, physical, mental, or educational qualifications, or veterans' status required in many positions for which respondents offer training, may nevertheless find employment in such positions;

10. That the U. S. Civil Service Commission is looking to, or relying upon, respondents to locate and place employees;

11. That enrollment contracts are cancelled or refunds of money paid for tuition are made if enrollees decide to discontinue said courses or are dissatisfied or have changed their minds.

In many instances said sales agents have rushed prospective purchasers into signing said enrollment contract without affording them an opportunity to think over and consider the advisability of enrolling, or reading and understanding the terms of said contract; and in some instances respondents have demanded payment of tuition fees after

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they had been advised by the prospective purchasers that they had signed no note or contract for the payment of such fees.

PAR. 6. All of said statements, representations, implications and practices are grossly exaggerated, false and misleading. In truth and in fact, while there are opportunities for employment in government service, the U. S. Civil Service Commission does not advertise for men and women to fill government positions or that vacancies exist in government service.

The statements on said postal cards "Preparatory training for civil service" and "Instructions now being given if you qualify" imply that respondents are authorized or designated by the U. S. Civil Service to qualify and prepare applicants for the taking of civil service examinations. Most of the positions listed on said postal cards are not open to applicants generally but are either restricted to persons with veteran's status or requiring special physical and educational qualifications and practical experience.

There is no position known as Assistant Meat Inspector, or positions in the Weather Bureau, Veterans Administration, Customs, or Reclamation Services paying \$4479.00 per annum filled solely through competitive examinations. The unqualified representation that the positions listed on said postal cards have starting salaries as high as \$4479.00 per year is grossly exaggerated and misleading; with respect to postal service, the entrance salary in Post Offices of the first and second class is \$1.31½ per hour and in the railway mail service, \$1.41½ per hour. Moreover, employment is frequently on a temporary or part time basis and employees are advanced to regular or carrier positions as vacancies occur. Positions in salary ranges of \$4479.00 per annum require college or professional training or approximately five years of practical experience. The lowest grade of meat inspector position begins at \$2650.00 per annum and requires two years of experience. Many positions in the Customs and Immigration Service are restricted to veterans.

Neither the respondents nor any of their officers, agents or salesmen are connected in any manner whatsoever with the U. S. Civil Service, the United States Government or any agency thereof. Employees having completed respondents' courses of study are not eligible for any position in the Civil Service by reason of that fact, and any assurance, promise or guarantee to that effect made by said salesmen is false. Respondents cannot hold open any position for any enrollee who has failed to pass a Civil Service examination for such position; there is no requirement by the Civil Service Commission to take respondents' courses of instruction to qualify for Civil Service examinations or positions, and examinations given by respondents are not

examinations for specific positions in the Civil Service. Enrollees who have completed respondents' course or who have taken and passed a Civil Service examination will not in all instances be placed immediately or in a short time in a Civil Service position, the time of actual employment depending upon a number of factors, such as availability of eligible person in various Civil Service districts, the rating of eligibles, veterans' preferences, and other conditions over which neither respondents nor applicants have any control; nor can they determine the locations or place of employment. There are many positions in the Civil Service that are either limited exclusively to veterans or are subject to special requirements pertaining to experience and physical, mental and educational qualifications and no one can be employed in such positions without meeting all requirements. The U. S. Civil Service Commission does not request or depend on any individuals or private business to secure, furnish or recommend any employees or applicants for Civil Service positions. Respondents do not refund deposits or money paid on account of tuition costs by students or purchasers of said courses, regardless of the reasons given therefor.

A large number of prospects solicited by said salesmen live in rural and farming areas where information regarding Civil Service and the methods of obtaining employment therein is not readily available. The representations on said postal cards that men and women are wanted, the emphasis on Civil Service and listing of government positions, singly and in combination with the corporate and trade names create the erroneous impression that said cards are official announcements of the U. S. Civil Service Commission; and this implication is furthered and strengthened by said salesmen making the statements and representations set forth in Paragraph Five hereof, and in failing to explain the terms of the enrollment contract or afford prospective purchasers the time to read, consider and comprehend said terms. In many instances enrollees believe they are signing applications and are not aware that they are signing a contract and a promissory note.

PAR. 7. The use of the words "National" and "Institute" in the names National Coaching Service Institute, Inc., National Service Institute and Career Institute under which respondents' business is conducted are misleading in that they imply an official government connection and the operation of a resident institution of learning with a staff of competent experienced and qualified educators offering instruction in philosophy, the arts, sciences and other subjects of higher learning.

In truth and in fact, respondents do not operate an "Institute" in the accepted sense of that term. Respondents offer no training or

instruction in philosophy, the arts, sciences, or other learned subjects. No basic, thorough or competent instruction is given in residence in any subject of learning. While respondents may have in their employ a number of persons possessing degrees from recognized institutions of learning and teachers' certificates, the subject matters in which respondents' students are prepared are not of the extent properly to be included in the term of higher education. In fact, respondents' courses of study and instruction consist of a general information type of Civil Service examination and a number of special lessons in the lower and non-professional type of examinations for Civil Service positions. All work is done by correspondence and consists of mailing previously prepared lessons and the grading of papers by employees. Moreover, much of the handling of contracts and grading of lessons is done with machines, the operation of which does not require academic training or teachers' certificates.

PAR. 8. The use by respondents of the statements and representations aforesaid has had and now has the tendency and capacity to and does confuse, mislead and deceive members of the public into the erroneous and mistaken belief that such statements and representations are true, and to induce them to purchase respondents' courses of study and instruction in said commerce on account thereof.

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 April 21, 1952, the initial decision in the instant matter of hearing examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 2, 1951, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After the filing by respondents of their answer to the complaint, a hearing was held before the above named hearing

examiner, theretofore duly designated by the Commission, at which a stipulation of facts was entered into by counsel supporting the complaint and counsel for respondents and incorporated in the record, which was duly filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by the hearing examiner upon the complaint, answer and stipulation (the stipulation having been approved by the hearing examiner) (counsel having elected not to submit proposed findings and conclusions for consideration by the hearing examiner or to argue the matter orally), and the hearing 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 National Coaching Service Institute, Inc., is a corporation organized and existing under the laws of the State of Colorado, with its principal office and place of business located at 1026 17th Street, Denver, Colorado. Respondent Archie K. Babson, an individual, is president of the corporation and formulates, controls and manages all of its affairs. Respondent Babson has also done business under the trade name National Service Institute and is presently operating a branch of National Coaching Service Institute, Inc., under the trade name Career Institute, such branch being located at 110 Market Street, San Francisco, California. Respondents are engaged in the sale and distribution of courses of study and instruction intended for preparing students thereof for examinations for certain positions in the United States Civil Service, such courses being pursued by correspondence through the medium of the United States mails.

PAR. 2. In the course and conduct of their business, respondents cause and have caused their courses of study and instruction, when sold, to be transported from their places of business in the States of Colorado and California to purchasers located in various other States of the United States and in the District of Columbia. Respondents maintain and have maintained a course of trade in their courses in commerce between and among various States of the United States and in the District of Columbia.

PAR. 3. In promoting the sale of their courses of study and instruction respondents use printed postal cards which are mailed to prospective purchasers. Inquiries received in response to such cards are referred by respondents to traveling sales agents employed by them who proceed to call upon the prospects and undertake to sell them the

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courses. It is with certain oral representations alleged to have been made to prospective students by these sales agents that the present proceeding is primarily concerned. The record establishes that in a substantial number of instances the following representations have been made:

(a) That National Coaching Service Institute, Inc., National Service Institute, and Career Institute are connected with the United States Civil Service or some other agency of the United States Government.

(b) That respondents' sales agents are representatives or employees of the United States Civil Service or have some official connection therewith.

(c) That the completion of respondents' courses of study assures students of appointment to United States Civil Service positions or makes them eligible for such appointments.

(d) That students failing to pass Civil Service examinations will have positions held open for them by respondents.

(e) That prospective students must take respondents' courses of study in order to obtain Civil Service positions.

(f) That the examinations given by respondents are examinations for specific positions in Civil Service.

(g) That students will receive Civil Service positions immediately or within a few days after successfully completing respondents' courses.

(h) That students may obtain employment in or near the cities or towns in which they reside.

(i) That students not possessing the experience, physical, mental or educational qualifications or veterans' status required for many positions for which respondents offer training may nevertheless find employment in such positions.

(j) That the United States Civil Service Commission is looking to or relying upon respondents to locate and place employees.

PAR. 4. These representations were false and misleading. Neither respondents nor any of their agents are connected in any manner with the United States Civil Service or any other agency of the United States Government. Students completing respondents' courses are not by reason of that fact eligible for any position in the Civil Service. Respondents are wholly without power or authority to hold open any position in the Civil Service for anyone. There is no requirement that persons take respondents' courses in order to qualify for Civil Service examinations or positions. The examinations given by respondents are not examinations for specific positions in the Civil Serv-

ice. Persons who have completed respondents' courses and passed a Civil Service examination will not, in all instances, be placed in Civil Service positions immediately or within a short time. The time of actual employment depends upon a number of factors, such as availability of eligible persons in various Civil Service districts, the rating of eligibles, veterans' preferences, and other conditions over which neither respondents nor applicants have any control. Nor can respondents or applicants determine the place of employment. There are some positions in the Civil Service which are either limited exclusively to veterans or are subject to special requirements pertaining to experience and to physical, mental and educational qualifications, and no one can be employed in such positions unless he meets such requirements. The United States Civil Service Commission does not look to or rely upon respondents to secure or recommend any employees or applicants for Civil Service positions.

PAR. 5. The record indicates that respondents have sought in good faith to prevent misrepresentation by their sales agents and that sales agents have been dismissed by respondents when it was found that they had been guilty of making false statements to prospective purchasers. Respondents place upon the printed form of enrollment agreement which purchasers are required to sign, a statement to the effect that respondents are not connected in any way with any Governmental agency, and this statement also appears on a circular letter and other advertising material used by respondents in contacting prospective students.

PAR. 6. The use by respondents of the word "Institute" in their corporate and trade names is itself misleading in that such word implies that respondents' school is a resident institution of higher learning. The school is not in fact such an institution but, as heretofore stated, is a correspondence school engaged in the teaching of courses designed to prepare students for Civil Service examinations.

PAR. 7. While the complaint contained certain charges in addition to those discussed above, such additional charges are not sustained by the record.

PAR. 8. The acts and practices of respondents, as described above, have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's school and its courses of study and instruction and with respect to positions in the United States Civil Service, and the tendency and capacity to cause such portion of the public to purchase respondents' courses as a result of the erroneous and mistaken belief so engendered.

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CONCLUSION

The acts and practices of 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, National Coaching Service Institute, Inc., a corporation, and its officers, and Archie K. Babson, individually and as an officer of said corporation and also doing business under the names of National Service Institute and Career Institute, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondent's courses of study and instruction, do forthwith cease and desist from:

1. Using the word "Institute" or any simulation thereof as a part of respondents' corporate or trade names; or otherwise representing, directly or by implication, that respondents' school is a resident institution of higher learning.

2. Representing, directly or by implication:

(a) That respondents' school has any connection with the United States Civil Service or any other agency of the United States Government.

(b) That respondents' sales agents are representatives or employees of the United States Civil Service or have any connection therewith.

(c) That the completion of respondents' courses of study assures students of positions in the United States Civil Service or makes them eligible for appointment to such positions.

(d) That respondents have any power or authority to hold open for any person any position in the United States Civil Service.

(e) That it is necessary that persons seeking Civil Service positions take respondents' courses of study in order to qualify for or obtain such positions.

(f) That the examinations given by respondents are examinations for specific positions in the Civil Service.

(g) That all persons completing respondents' courses and passing Civil Service examinations will obtain positions immediately or within a short time.

(h) That positions obtained in the United States Civil Service will be at or near the place of residence of the employee.

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(i) That Civil Service positions requiring certain physical, mental or educational qualifications or veterans' status may be obtained by persons not meeting such requirements.

(j) That the United States Civil Service Commission is looking to or relying upon respondents to locate persons to fill positions in the Civil Service.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of April 21, 1952].

IN THE MATTER OF

ZONITE PRODUCTS CORPORATION 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 5031. Complaint, Aug. 18, 1943—Decision, Apr. 23, 1952

"Massaging of the gums", as understood by a great majority of the general public from the use of the word in advertisements as meaning a haphazard indiscriminate rubbing of the gums with a toothbrush or finger, either with or without the toothpaste involved in the instant case, is of no value in making soft gums firm or in the prevention or treatment of gingivitis or pyorrhea.

The term "massage" as used by dentists means a careful stroking or squeezing pressure applied to the gums in a particular area to achieve a specific purpose, the proper use of which requires professional instruction.

While the testimony of the expert witnesses in the instant case was conflicting as to the value of massaging the gums, even with professional instruction, the preponderant weight of the qualified dental opinion was that massaging them in the sense of indiscriminate rubbing is of no value and, in some cases, is actually harmful.

Where a corporation engaged in the interstate sale of its "Forhan's Toothpaste", along with its advertising agent, in advertising in newspapers and periodicals and through radio broadcasts, directly and by implication—

- (a) Falsely represented that uninstructed massage of the gums with said toothpaste would help make them firmer;
- (b) Represented that such massage and cleaning the teeth with said toothpaste would protect the user against gingivitis and pyorrhea and was of value in the treatment of the former condition; and
- (c) Represented that by comparison all other toothpastes were "ordinary" and inferior;

The facts being that the sole value of said preparation was as a cleaning agent; use thereof in brushing the teeth was of no value in the treatment of gingivitis, or in the prevention thereof except to the extent that it might help gingivitis caused by accumulation of food particles or other foreign materials in places inaccessible to the toothbrush; preponderant weight of qualified dental opinion was that massaging the gums in the sense of indiscriminately rubbing them was of no value and in some cases was actually harmful; results achieved through the use of their preparation were essentially the same as those achieved through the use of other commercial toothpastes; and it was not extraordinary in the sense that others were inferior;

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

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

As respects the charge of the complaint that respondents had falsely represented that the use of said product would protect teeth against decay by removing from them the acids and acid films which are its cause, the record showed that brushing the teeth with a dentifrice would remove acid film from surfaces accessible to the toothbrush, and that such acid film was one of the causes of tooth decay, and the Commission was of the opinion, upon the record, that these allegations had not been sustained.

As regards the allegations of the complaint that respondents had falsely represented that the use of said toothpaste as a dentifrice would cause the user's teeth to become naturally white, sparkling, bright and lustrous, even though their natural appearance, even when clean and polished, was dull and yellowish: it was believed—notwithstanding the fact that all teeth are not naturally white or brilliant and that said toothpaste would not alter the original color or luster of the teeth though it would, through the removal of film, debris, dirt and surface stains assist in cleaning them—that exaggerations as to the whiteness and luster which would be achieved by the use of a toothpaste, were unlikely to deceive anyone factually, as long as it was clearly stated that it only cleaned teeth to their own natural state, as in the typical representation "cleans dull teeth to their natural white brilliance"; and the Commission, in the absence of evidence to the contrary, found that the allegations of the complaint with respect to said matter had not been sustained.

With respect to the allegations that respondents had falsely represented that large numbers of dentists had for many years recommended said toothpaste for the results claimed by respondents in their advertisement: the record contained no evidence proving that large numbers of dentists had not so recommended, and said allegation was not sustained.

While the Commission considered the fact that the representations found to be false in the instant proceeding were contained in advertisements disseminated prior to the issuance of the complaint and that the record was silent as to whether or not respondents had continued to disseminate similar advertising representations since that time, the Commission also considered the fact that respondents had at no times contended that they were not continuing to so advertise, and had at all times vigorously contended that their said advertisements were proper and legal, and was of the opinion, upon the record, that respondents were likely to so advertise in the future unless prohibited by an order of the Commission; and that, accordingly, the issuance of such an order was required in the public interest.

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

Mr. Randolph W. Branch for the Commission.

Littlefield, Miller & Cleaves, of New York City, for respondents.

Margaret C. Cowley, of New York City, also represented *Erwin, Wasey & Co., Inc.*

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Zonite Products Corporation, a corporation, and Erwin, Wasey & Company, Inc., a corporation, 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 states its charges in that respect as follows:

PARAGRAPH 1. Respondents Zonite Products Corporation and Erwin, Wasey & Company, Inc., are corporations organized under the laws of the State of Delaware, and have their respective offices and principal places of business at Chrysler Building and at 420 Lexington Avenue, city and State of New York.

PAR. 2. Respondent Zonite Products Corporation is now, and has been for several years last past, engaged in the sale of Forhan's Toothpaste, a cosmetic preparation as defined in the Federal Trade Commission Act. Respondent Erwin, Wasey & Company, Inc., has been the advertising agent for respondent Zonite Products Corporation, and has participated in the preparation and dissemination of the advertising matter to which reference is made herein.

Respondent Zonite Products Corporation causes the said toothpaste, when sold, to be shipped and transported from its principal place of business in the State of New York and from its manufacturing plant in the State of New Jersey, to purchasers thereof located in various States other than that of the points of origin of such shipments. Said respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said toothpaste in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondents, in the course and conduct of their businesses, have disseminated and are now disseminating and have caused, and are now causing the dissemination of, false advertisements concerning said Forhan's Toothpaste by the United States mails, and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated, and are now disseminating, and have caused, and are now causing the dissemination of, false advertisements concerning said Forhan's Toothpaste by various means, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of the said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among, and typical of, the false, misleading and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as aforesaid by the United States mails, by advertisements inserted in newspapers and periodicals, by radio continuities and by other advertising literature, are the following:

Examine your gums closely. Are they tender, sore to the touch? Do they bleed when you brush your teeth? Then any one of these signs may mean that Gingivitis has started its silent work on you. This mild gum inflammation is so common today that four out of five may have it. If care isn't taken—it may lead to Pyorrhoea, which only your dentist can help. See your dentist—then at home help guard against Gingivitis with Forhan's Toothpaste and massage. This time tested Forhan method not only helps gums to be firmer—but also brightens dingy teeth to their natural sparkling lustre. Forhan's costs no more than ordinary toothpastes—so why not enjoy its advantages.

If neglected this may lead to dreaded Pyorrhoea, which only your dentist can help.

If neglected—Gingivitis may lead to dreaded Pyorrhoea, to shrinking gums and loosened teeth which often have to be extracted in the last stages of Pyorrhoea.

He was a very successful dentist—and he told me of a great many cases where he had checked gingivitis—and in all those cases Forhan's as a gum massage and toothpaste has worked out fine.

For home defense in helping guard against Gingivitis massage your gums and brush your teeth twice daily with Forhan's Toothpaste—massaging gums to be firmer and for cleaning teeth to their natural brightness—Forhan's—helps remove acid film that so often starts tooth decay. Yet Forhan's costs no more than ordinary toothpastes.

So guard against Gingivitis—help your gums to be firmer—your teeth naturally bright and sparkling with Forhan's Toothpaste and massage.

You will hear my four children massaging their gums and brushing their teeth with Forhan's Toothpaste—massaging and brushing so vigorously and earnestly that it seems like a chorus shouting “down with gingivitis.”

Forhan's with massage not only helps gums to be firmer, but actually cleans dull teeth to their own *natural white brilliance*.

One best precaution against Gingivitis. Just put some Forhan's Toothpaste on your finger tip and massage it onto your gums.

Gingivitis helped in 30 days.

Forhan's—helps remove acids that cause decay.

No wonder so many dentists for over twenty years have used and recommended Forhan's.

PAR. 4. Through the use of the aforesaid statements and claims hereinabove set forth, and others similar thereto not specifically set out herein, respondent has represented, directly and by implication, that Forhan's Toothpaste when rubbed on the gums will make the gums firmer; will protect the user against gingivitis and pyorrhoea, and is of value in the treatment of gingivitis; that the use of Forhan's Toothpaste as a dentrifice will cause the user's teeth to become natu-

rally white, sparkling, bright and lustrous, and will protect teeth against decay by removing from them the acids and acid films which are its cause; that large numbers of dentists have for many years recommended it for these purposes, and that by comparison with Forhan's all other toothpastes are "ordinary" and inferior.

PAR. 5. The foregoing statements and representations are false and misleading. In truth and in fact, Forhan's Toothpaste, however applied, will not afford any protection to the user against either gingivitis or pyorrhea and is of no value in the treatment of gingivitis or any other ailment or condition of the mouth or gums. The firmness of gums is primarily dependent upon the general condition of the system and supporting mechanism of the teeth, and will not be enhanced, improved or affected by the use of said product either as a dentrifice, as a rubbing medium or both; the user will not be protected against gingivitis or other gum troubles nor rendered less susceptible thereto. Any benefit that may result from rubbing said product on the gums is due solely to the rubbing and not to any property of the toothpaste. Whether teeth naturally possess "whiteness," "sparkle," "brightness" and "lustre" depends upon the natural qualities of the tooth enamel. The teeth of some people possess these qualities; those of others do not and in such cases none of these qualities will be attained, acquired or disclosed through the use of Forhan's Toothpaste whether it is rubbed on the gums, used as a dentrifice or both. Forhan's will not, however used, protect the teeth of the user against decay. There is no substantial body of medical or dental opinion which holds that Forhan's dentrifice, when used as directed, will protect the teeth against acids or acid films in the localities where decay is most prevalent. The only value of Forhan's Toothpaste is as a not unpleasant adjunct to the use of the toothbrush in cleaning the teeth. No substantial number of dentists has recommended Forhan's as a means of accomplishing the results claimed by respondent and as set forth herein. Respondent's toothpaste possesses no inherent superiority in any respect over other toothpastes which warrants the characterization of such toothpastes by respondent as ordinary or common by comparison with respondents' product. Forhan's is in no respect extraordinary.

PAR. 6. The use by respondent of the foregoing false, misleading and deceptive statements and representations with respect to its said Forhan's Toothpaste has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of

substantial quantities of respondent's toothpaste because of such erroneous and mistaken belief.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 18, 1943, issued and subsequently served its complaint in this proceeding upon the respondents, Zonite Products Corporation and Erwin, Wasey & Company, Inc., charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After the filing of respondents' answers, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a hearing examiner of the Commission, theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the aforesaid complaint, the respondents' answers thereto, testimony and other evidence, the recommended decision of the hearing examiner and exceptions thereto by counsel for respondents, and briefs and oral argument of counsel; and the Commission, having duly considered the matter and having entered its order disposing of the exceptions to the recommended decision of the hearing examiner and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Zonite Products Corporation and Erwin, Wasey & Company, Inc., are corporations organized under the laws of the State of Delaware, and have their respective offices and principal places of business at 370 Lexington Avenue and 420 Lexington Avenue, New York, New York.

PAR. 2. Respondent Zonite Products Corporation is now, and has been for several years last past, engaged in the sale of Forhan's Toothpaste, a cosmetic preparation. Respondent Erwin, Wasey & Company, Inc., has been the advertising agent for respondent Zonite Products Corporation and has participated in the preparation and

dissemination of the advertising matter, as hereinafter set forth subsequent to January 1, 1940.

PAR. 3. Respondent Zonite Products Corporation causes the said tooth paste, when sold, to be shipped and transported from its principal place of business in the State of New York and from its manufacturing plant in the State of New Jersey, to purchasers thereof located in various States other than that of the points of origin of such shipments; said respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said tooth paste in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their businesses, as aforesaid, and for the purpose of inducing the purchase of the cosmetic preparation, designated as Forhan's Toothpaste, respondents have disseminated and have caused the dissemination of many advertisements concerning said preparation by the United States mails, and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and have caused the dissemination of many advertisements concerning said preparation by various means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical of the statements and representations contained in said advertisements, disseminated and caused to be disseminated as hereinabove set forth, principally by insertions in newspapers and periodicals and radio announcements, have been the following:

Sore Bleeding Gums of

GINGIVITIS

Helped in 30 Days!

Even *you* may be victim of gum
inflammation attacking thousands!

If gums are tender, sore or bleed, BEWARE! You may have Gingivitis, an inflammation where gums join teeth and, IF NEGLECTED, often forewarns of Pyorrhea which *only* your dentist can help.

BUT—you can help guard against Gingivitis this easy way: a recent clinical investigation shows over 95% of Gingivitis patients were *remarkably* helped in 30 days by cleaning teeth and massaging gums twice daily with Forhan's Toothpaste—the ORIGINAL toothpaste for massaging gums.

Massage and brushing with Forhan's helps keep gums firmer, healthier; * * *

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* * * Examine your gums closely. Are they tender, sore to touch? Do they bleed when you brush your teeth? Then anyone of these signs may mean Gingivitis has started its silent work on *you*. This mild gum inflammation is so common today four out of five may have it. If care isn't taken—it may lead to Pyorrhoea which only your dentist can help. See your dentist—then at home help guard against Gingivitis with Forhan's toothpaste and massage. * * * Forhan's costs no more than ordinary toothpaste—so why not enjoy its advantages.

* * * *

Friends—a simple gum inflammation called Gingivitis is attacking thousands throughout the country. It's so common today four out of five of us may have it. *You* yourself may be getting it and at first not even suspect it. Some signs are *tender, bleeding gums*. If neglected this condition may lead to dreaded Pyorrhoea, which only your dentist can help. See your dentist. Then at home help guard against Gingivitis by massaging your gums with Forhan's Toothpaste. This effective Forhan's method, developed by Dr. R. J. Forhan, helps gums to be firmer—thus more able to ward off infection. * * * Forhan's is one toothpaste you can buy today that helps remove acid film that so often starts tooth decay—yet Forhan's costs no more than ordinary toothpastes. Remember—sound, sparkling teeth require firm gums. So help by starting Forhan's and massage at once.

* * * *

The whole nation is awake to the importance of good teeth—and a good rule to remember is—good teeth need firm gums—and gums often need care in helping them to be firmer. The best care of course is to see your dentist four times a year. And in addition a good rule is to massage your gums twice a day with Forhan's Toothpaste. Some Forhan's toothpaste on your finger tip massaged gently onto your gums morning and night to help them be firmer—to help guard against Gingivitis—the tender bleeding gum condition to which four out of five of us may be subject * * *.

* * * *

* * * He was a very successful dentist—and I asked him about Forhan's Toothpaste. Excellent—he said—I have used Forhan's—he said—and recommended it for years. And I have seen what fine results it produces too. And he told me of a great many cases where he had checked Gingivitis—the sore, tender gum condition which most of us face—and in all those cases Forhan's as a gum massage and toothpaste has worked out fine. * * *

PAR. 6. Through the use of the statements hereinabove set forth, respondents have represented, directly and by implication, that uninstructed massage of the gums with Forhan's Toothpaste will help make gums firmer; that uninstructed massage of the gums and cleaning the teeth with Forhan's Toothpaste will protect the user against gingivitis and pyorrhoea; that uninstructed massage of the gums and cleaning the teeth with Forhan's Toothpaste is of value in the treatment of gingivitis; and that, by comparison with Forhan's, all other tooth pastes are “ordinary” and inferior.

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PAR. 7. The formula for Forhan's Toothpaste is as follows:

<i>"Ingredients</i>	<i>Percentage</i>
Precipitated chalk-----	45.0
Sodium soap-----	1.6
Zinc soap (zinc stearate and zinc oleate)-----	.9
Glycerine (or other humectants)-----	35.0
Flavoring oils (peppermint, menthol and thymol)-----	.7
Mineral oil-----	.9
Gums-----	.47
Saccharine-----	.07
Certified color-----	.004
Sodium Chloride-----	.16
Water (by difference)-----	15.196
	100.00

The manufacturing process tolerates variances in the percentages of chalk, humectants, and water, of plus or minus .5% which has no material effect on the product, but may give slightly different quantitative values for those ingredients from batch to batch."

PAR. 8. Respondents' preparation contains nothing the application of which is of therapeutic value in the prevention or cure of any disease or disorder of the teeth or gums. Its sole value is as a cleaning agent. The use of this preparation on a toothbrush in brushing the teeth is of no value in the treatment of inflammation of the gums (gingivitis); its use on a toothbrush in brushing the teeth is of no value in preventing gingivitis or pyorrhea except to the extent that it may help to prevent gingivitis caused by accumulation of food particles or other foreign materials in places on the teeth which are accessible to a toothbrush.

The term "massage," as used in their above set-out advertisement means to the great majority of the general public a haphazard, indiscriminate rubbing of the gums with a toothbrush or finger. Massaging of the gums in this sense, whether with or without the said preparation, is of no value in making soft gums firm, or in the prevention or treatment of gingivitis or pyorrhea. The term "massage," as used by dentists, means a careful stroking or squeezing pressure applied to the gums in a particular area to achieve a specific purpose. Its proper use requires professional instruction. The testimony of the expert witnesses is conflicting as to the value of massaging the gums even with professional instruction. However, the preponderant weight of the qualified dental opinion is that massaging the gums in the sense of indiscriminately rubbing them is of no value and, in some cases, is actually harmful to the gums.

The results achieved through the use of respondents' preparation are essentially the same as those achieved through the use of other commercial tooth pastes. It is not extraordinary in the sense that the properties of competing commercial tooth pastes are inferior.

PAR. 9. The complaint also alleges that respondents have falsely represented that the use of Forhan's Toothpaste will protect teeth against decay by removing from them the acids and acid films which are its cause. Respondents represented "Forhan's * * * helps remove acid film that so often starts tooth decay * * *." The record shows that brushing teeth with a dentifrice will remove acid film from those surfaces of the teeth accessible to the toothbrush and that such acid film is one of the causes of tooth decay. Upon this record, the Commission is of the opinion that these allegations of the complaint have not been sustained.

PAR. 10. The complaint further alleges that respondents have falsely represented that the use of Forhan's Toothpaste as a dentifrice will cause the user's teeth to become naturally white, sparkling, bright and lustrous even though their natural appearance, even when clean and polished, is dull or yellowish. A typical representation is "cleans dull teeth to their own natural white brilliance." Interpreted literally, this represents that Forhan's Toothpaste will clean teeth to their own natural state which is that of white brilliance. All teeth are not naturally white nor brilliant. The use of Forhan's Toothpaste will not alter the original color or lustre of teeth though it will, through the removal of film, debris, dirt and surface stains, assist in cleaning them. However, in the absence of evidence to the contrary, it is believed that exaggerations as to the whiteness and lustre to be achieved by the use of a tooth paste are unlikely to deceive anyone factually as long as it is clearly stated that the tooth paste only cleans teeth to their own natural state. The Commission, therefore, finds that the allegation of the complaint that these representations are deceptive has not been sustained.

PAR. 11. The complaint further alleges that respondents have falsely represented that large numbers of dentists have for many years recommended Forhan's Toothpaste for the results claimed by respondents in their advertisements. The record does not contain evidence proving that large numbers of dentists have not so recommended Forhan's Toothpaste. Therefore, this allegation of the complaint has not been sustained.

PAR. 12. The statements and representations referred to in Paragraph Six of these findings have been and are false and misleading, and the advertisements wherein such statements and representations were made were false advertisements. Respondents' use of the afore-

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said false and misleading statements and representations, disseminated as aforesaid, has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true and to induce a substantial number of the public to purchase said preparation because of such erroneous and mistaken belief.

PAR. 13. The Commission has considered the fact that the representations found to be false herein were contained in advertisements disseminated prior to the issuance of the complaint herein and that the record is silent as to whether or not respondents have continued to disseminate advertisements containing similar representations since that time. It has further considered the fact that respondents have at no time contended that they were not continuing to so advertise and have at all times vigorously contended that their said advertisements were proper and legal. Upon this record, the Commission is of the opinion that respondents are likely to so advertise in the future unless prohibited from doing so by an order of the Commission and that, therefore, the issuance of such an order is required in the public interest.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondents, Zonite Products Corporation and Erwin Wasey & Company, Inc., and their respective officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the cosmetic preparation, Forhan's Toothpaste, or

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any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from:

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

(a) That massaging the gums with said preparation is of any value in making gums firmer or in the prevention of gingivitis or pyorrhea;

(b) That massaging the gums or brushing the teeth with said preparation is of any value in the treatment of gingivitis;

(c) That brushing the teeth with said preparation is of any value in the prevention of gingivitis or pyorrhea other than to the extent that locally caused gingivitis may be prevented by keeping the teeth clean;

(d) That the results obtained by the use of competing tooth pastes are inferior.

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

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

IN THE MATTER OF
HOME MACHINE SUPPLY, 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 5884. Complaint, June 27, 1951—Decision, Apr. 24, 1952

When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public not marked or not adequately marked showing that they are of foreign origin, or with markings covered or otherwise concealed, such public understands and believes them to be wholly of domestic origin.

There is among the members of the purchasing public a substantial number who have a decided preference for products originating in the United States over products originating in whole or in part in foreign countries, including sewing machine heads.

Where a corporation and its two officers engaged in the competitive interstate sale of sewing machine heads purchased by them from importers, and of completed sewing machines made by attaching a motor to said heads in process of which the words "Made in Occupied Japan" or "Japan" were covered—

- (a) Failed adequately to disclose on said heads that they were made in Japan, notwithstanding the presence upon the front of some of them of a medallion which bore in small and indistinct words the legend "Made in Occupied Japan" or "Japan"; and thereby placed in the hands of dealers a means whereby they might deceive the purchasing public as to the place of origin of said heads; and
- (b) Made such statements in their advertising as "Fully guaranteed", without disclosing the terms and conditions of the guarantee, effect of which was to confuse and mislead the public and purchasers;

With tendency and capacity to mislead members of the purchasing public into the erroneous belief that their said product was of domestic origin and thereby induce purchase of sewing machines of which said heads were a part; and with effect of unfairly diverting trade to them from competitor sellers of the domestic and of the imported products:

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

Before *Mr. James A. Purcell*, hearing examiner.

Mr. William L. Taggart for the Commission.

Mr. H. Robert Levine, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Home Machine Supply, Inc., a corporation, and Max Lippman, and Max Albin, 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, Home Machine Supply, Inc., 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 at 750 Avenue of the Americas, New York, New York. Respondent Max Lippman is President and respondent Max Albin is Secretary-Treasurer of the corporate respondent, and acting as such officers, formulate, direct and control the policies, acts and practices of said corporation. The address of these individual respondents is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and have been for several years last past, engaged in the sale of sewing machine heads purchased by them from importers, and completed sewing machines of which said heads are a part, to retailers who sell to the purchasing public. In the course and conduct of their business respondents cause their said sewing machine heads, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States, and maintain and at all times mentioned herein have maintained a course of trade in said products in commerce among and between the various States of the United States. Their volume of trade in said commerce has been and is now substantial.

PAR. 3. When the sewing machine heads are purchased by respondents the words "Made in Occupied Japan" or "Japan" appear on the back of the vertical arm. Before the heads are sold to the purchasing public as a part of a complete sewing machine it is necessary to attach a motor to the head in the process of which the aforesaid words are covered by the motor so that they are not visible. In some instances said heads, when received by respondents, are marked with a medallion placed on the front of the vertical arm upon which the words "Made in Occupied Japan" or "Japan" appear. These words are, however, so small and indistinct that they do not constitute adequate notice to the public that the heads are imported.

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PAR. 4. When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public and such articles are not marked or are not adequately marked showing that they are of foreign origin or if marked and the markings are covered or otherwise concealed, such purchasing public understands and believes such articles to be wholly of domestic origin.

There is among the members of the purchasing public a substantial number who have a decided preference for products originating in the United States over products originating in whole or in part in foreign countries, including sewing machine heads.

PAR. 5. Respondents in their advertising make such statements as the following:

“Fully guaranteed”

The use of the word “guaranteed” in said advertising without disclosing the terms and conditions of the guarantee is confusing and misleading to the public and purchasers and constitutes an unfair and deceptive act and practice in commerce.

PAR. 6. Respondents by placing in the hands of dealers their said sewing machine heads and completed sewing machines provide said dealers a means and instrumentality whereby they may mislead and deceive the purchasing public as to the place of origin of said heads.

PAR. 7. Respondents in the course and conduct of their business are in substantial competition in commerce with the makers and sellers of domestic machines and also sellers of imported machines, some of whom adequately inform the public as to the source of origin of their said product.

PAR. 8. The failure of respondents to adequately disclose on the sewing machine heads that they are manufactured in Japan has the tendency and capacity to lead members of the purchasing public into the erroneous and mistaken belief that their said product is of domestic origin, and to induce members of the purchasing public to purchase sewing machines of which their heads are a part because of such erroneous and mistaken belief. As a result thereof, trade has been unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce.

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

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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 April 24, 1952, the initial decision in the instant matter of hearing examiner James A. Purcell, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 27, 1951, issued and subsequently served its complaint in the above-entitled proceedings upon the respondents Home Machine Supply, Inc., a corporation, and Max Lippman and Max Albin, individually and as officers of said corporation, charging them with unfair and deceptive acts and practices in commerce in violation of said Act. On July 25, 1951, respondents filed their answer to the complaint. Thereafter, at a hearing held in New York, New York, on December 6, 1951, respondents moved the Hearing Examiner for leave to withdraw the aforesaid answer and to file in substitution thereof an answer admitting all of the material allegations of facts set forth in the complaint, which motion was granted on the record and confirmed by formal order filed herein on December 7, 1951. Such substituted answer reserved to respondents the right and privilege to submit Proposed Findings and Conclusions as provided by Rule XXI of the Commission's Rules of Practice, and also certain other reservations to respondents not necessary to be here set forth. Testimony was received, which the Hearing Examiner has retained of record, no motion to strike same having been made by either party, which testimony is not herein considered because of the filing of the admission answer, as above set out.

Thereafter the proceeding regularly came on for final consideration by the above-named Hearing Examiner, theretofore duly designated by the Commission, upon said complaint and answer thereto, Proposed Findings and Conclusions not having been submitted on behalf of any party to the proceeding, and said Hearing 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, Home Machine Supply, Inc., 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 at 750 Avenue of the Americas, New York, New York. Respondent Max Lippman is President and respondent Max Albin is Secretary-Treasurer of the corporate respondent, and acting as such officers, formulate, direct and control the policies, acts and practices of said corporation. The address of these individual respondents is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and have been for several years last past, engaged in the sale of sewing machine heads purchased by them from importers, and completed sewing machines of which said heads are a part, to retailers who sell to the purchasing public. In the course and conduct of their business respondents cause their said sewing machine heads, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States, and maintain and at all times mentioned herein have maintained a course of trade in said products in commerce among and between the various States of the United States. Their volume of trade in said commerce has been and is now substantial.

PAR. 3. When the sewing machine heads are purchased by respondents the words "Made in Occupied Japan" or "Japan" appear on the back of the vertical arm. Before the heads are sold to the purchasing public as a part of a complete sewing machine it is necessary to attach a motor to the head in the process of which the aforesaid words are covered by the motor so that they are not visible. In some instances said heads, when received by respondents, are marked with a medallion placed on the front of the vertical arm upon which the words "Made in Occupied Japan" or "Japan" appear. These words are, however, so small and indistinct that they do not constitute adequate notice to the public that the heads are imported.

PAR. 4. When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public and such articles are not marked or are not adequately marked showing that they are of foreign origin or if marked and the markings are covered or otherwise concealed, such purchasing public understands and believes such articles to be wholly of domestic origin.

There is among the members of the purchasing public a substantial number who have a decided preference for products originating in the United States over products originating in whole or in part in foreign countries, including sewing machine heads.

PAR. 5. Respondents in their advertising make such statements as the following:

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"Fully guaranteed"

The use of the word "guaranteed" in said advertising without disclosing the terms and conditions of the guarantee is confusing and misleading to the public and purchasers and constitutes an unfair and deceptive act and practice in commerce.

PAR. 6. Respondents by placing in the hands of dealers their said sewing machine heads and completed sewing machines provide said dealers a means and instrumentality whereby they may mislead and deceive the purchasing public as to the place of origin of said heads.

PAR. 7. Respondents in the course and conduct of their business are in substantial competition in commerce with the makers and sellers of domestic machines and also sellers of imported machines, some of whom adequately inform the public as to the source of origin of their said product.

PAR. 8. The failure of respondents to adequately disclose on the sewing machine heads that they are manufactured in Japan has the tendency and capacity to lead members of the purchasing public into the erroneous and mistaken belief that their said product is of domestic origin, and to induce members of the purchasing public to purchase sewing machines of which their heads are a part because of such erroneous and mistaken belief. As a result thereof, trade has been unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce.

CONCLUSION

The aforesaid acts and practices of respondents as herein found are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition and 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, Home Machine Supply, Inc., a corporation, and its officers, and Max Lippman and Max Albin, individually and as officers of said corporation, and said respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of sewing machine heads or sewing machines in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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1. Offering for sale, selling or distributing foreign made sewing machine heads, or sewing machines of which foreign made heads are a part, without clearly and conspicuously disclosing on the heads, in such a manner that it will not be hidden or obliterated, the country of origin thereof.

2. Representing, directly or by implication, that their sewing machine heads or sewing machines are fully guaranteed, or that they are otherwise guaranteed, unless the nature and extent of the guarantee, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of April 24, 1952].

Syllabus

IN THE MATTER OF
ROMAN-RAICHERT 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 5886. Complaint, June 27, 1951—Decision, Apr. 24, 1952

When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public not marked or not adequately marked showing that they are of foreign origin, or with markings covered or otherwise concealed, such public understands and believes them to be wholly of domestic origin.

There is among the members of the purchasing public a substantial number who have a decided preference for products originating in the United States over products originating in whole or in part in foreign countries, including sewing machine heads.

The names "Cadillac" and "Zenith" are the names or part of the names of corporations doing business in the United States which are well and favorably known to the purchasing public and long established in various industries, some of which also use said words as trade names, marks or brands for their products—particularly "Cadillac automobiles" and "Zenith radios"—and there is a preference among members of the purchasing public for products made by the concerns whose identity is connected with said words.

Where a corporation and its three officers, engaged in the competitive interstate sale to retailers of sewing machine heads imported from Japan and of completed sewing machines which incorporated said heads through attachment of a motor thereto, in process of which the words "Made in Occupied Japan" or "Japan" were covered—

- (a) Failed adequately to disclose on said heads that they were made in Japan, notwithstanding the presence upon the front of some of them of a medallion which bore in small and indistinct words the legend "Made in Occupied Japan" or "Japan";
- (b) Falsely represented that their sewing machine heads were made by certain well-known firms through printing on the front of the horizontal arms in conspicuous letters the words "Cadillac" or "Zenith", and through use in their advertising of such trade names; and enhanced thereby the belief on the part of the public that said heads were of domestic origin; and
- (c) Made such statements in their advertising as "20 year guarantee", without disclosing the terms and conditions of the guarantee, effect of which was to confuse and mislead the public and purchasers;

With result of providing dealers, in whose hands they placed said completed sewing machines, a means to deceive the purchasing public as to the place of origin of said heads and the manufacturers thereof; and with tendency and capacity to lead substantial numbers of the purchasing public into the

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erroneous belief that their said products were of domestic origin and made by well-known domestic manufacturers; and to induce thereby purchase of such sewing machines, and thus unfairly divert trade and commerce to them from their competitors, to the substantial injury of competition in commerce:

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

Before *Mr. James A. Purcell*, hearing examiner.

Mr. William L. Taggart for the Commission.

Korshak & Rothman, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Roman-Raichert Company, Inc., and Roman Raichert, Leonard Raichert and Edward Raichert, 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 Roman-Raichert Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois with its office and principal place of business located at 3855 North Lincoln Avenue, Chicago, Illinois. Respondents Roman Raichert, Leonard Raichert and Edward Raichert are President and Vice President, Secretary and Treasurer, respectively, of corporate respondent and acting as such officers, formulate, direct and control the policies, acts and practices of said corporation. The address of the individual respondents is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and have been for several years last past, engaged in the sale of sewing machine heads imported from Japan, and completed sewing machines of which said heads are a part, to retailers who in turn sell them to the purchasing public. In the course and conduct of their business, respondents cause their said products, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof located in various other States and maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and

between the various States of the United States. Their volume of trade in said commerce has been and is substantial.

PAR. 3. When the sewing machine heads are received by respondents, the words "Made in Occupied Japan" or "Japan" appear on the back of the vertical arm. Before the heads are sold to the purchasing public as a part of a complete sewing machine, it is necessary to attach a motor to the head in the process of which the aforesaid words are covered by the motor so that they are not visible. In some instances, said heads, when received by respondents, are marked with a medallion placed on the front of the vertical arm upon which the words "Made in Occupied Japan" or "Japan" appear. These words are, however, so small and indistinct that they do not constitute adequate notice to the public that the heads are imported.

PAR. 4. When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public and such articles are not marked or are not adequately marked showing that they are of foreign origin, or if marked and the markings are covered or otherwise concealed, such purchasing public understands and believes such articles to be wholly of domestic origin.

PAR. 5. There is among the members of the purchasing public a substantial number who have a decided preference for products originating in the United States over products originating in whole or in part in foreign countries, including sewing machine heads.

PAR. 6. Respondents have adopted and use the words "Cadillac" and "Zenith" for their said sewing machine heads, which words are printed on the front horizontal arm of the head in conspicuous letters and use such trade names in their advertising. The names "Cadillac" and "Zenith" are the names or part of the names of a number of corporations transacting and doing business in the United States which are and have been well and favorably known to the purchasing public and which are and have been long established in various industries. Some of these corporations use the words "Cadillac" or "Zenith" as trade names, marks or brands for their products, particularly Cadillac automobiles and Zenith radios.

PAR. 7. By using said trade names respondents represent that their product is manufactured by the well known firms with which said names have long been associated, which is contrary to the fact.

PAR. 8. There is a preference among members of the purchasing public for products manufactured by well and favorably known and long established concerns whose identity is connected with the words "Cadillac" and "Zenith" and the use of said trade names by respondents on their sewing machine heads enhances the belief on the part of the public that the machine heads are of domestic origin.

PAR. 9. Respondents in their advertising make such statements as the following:

“20 year guarantee”

The use of the word “guarantee” without disclosing the terms and conditions of the guarantee is confusing and misleading to the public and purchasers and constitutes an unfair and deceptive practice.

PAR. 10. Respondents, by placing in the hands of dealers their said sewing machine heads and completed sewing machines, provide said dealers a means and instrumentality whereby they may mislead and deceive the purchasing public as to the place of origin of said heads and the manufacturer thereof.

PAR. 11. Respondents, in the course and conduct of their business, are in substantial competition in commerce with the makers and sellers of domestic machines and also with sellers of imported machines, some of whom adequately inform the public as to the source of origin of their said product.

PAR. 12. The failure of respondents to adequately disclose on their sewing machine heads that they are manufactured in Occupied Japan and the use of the words “Cadillac” and “Zenith” as a trade or brand name has the tendency and capacity to lead substantial numbers of the purchasing public into the erroneous and mistaken belief that their said products are of domestic origin and are manufactured by the well and favorably known domestic manufacturers with which said names have long been associated, and to induce substantial numbers of the purchasing public to purchase sewing machines containing said heads because of such erroneous and mistaken belief. As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce.

PAR. 13. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 April 24, 1952, the initial decision in the instant matter of hearing examiner James A. Purcell, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 27, 1951, issued and subsequently served its complaint in the above-entitled proceeding upon respondents Roman-Raichert Company, Inc., a corporation, and Roman Raichert, Leonard Raichert and Edward Raichert, individually and as officers of Roman-Raichert Company, Inc., they being respectively President and Vice-President, Secretary, and Treasurer thereof, charging them with unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of said Act. On July 20, 1951, respondents filed their answer to the complaint. Thereafter, at a hearing held in Chicago, Illinois, November 14, 1951, respondents moved the hearing examiner for leave to withdraw the aforesaid answer and to file in substitution thereof an answer admitting all of the material allegations of fact set forth in the complaint, which motion was granted on the record and confirmed by formal order filed herein on November 16, 1951. Such substituted answer reserved to respondents the privilege to submit Proposed Findings and Conclusions as provided by Rule XXI of the Commission's Rules of Practice, and also certain other reservations to respondents not necessary to be here set forth. Thereafter the proceeding regularly came on for final consideration by the above-named hearing examiner, theretofore duly designated by the Commission, upon said complaint and substituted answer thereto, proposed findings and conclusions submitted on behalf of the respondents, none such having been filed by the attorney in support of the complaint; and said hearing 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 Roman-Raichert Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois with its office and principal place of business located at 3855 North Lincoln Avenue, Chicago, Illinois. Respondents Roman Raichert, Leonard Raichert and Edward Raichert are President and Vice-President, Secretary and Treasurer, respectively, of corporate respondent and acting as such officers, formulate, direct and control the policies, acts and practices of said corporation. The address of the individual respondents is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and have been for several years last past, engaged in the sale of sewing machine heads imported from Japan, and completed sewing machines of which said heads are a part, to retailers who in turn sell them to the purchasing public. In the course and conduct of their business, respondents cause their said products, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof located in various other States and maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States. Their volume of trade in said commerce has been and is substantial.

PAR. 3. When the sewing machine heads are received by respondents, the words "Made in Occupied Japan" or "Japan" appear on the back of the vertical arm. Before the heads are sold to the purchasing public as a part of a complete sewing machine, it is necessary to attach a motor to the head in the process of which the aforesaid words are covered by the motor so that they are not visible. In some instances, said heads, when received by respondents, are marked with a medallion placed on the front of the vertical arm upon which the words "Made in Occupied Japan" or "Japan" appear. These words are, however, so small and indistinct that they do not constitute adequate notice to the public that the heads are imported.

PAR. 4. When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public and such articles are not marked or are not adequately marked showing that they are of foreign origin, or if marked and the markings are covered or otherwise concealed, such purchasing public understands and believes such articles to be wholly of domestic origin.

PAR. 5. There is among the members of the purchasing public a substantial number who have a decided preference for products originating in the United States over products originating in whole or in part in foreign countries, including sewing machine heads.

PAR. 6. Respondents have adopted and use the words "Cadillac" and "Zenith" for their said sewing machine heads, which words are printed on the front horizontal arm of the head in conspicuous letters and use such trade names in their advertising. The names "Cadillac" and "Zenith" are the names or part of the names of a number of corporations transacting and doing business in the United States which are and have been well and favorably known to the purchasing public and which are and have been long established in various industries. Some of these corporations use the words "Cadillac" or "Zenith" as trade names, marks or brands for their products, particularly Cadillac automobiles and Zenith radios.

PAR. 7. By using said trade means respondents represent that their product is manufactured by the well known firms with which said names have long been associated, which is contrary to the fact.

PAR. 8. There is a preference among members of the purchasing public for products manufactured by well and favorably known and long established concerns whose identity is connected with the words "Cadillac" and "Zenith" and the use of said trade names by respondents on their sewing machine heads enhances the belief on the part of the public that the machine heads are of domestic origin.

PAR. 9. Respondents in their advertising make such statements as the following:

"20 year guarantee"

The use of the word "guarantee" without disclosing the terms and conditions of the guarantee is confusing and misleading to the public and purchasers and constitutes an unfair and deceptive practice.

PAR. 10. Respondents, by placing in the hands of dealers their said sewing machine heads and completed sewing machines, provide said dealers a means and instrumentality whereby they may mislead and deceive the purchasing public as to the place of origin of said heads and the manufacturer thereof.

PAR. 11. Respondents, in the course and conduct of their business, are in substantial competition in commerce with the makers and sellers of domestic machines and also with sellers of imported machines, some of whom adequately inform the public as to the source of origin of their said product.

PAR. 12. The failure of respondents to adequately disclose on their sewing machine heads that they are manufactured in Occupied Japan and the use of the words "Cadillac" and "Zenith" as a trade or brand name has the tendency and capacity to lead substantial numbers of the purchasing public into the erroneous and mistaken belief that their said products are of domestic origin and are manufactured by the well and favorably known domestic manufacturers with which said names have long been associated, and to induce substantial numbers of the purchasing public to purchase sewing machines containing said heads because of such erroneous and mistaken belief. As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found, are all to the prejudice and injury of the public and of respondents'

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competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondents, Roman-Raichert Company, Inc., a corporation, and its officers, and Roman Raichert, Leonard Raichert and Edward Raichert, individually and as officers of said corporation, and said respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of sewing machine heads or sewing machines in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale, selling or distributing foreign made sewing machine heads, or sewing machines of which foreign made heads are a part, without clearly and conspicuously disclosing on the heads, in such a manner that it will not be hidden or obliterated, the country of origin thereof.

2. Using the words "Cadillac," or "Zenith," or any simulations thereof, as brand or trade names to designate, describe or refer to their sewing machines or sewing machine heads; or representing through the use of any other words or in any other manner that their sewing machines or sewing machine heads are made by anyone other than the actual manufacturers.

3. Representing, directly or by implication, that their sewing machine heads or sewing machines are guaranteed for twenty years, or for any other period of time, or that they are otherwise guaranteed, unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of April 24, 1952].