Syllabus 48 F. T. C.

IN THE MATTER OF

WILLIAM A. REED CO., ET AL.

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

Docket 5539. Complaint, Apr. 27, 1948—Decision, Aug. 22, 1951

Where a corporation, with its president and four other individuals who, formerly partners, had theretofore transferred to it all their property rights and interests in the predecessor business, engaged in the interstate sale and distribution of their "Medrex Soap," "Medrex Ointment," and "Nulfey Tablets," in advertising their said products in newspapers and through radio continuities distributed throughout the United States, and in other ways, directly and by implication—

(*a*) Represented falsely that the use of said soap was effective in treating and relieving externally caused pimples, blotches, broken-out skin, rashes, and blackheads, and would relieve itching and burning skin and restore a clear natural complexion in cases of blotchy skin;

When in fact it possessed no medicinal value and acted only as a cleansing agent;

(*b*) Represented falsely that the use of said ointment as directed was a cure and effective treatment for all externally caused skin ailments or conditions, including pimples, blackheads, scabies, eczema, skin irritations or blemishes, etc., and would relieve the itching of skin blemishes and eruptions of external nature;

The facts being that although it would temporarily relieve itching of some skin blemishes and eruptions, it would not do so in all such conditions;

(*c*) Represented falsely that its "Nulfey Tablets," Formula No. 1, would have a remedial action and would cure rheumatism, arthritis, sciatica, gout, lumbago, muscular aches and pains and neuralgia; that waste poisons caused the pains of neuralgia and rheumatism, and that said product would clear the system thereof and thereby relieve such pains;

The facts being that said preparation, by reason of its laxative effect, would cause the evacuation of waste materials from the intestinal tract, but would not accomplish the results claimed above; and

(*d*) Represented that its "Nulfey Tablets," Formula No. 2, would relieve aches and pains and particularly muscular aches and pains, rheumatic pains, and headaches, backaches, and pains of simple neuralgia;

The facts being that while said tablets, both Formulas Nos. 1 and 2, because of their analgesic properties, would tend to relieve temporarily or reduce the pain associated with aforesaid ailments, the pain would return as soon as the analgesic effect wore off, and some pains associated with some of said ailments were so severe that the tablets taken as directed would not give complete relief;

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

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

Mr. Randolph W. Branch for the Commission.
Mr. Matthew S. Biron, 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 William A. Reed Co., a corporation, and Albert J. Sylk, individually and as an officer of said corporation, and Albert J. Sylk, William H. Sylk, Harry S. Sylk, Morris Soble, and Bernard Weinberg, copartners, operating as William A. Reed Co., 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 William A. Reed Co. is a corporation, organized under the laws of the State of Pennsylvania on October 1, 1945, with its principal place of business located at 1928 Spruce Street, Philadelphia, Pa. Albert J. Sylk is president of William A. Reed Co., a corporation, and formulates and directs the policies and practices of said corporation. Prior to about January 2, 1946, Albert J. Sylk, William H. Sylk, Harry S. Sylk, Morris Soble, and Bernard Weinberg operated as copartners under the name and style of William A. Reed Co., at which time the business operated by them under such name was sold to the respondent William A. Reed Co., a corporation.

The addresses of the individual respondents are: Albert J. Sylk, 1928 Spruce Street, Philadelphia, Pa.; William H. Sylk, 6953 Greenhill Road, Philadelphia, Pa.; Harry S. Sylk, 5117 Wynnefield Avenue, Philadelphia, Pa.; Morris Soble, 2277 Georges Lane, Philadelphia, Pa.; and Bernard Weinberg, 2319 North Fifty-first Street, Philadelphia, Pa.

PAR. 2. Respondent William A. Reed Co., a corporation, is now, and the individual respondents, as copartners, from some time prior to January 2, 1946, were engaged in the business of selling and distributing drugs and cosmetic products in commerce as drugs and cosmetics are defined in the Federal Trade Commission Act. The designation used by respondents for said products and the formulae and directions for use thereof are as follows:

Designation: MEDREX SOAP.
Formula: (1) Combination of tallow and cocoanut oil.
(2) 83 to 84% anhydrous soap.
(3) 10 to 12% moisture.

(4) 2% Medrex Ointment.
(5) ¾ of 1% perfume.
(6) 0.5 of 1% gylcerine.
(7) 0.02 of 1% alkali.
(8) trace of salt.

Directions for Use: To promote the healing of pimples and blackheads due to external causes, place a cake of Medrex Soap into a bowl of hot water and make a lather. Wash the skin thoroughly and allow the lather to dry on the affected skin. Rinse and dry, by patting with a clean, soft towel. Then apply Medrex Ointment with fingers, gauze or cotton. Do not spread on too thickly, as a thin coating is all that is needed. Use Medrex treatment nightly before bedtime. Every morning cleanse the face with Medrex Soap and hot water, working the lather into the pores; then rinse with cold water.

Designation: MEDREX OINTMENT.

Formula:	
Acid Salicylic	1# 5 oz. 105 gr.
Benzoic Acid	1# 5 oz. 105 gr.
Zinc Oxide	13#
Amylum (Starch)	13#
Petrolatum	39#
Acetanilid	8 oz.
Phenol (Carbolic Acid)	5 oz.
Methyl Salicylate	4 oz.
Color	q. s.

Directions for Use: Apply gently on the affected parts twice a day. If necessary, it may be used more frequently. Later continue treatment less frequently as may be required.

Designation: NULFEY TABLETS.

Formula No. 1: (Used Prior to October 1947.)

Each tablet contains:

P. E. cascara	¼ gr.
P. E. Buchu	¼ gr.
P. E. Uva Ussi	¼ gr.
Methenamine	2½ grs.
Acid Sodium Phosphate	2½ grs.
Sodium Salicylate	5 grs.

Directions for Use: Take 1 or 2 tablets every 3 or 4 hours. If relief is not prompt, see your physician.

Formula No. 2: (Used subsequent to October 1947.)

Acetyl Salicylic Acid	3 grs.
Acetophenetidin	2½ grs.
Grain Caffeine	½ gr.

Directions for Use: FOR ADULTS: 1 or 2 tablets. May be repeated in 3 hours if necessary. Do not take more than 5 tablets in any 24 hour period.

For Children over 7 years: 1 tablet only. May be repeated in 3 hours. Do not give more than 3 tablets in any 24 hours.

Do not exceed the above recommended doses in any 24 hours. If pains persist, recur frequently, or are unusually severe, consult a physician.

PAR. 3. Respondents cause and have caused said products when sold, to be transported from their place of business in the State of Pennsylvania to purchasers, thereof located in various other States of the United States and in the District of Columbia and at all times mentioned herein, maintain and have maintained a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business, respondent William A. Reed Co., a corporation, subsequent to about January 2, 1946, and the individual respondents as copartners prior to such time, but subsequent to March 31, 1938, disseminated and caused the dissemination of certain advertisements concerning said products by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements in the Cincinnati "Star-Times," June 1944; in the Detroit "News" on or about February 16, 1944; in the Chicago "Herald-Examiner" from June 1946 to January 1947; Newark "Evening News" November 1947, and other nationally distributed newspapers in several States of the United States over the period of time covered in this complaint, and by means of radio continuities broadcast from Station WOL, Washington, D. C., on or about June 30, 1943; Station WPEN, Philadelphia, Pa., in June 1943, and in December 1944; and from other radio stations during the period of time covered in this complaint, and by other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondents have disseminated and caused the dissemination of advertisements concerning their said products by various means, including but not limited to the advertisements and radio continuities referred to above, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among the statements and representations contained in the said advertisements disseminated as aforesaid are the following:

Relating to Medrex Soap, disseminated by means of radio continuities by the individual respondents as copartners in the year 1944:

MEDREX SOAP * * * helps to bring genuine relief from burning, itching and embarrassment of blotchy skin. Mild, medicated MEDREX SOAP is delightful to use—and a big help in bringing back a clear, natural complexion * * * Friends if you're troubled with blotchy, broken-out skin, get a cake of MEDREX SOAP tonight. Use it regularly. See how it may help relieve that externally-caused skin condition.

And how should MEDREX SOAP be used to help relieve externally-caused pimples, blackheads and rashes? It is very simple. You just make a thick

rich MEDREX SOAP lather. Wash your face thoroughly—allow some of the lather to dry on the face—then rinse with warm water and pat dry with a soft towel. Do it regularly. MEDREX SOAP is a pure, perfectly balanced, soothing soap that helps nature bring back a clear, lovely complexion.

Relating to Medrex Ointment, disseminated by the individual respondents as copartners by means of newspapers prior to January 2, 1946:

WHY LOOK DISPLEASED? Get rid of pimples. Do ugly, red, disfiguring pimples, bothersome blackheads, burning eczema, itching skin and other non-systemic externally-caused skin ailments make you look as if you suffered from a really serious complaint? Then, for Heaven's Sake go to your druggist right away and get a jar of MEDREX OINTMENT. * * * MEDREX offers quick relief and promotes beneficial effect by helping nature to clear away these externally-caused blemishes.

BLACKHEADS, PIMPLES, QUICKLY GO, OR MONEY BACK!

MEDREX has proved completely effective in clearing up PIMPLES, BLACKHEADS, and all other kinds of externally-caused skin irritations.

Disseminated by the corporate respondent by means of newspapers subsequent to January 2, 1946:

AWAY GO PIMPLES.

The instant you put soothing MEDREX OINTMENT on the itching pimples you get action. Relieve the troublesome symptoms of externally-caused pimples with MEDREX OINTMENT. Millions of satisfied users find this famous doctor's prescription eases the itching of pimples—helps nature in healing. The eight tested ingredients of MEDREX OINTMENT guarantee quick relief or your money back. Why suffer? medicate with MEDREX OINTMENT.

Here is a free way to rid yourself of torturous itching pimples, eczema, blotches and blemishes of an external nature. Money refunded if pure MEDREX OINTMENT fails to give you quick relief from symptoms. MEDREX OINTMENT is guaranteed. Skin eruptions must go or money back.

ONE! TWO! PIMPLES THROUGH.

A new double action way to find relief from itching pimples, eczema and other skin eruptions of external nature. MEDREX OINTMENT relieves instantly or your money back. Millions find MEDREX OINTMENT the ideal answer to their skin problems.

BAD SKIN, PIMPLES.

Here is a new way to help rid yourself of torturous itching pimples, scales, scabies and blemishes of external nature.

Relating to Nulfey Tablets, under Formula No. 1 above, disseminated by newspapers and radio prior to January 2, 1946:

NULFEY HELPS clear up the system by acting as a laxative, too. It helps clear away those waste poisons that might be the cause of unbearable neuralgia and muscular pains.

BACK-BREAKING PAINS.

If you suffer from the agonizing torture of nagging backaches, rheumatism, arthritis, sciatica, gout, lumbago, or simple neuralgia . . . if you feel so stiff and achy that you can hardly walk, sit or sleep in comfort, don't despair.

Go to your druggist this very minute and buy a box of NULFEY TABLETS. Take 1 or 2 every 3 or 4 hours and the chances are better than good that you will find quick relief. Sold with the ironclad guarantee that they must act beneficially on the particular condition for which they are intended or your money cheerfully refunded. Get NULFEY TABLETS today and get rid of those torturing pains.

RHEUMATISM—ARTHRITIS—NEURALGIA—MUSCULAR PAINS.

You are only as old as you feel! So why not do something that will help you regain your youthful vim, pep and vigor. Go to your druggist now and buy a bottle of NULFEY TABLETS that often bring relief in a jiffy to sufferers from rheumatism, arthritis, sciatica, gout, lumbago, muscular aches and pains and simple neuralgia. NULFEY TABLETS are sold with an ironclad guarantee that they must act beneficially on the particular conditions for which they are intended or your money promptly refunded. Get NULFEY TABLETS at your druggist and get relief from agonizing pain.

Disseminated by respondent corporation by means of newspapers subsequent to January 2, 1946, under Formula No. 2 above:

ACHES—PAINS

Help rid yourself of torturing pains. Use time-tested NULFEY TABLETS for the relief of muscular aches and pains commonly referred to as rheumatic pains, also headaches, backache and simple neuralgia. Guaranteed quick acting NULFEY TABLETS must relieve promptly or your money back. The new improved NULFEY TABLETS are on sale today.

HEADACHE

Are you suffering from the misery of a nervous headache? Why let pain make work all agony and nights a torture? NULFEY TABLETS will often bring you relief in a jiffy. Don't delay—when that warning pain strikes. Get genuine, dependable NULFEY TABLETS today, NULFEY TABLETS, a time-tested, formula, is scientifically prepared and used by thousands of satisfied customers for over 50 years with amazing results. Complete satisfaction or your money back. Use only as directed.

PAR. 6. Through the use of the advertisements containing the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondents have represented, directly and by implication:

That the use of Medrex Soap, is effective in treating and relieving externally caused pimples, blotches, broken out skin, rashes, and blackheads; that it will relieve itching and burning skin and will restore a clear, natural complexion, in cases of blotchy skin.

That the use of Medrex Ointment, as directed, is a cure or remedy and constitutes a competent and effective treatment for, all externally caused skin ailments or conditions including pimples, blackheads, scabies, scales, skin blotches, eczema, skin irritations and eruptions, skin blemishes or similar skin ailments, or conditions and will relieve the itching of skin blemishes and eruptions of external nature.

That Nulfey Tablets Formula No. 1 above, will have a remedial action and will cure rheumatism, arthritis, sciatica, gout, lumbago, muscular aches and pains, and neuralgia; that waste poisons cause the pains of neuralgia and rheumatism and that this product will clear the system of these poisons and thereby relieve such pains.

That Nulfey Tablets Formula No. 2 above, will relieve aches and pains, particularly muscular aches and pains, rheumatic pains, headaches, backaches and pains of simple neuralgia.

PAR. 7. That said advertisements are misleading in material respects, and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact:

The use of Medrex Soap is not an effective treatment for and will not relieve externally or otherwise caused pimples, blotched or broken out skin, rashes, or blackheads. Its use will not relieve itching or burning skin. It will not restore a clear, natural complexion in cases of blotchy skin. This product possesses no medicinal value and acts only as a cleansing agent.

The use of Medrex Ointment as directed, is not a cure or remedy nor does it constitute a competent or effective treatment for externally or otherwise caused pimples, blackheads, scabies, scales, skin blotches, eczema, skin irritations and eruptions, skin blemishes, or similar skin ailments or conditions. While this product will temporarily relieve the itching of some skin blemishes and eruptions it will not do so in all such conditions.

Waste poisons do not cause the pains of neuralgia or rheumatism and while Nulfey Tablets Formula No. 1 above, will by reason of its laxative effect cause the evacuation of waste materials from the intestinal tract, such action will not clear the system of poisons or relieve the pains of neuralgia or rheumatism.

This product will not cure rheumatism, arthritis, sciatica, gout, lumbago, muscular aches and pains, or neuralgia or have any remedial or beneficial effect upon such ailments or conditions.

Both Nulfey Tablets, Formulas No. 1 and No. 2, because of their analgesic properties will tend to temporarily relieve or reduce the pain associated with the aforesaid ailments or conditions but the pain will return as soon as the analgesic effect wears off. There are pains associated with some of said ailments or conditions in which the pain is so severe that Nulfey Tablets, taken as directed, will not give complete relief.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 27, 1948, 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. An answer to said complaint was filed by respondents William A. Reed Co. and Albert J. Sylk. No answer was filed by the other respondents. Thereafter, respondents submitted an offer of settlement conditioned upon the issuance by the Commission of a specified order to cease and desist. The Commission declined to issue its order to cease and desist in the form specified in the offer of settlement, but issued and served upon respondents a tentative order to cease and desist. Objection having been made by respondents to the issuance by the Commission of its order to cease and desist in the form contained in the said tentative order, the Commission remanded the matter to a trial examiner of the Commission, theretofore duly designated by it, for further proceedings. Thereupon, respondents agreed to the issuance of an order to cease and desist in the form contained in the tentative order issued by the Commission. The trial examiner, stating that no further proceedings by him were necessary, certified the matter to the Commission for its final consideration. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the aforesaid complaint, the answer thereto of respondents William A. Reed Co. and Albert J. Sylk, respondents' offer of settlement, the Commission's tentative order to cease and desist and respondents' consent thereto (no briefs having been filed or oral argument requested), and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent William A. Reed Co. is a corporation, organized under the laws of the State of Pennsylvania on October 1, 1945, with its principal place of business located at 1928 Spruce Street, Philadelphia, Pa. Respondent Albert J. Sylk is president of the respondent corporation, William A. Reed Co., and formulates and directs the policies and practices of said corporation. Respondents Albert J. Sylk, William H. Sylk, Harry S. Sylk, Morris Soble, and Bernard Weinberg are individuals who prior to January 2, 1946 op-

erated as copartners under the name and style of William A. Reed Co. On or about January 2, 1946, the said respondent copartners transferred all of their property, rights and interest in the said partnership to the respondent corporation, William A. Reed Co.

The addresses of the individual respondents are: Albert J. Sylk, 1928 Spruce Street, Philadelphia, Pa.; William H. Sylk, 6953 Greenhill Road, Philadelphia, Pa.; Harry S. Sylk, 5117 Wynnefield Avenue, Philadelphia, Pa.; Morris Soble, 2277 Georges Lane, Philadelphia, Pa.; and Bernard Weinburg, 2319 North Fifty-first Street, Philadelphia, Pa.

PAR. 2. Respondent corporation, William A. Reed Co., is now, and since January 2, 1946, it has been, engaged in the sale and distribution of certain drug and cosmetic products. Respondents Albert J. Sylk, William H. Sylk, Harry S. Sylk, Morris Soble, and Bernard Weinberg, as copartners operating as William A. Reed Co., were engaged in the sale and distribution of the said drug and cosmetic products for several years immediately prior to January 2, 1946. The designation used by respondents for said drug and cosmetic products and the formulae and direction for use thereof are as follows:

Designation: MEDREX SOAP.

Formula: (1) Combination of tallow and cocoanut oil.
(2) 83 to 84% anhydrous soap.
(3) 10 to 12% moisture.
(4) 2% Medrex Ointment.
(5) ¾ of 1% perfume.
(6) 0.05 of 1% glycerine.
(7) 0.02 of 1% alkali.
(8) trace of salt.

Directions for Use: To promote the healing of pimples and blackheads due to external causes, place a cake of Medrex Soap into a bowl of hot water and make a lather. Wash the skin thoroughly and allow the lather to dry on the affected skin. Rinse and dry, by patting with a clean, soft towel. Then apply Medrex Ointment with fingers, gauze or cotton. Do not spread on too thickly, as a thin coating is all that is needed. Use Medrex treatment nightly before bedtime. Every morning cleanse the face with Medrex Soap and hot water, working the lather into the pores; then rinse with cold water.

Designation: MEDREX OINTMENT.

Formula:

Acid Salicylic	1# 5 oz. 105 gr.
Benzoic Acid	1# 5 oz. 105 gr.
Zinc Oxide	13#
Amylum (Starch)	13#
Petrolatum	39#
Acetanilid	8 oz.
Phenol (Carbolic Acid)	5 oz.
Methyl Salicylate	4 oz.
Color	q.s.

Directions for Use: Apply gently on the affected parts twice a day. If necessary, it may be used more frequently. Later continue treatment less frequently as may be required.

Designation: NULFEY TABLETS.

Formula No. 1: (Used prior to October 1947.)

Each tablet contains:

P. E. Cascara	¼ gr.
P. E. Buchu	¼ gr.
P. E. Uva Ussi	¼ gr.
Methenamine	2½ grs.
Acid Sodium Phosphate	2½ grs.
Sodium Salicylate	5 grs.

Directions for Use: Take 1 or 2 tablets every 3 or 4 hours. If relief is not prompt, see your physician.

Formula No. 2: (Used subsequent to October 1947.)

Acetyl Salicylic Acid	3 grs.
Acetophenetidin	2½ grs.
Grain Caffein	½ gr.

Direction for Use: FOR ADULTS: 1 or two tablets. May be repeated in 3 hours if necessary. Do not take more than 5 tables in any 24-hour period.

For Children over 7 years: 1 tablet only. May be repeated in 3 hours. Do not give more than 3 tablets in any 24 hours.

Do not exceed the above recommended doses in any 24 hours. If pains persist, recur frequently, or are unusually severe, consult a physician.

PAR. 3. Respondents cause and have caused said products, when sold, to be transported from their place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents at all times mentioned herein have maintained a course of trade in said products 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 aforesaid business, respondent William A. Reed Co., a corporation, subsequent to about January 2, 1946, and the individual respondents as copartners prior to such time, but subsequent to March 31, 1938, disseminated and caused the dissemination of a number of advertisements concerning said products, by the United States mails, and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and have caused the dissemination of a number of advertisements concerning their said products, by various means, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical of the statements and representations contained in the advertisements disseminated and caused to be dis-

seminated by the respondents as hereinabove set forth, in newspapers and radio continuities distributed throughout the United States, by the United States mails, and by other means in commerce, were the following:

1. *Medrex Soap:*

MEDREX SOAP * * * helps to bring genuine relief from burning, itching and embarrassment of blotchy skin. Mild, medicated MEDREX SOAP is delightful to use—and a big help in bringing back a clear, natural complexion * * * Friends if you're troubled with blotchy, broken-out skin, get a cake of MEDREX SOAP tonight. Use it regularly. See how it may help relieve that externally-caused skin condition.

And how should MEDREX SOAP be used to help relieve externally-caused pimples, blackheads and rashes? It is very simple. You just make a thick rich MEDREX SOAP lather. Wash your face thoroughly—allow some of the lather to dry on the face—then rinse with warm water and pat dry with a soft towel. Do it regularly. MEDREX SOAP is a pure, perfectly balanced, soothing soap that helps nature bring back a clear, lovely complexion.

2. *Medrex Ointment:*

WHY LOOK DISPLEASED? Get rid of pimples. Do ugly red, disfiguring pimples, bothersome blackheads, burning eczema, itching skin and other non-systemic externally-caused skin ailments make you look as if you suffered from a really serious complaint? Then, for Heaven's Sake go to your druggist right away and get a jar of MEDREX OINTMENT. * * * MEDREX offers quick relief and promotes beneficial effect by helping nature to clear away these externally-caused blemishes.

BAD SKIN, PIMPLES.

Here is a new way to help rid yourself of torturous itching pimples, scales, scabies and blemishes of external nature.

3. *Nulfey Tablets, Formula No. 1:*

NULFEY HELPS clear up the system by acting as a laxative, too. It helps clear away those waste poisons that might be the cause of unbearable neuralgia and muscular pains.

BACK-BREAKING PAINS.

If you suffer from the agonizing torture of nagging backaches, rheumatism, arthritis, sciatica, gout, lumbago, or simple neuralgia . . . if you feel so stiff and achy that you can hardly walk, sit or sleep in comfort, don't dispair. Go to your druggist this very minute and buy a box of NULFEY TABLETS. Take 1 or 2 every 3 or 4 hours and the chances are better than good that you will find quick relief. Sold with the ironclad guarantee that they must act beneficially on the particular condition for which they are intended or your money cheerfully refunded. Get NULFEY TABLETS today and get rid of those torturing pains.

4. *Nulfey Tablets, Formula No. 2:*

ACHES—PAINS

Help rid yourself of torturing pains. Use time-tested NULFEY TABLETS for the relief of muscular aches and pains commonly referred to as rheumatic pains, also headaches, backache and simple neuralgia. Guaranteed quick acting NULFEY TABLETS must relieve promptly or your money back. The new improved NULFEY TABLETS are on sale today.

PAR. 6. Through the use of the advertisements containing the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondents have represented, directly and by implication:

(*a*) That the use of Medrex Soap is effective in treating and relieving externally caused pimples, blotches, broken out skin, rashes, and blackheads; and its use will relieve itching and burning skin and restore a clear, natural complexion, in cases of blotchy skin;

(*b*) That the use of Medrex Ointment as directed as a cure or remedy and constitutes a competent and effective treatment for all externally caused skin ailments or conditions, including pimples, blackheads, scabies, scales, skin blotches, eczema, skin irritations and eruptions, skin blemishes or similar skin ailments or conditions, and will relieve the itching of skin blemishes and eruptions of external nature;

(*c*) That Nulfey Tablets, Formula No. 1, will have a remedial action and will cure rheumatism, arthritis, sciatica, gout, lumbago, muscular aches and pains, and neuralgia; that waste poisons cause the pains of neuralgia and rheumatism and that this product will clear the system of these poisons and thereby relieve such pains; and

(*d*) That Nulfey Tablets, Formula No. 2, will relieve aches and pains, particularly muscular aches and pains, rheumatic pains, headaches, backaches, and pains of simple neuralgia.

PAR. 7. The said advertisements contained statements and representations which were misleading and are "false advertisements" as that term is defined in the Federal Trade Commission Act in that:

(*a*) The use of Medrex Soap is not an effective treatment for and will not relieve externally or otherwise caused pimples, blotched or broken out skin, rashes or blackheads, will not relieve itching or burning skin, will not restore a clear, natural complexion in cases of blotchy skin, and the said soap does not possess medicinal value but acts only as a cleansing agent;

(*b*) The use of Medrex Ointment as directed is not a cure or remedy nor does it constitute a competent or effective treatment for externally or otherwise caused pimples, blackheads, scabies, skin blotches, eczema, skin irritations and eruptions, skin blemishes, or similar skin ailments, and although this product will temporarily relieve itching of some skin blemishes and eruptions, it does not do so in all such conditions;

(*c*) Nulfey Tablets, Formula No. 1, by reason of its laxative effect, will cause the evacuation of waste materials from the intestinal tract, but such action will not clear the system of poisons nor cure or relieve the pains of neuralgia, rheumatism, arthritis, sciatica, gout, lumbago, muscular aches and pains, nor does the use of these

tablets have any remedial or beneficial effect upon such ailments or conditions; and

(*d*) Nulfey Tablets, Formula No. 1, and Nulfey Tablets, Formula No. 2, because of their analgesic properties will tend to relieve temporarily or reduce the pain associated with the aforesaid ailments set out in subsection (c) above, but the pain will return as soon as the analgesic effect wears off; and there are pains associated with some of the said ailments or conditions in which the pain is so severe that Nulfey Tablets taken as directed will not give complete relief.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements and representations has a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and to induce a substantial portion of the purchasing public because of such erroneous and mistaken belief to purchase respondents' product.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer thereto of respondents William A. Reed Co. and Albert J. Sylk, respondents' offer of settlement and respondents' consent to the issuance by the Commission of an order to cease and desist in the form set forth in a tentative order to cease and desist issued by the Commission on January 22, 1951 (no briefs having been filed and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent William A. Reed Co., a corporation, and its officers, and the respondent Albert J. Sylk, individually and as president of William A. Reed Co., and the respondents Albert J. Sylk, William H. Sylk, Harry S. Sylk, Morris Soble, and Bernard Weinberg, individually and as copartners trading under the name of William A. Reed Co., or trading under any other name or trade designation, and said respective respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their

drug and cosmetic products presently designated as "Medrex Soap," "Medrex Ointment," "Nulfey Tablets," or any other products of substantially similar composition or composing or possessing substantially similar properties, whether sold under the same names or under any other names, do forthwith cease and desist from:

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

(*a*) That the use of Medrex Soap is effective in treating or relieving externally or otherwise caused pimples, blotched or broken out skin, rashes or blackheads; that said product will relieve itching or burning skin or restore a clear, natural complexion in cases of blotchy skin; or that said product possesses any medicinal value;

(*b*) That the use of Medrex Ointment, as directed, is a cure or remedy or constitutes a competent or effective treatment for externally caused skin ailments or conditions, or that said product has any value in the treatment of such ailments or conditions in excess of such temporary relief from itching as may be afforded;

(*c*) That Nulfey Tablets Formula No. 1 will have a remedial action or will cure rheumatism, arthritis, sciatica, gout, lumbago, muscular aches and pains, or neuralgia, or that said product will have any beneficial effect upon such ailments or conditions in excess of tending to temporarily relieve or reduce minor aches or pains associated with such ailments or conditions; or that said product, by the evacuation of waste materials from the intestinal tract afforded by the laxative effect of this product, will clear the system of poisons, or that the presence of waste poisons in the system causes the pains of neuralgia or rheumatism;

(*d*) That Nulfey Tablets Formula No. 2 will relieve aches or pains, particularly muscular aches or pains, rheumatic pains, headaches, backaches, and pain of simple neuralgia, except to the extent that said tablets will tend to temporarily relieve or reduce minor aches and pains associated with the aforesaid ailments or conditions.

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

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

IN THE MATTER OF

KOCH LABORATORIES, INC., ET AL.

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

Docket 4772. Complaint, June 13, 1942—Decision, Aug. 24, 1951

The premise or theoretical basis for a certain method of treatment which involved administration by intramuscular or intravenous injection of the products concerned—namely, that natural immunity or resistance to disease is brought about by a vigorous oxidation mechanism which destroys and renders harmless germ structures and cancer-producing mechanisms—is not supported by the predominant weight of qualified scientific opinion, which is to the effect that the oxidation processes have no direct bearing on natural immunity, that the degenerative diseases and the allergies are not caused by a defect of the oxidation mechanism, and that the products concerned in the instant proceeding have no beneficial role whatsoever in carbohydrate or glucose oxidation.

As respects the question of public interest and the false and misleading advertising of preparations offered and sold as treatments for various diseases and conditions of human beings and animals: the provisions of the Federal Trade Commission Act and the public policy expressed therein require corrective action to eliminate false representations, irrespective of whether or not the dissemination of the advertising was limited to those who had the requisite training to appraise accurately the false representations of material facts which appeared in the advertising in question.

Evaluation of therapeutic preparations requires study of a substantial number of cases correctly diagnosed, and usually also contemplates some knowledge of the ratio of cures to trials.

Where a corporation and two officers thereof, engaged in the manufacture and interstate sale and distribution of their "Glyoxylide," "B-Q," and "Malonide Ketene Solution" preparations for administration by intramuscular or intravenous injection;

In advertising in periodicals, pamphlets, circulars, and other promotional matter which they disseminated to doctors of medicine (including homeopathic physicians) and to naturopaths and other practitioners of the healing arts, and in which were included statements purportedly dealing with conditions encountered and results accomplished in clinical use, directly and by implication—

(*a*) Falsely represented that their preparation "Glyoxylide" was an adequate treatment for and possessed substantial therapeutic value in the presence of any type or stage of cancer, leprosy, malaria, coronary occlusion or thrombosis, multiple sclerosis, arteriosclerosis, angioneurotic oedema, obliterative endarteritis, asthma, hay fever, dementia praecox, epilepsy, psoriasis, poliomyelitis, tuberculosis, syphilis, arthritis and osteomyelitis, any type of allergy or infection, abscess of the prostate gland, septicaemia, and insanity;

(*b*) Falsely represented that the product "B–Q" constituted an adequate treatment for and possessed substantial therapeutic value in the presence of all infections and their sequelae including gonorrhea, salpingitis, sinusitis, meningitis, infantile paralysis, septicaemia, streptococcus sore throat, pneumonia, undulant fever, malaria, coronary thrombosis, the allergies, diabetes, cancer, arthritis, and the degenerative diseases;

(*c*) Falsely represented that the preparation "Malonide Ketene Solution" constituted an adequate treatment for and possessed substantial therapeutic value in the presence of the allergic diseases, infections, diabetes, cancer, double pneumonia, osteomelitis, and post operative meningitis; and

(*d*) Falsely represented through the use of the expressions "for the infections," "for the allergies," and "for cancer, and the degenerative diseases," that their products were of therapeutic value in the treatment of all infections, allergies, cancer, and degenerative diseases;

With capacity and tendency to deceive and mislead prospective purchasers into the belief that such representations were true and thereby induce purchase of said products:

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

While the witnesses who testified in support of the complaint had not prescribed respondents' products or observed their effects in concrete cases, they had had wide experience in various fields of medical science, and their broad knowledge individually and in the aggregate respecting the fields under inquiry, was such that their testimony—which affirmed in substance that respondents' highly diluted products, irrespective of the dilution in which they might be used, were of no value in the treatment of any disease or disorder whatsoever—was entitled to very great weight.

In the foregoing connection it also appeared that there had been a series of scientific experiments which entailed administration of various dilutions of a substance allied to the product "Glyoxylide" (which had apparently been used earlier by one of said individual respondents in the treatment of cancer), and that it was the conclusion of the scientific witnesses who conducted said experiments at an eastern university that the product had no effect, inhibitory or stimulatory, on tumors in mice, either spontaneous or induced.

As respects the preparation "Glyoxylide" and the effects thereof, the record also revealed that a legislative commission of the Province of Ontario, Canada, appointed to inquire into treatments offered for cancer, reported to the Minister of Health in 1942 that in nine cancer cases treated by "Glyoxylide" and observed until final termination, no curative or remedial effects were observed from the standpoint of the prolongation of life, regression of tumor, or suppression of symptoms.

As regards testimony and other evidence relating to specific instances in which respondents' products had been administered and other testimony respecting the opinions which certain of the witnesses, who were doctors of medicine or practitioners of other healing arts, had formed as to respondents' products,

primarily on the basis of the witnesses' use of such preparations and which were to the general effect that the products in question had significant therapeutic value: it was the view of the Commission that the evidence relating to the case histories concerned was unconvincing and constituted a wholly inadequate basis for a conclusion that such products possessed therapeutic value.

As respects said case histories it appeared, among other things, that in some instances improvement which apparently followed administration of one of respondents' products undoubtedly was attributable to such conventional therapeutic treatment as was rendered to the patient previously, simultaneously or subsequently, rather than to the effects of the products concerned; that in other instances the particular disease belonged in that category in which the symptoms might be subject to complete or substantial remission, subject, possibly, to reappearance months or years later; that in others the diseases were self-limiting or their symptoms were of definite duration or both; that in no single category did the testimony relating to clinical use embrace a substantial number of specific cases; and that in more than 20 or such categories the testimony in each instance related to the use of respondents' treatment of one patient.

As regards further testimony and evidence offered in respondents' behalf, it appeared that, in view of the existence of respondents' products for more than 20 years, there was a singular lack of test data or information obtained from controlled clinical work to corroborate the representations for therapeutic value used by respondents in promoting the sale of the product involved; and it was the conclusion of the Commission, on the basis of the greater weight of the evidence, that respondents' preparations possessed no therapeutic value; that their use in any dilution would not benefit any disease or condition of humans or animals; and that the statements in respondents' advertising and promotional matter—including those which represented that the efficacy of said products and their method of treatment was attested, demonstrated, or proved by the results afforded in their clinical use—constituted false representations of material facts, and that respondents' advertisements were false and misleading, and constituted false advertisements.

As respects respondents' contention that no public interest existed in the proceeding for the reason that dissemination of the advertising concerned had been restricted to members of the medical profession with the requisite training to understand and evaluate therapeutic claims made for medicinal products, it appeared that it was disseminated to doctors of medicine, including homeopathic physicians, and to practitioners of other healing arts, including naturopaths; and also that similar representations phrased in different language, particularly as they related to the treatment of cancer, had appeared in media coming to the attention of the lay public; and that, accordingly, respondents' advertising had not been thus limited as claimed, laying to one side the fact that, even if the contention were true, corrective action would nevertheless have been required under the statute and the public policy expressed therein.

While it appeared from certain documents filed on behalf of respondents that subsequent to the institution of the proceeding, respondent corporation was

dissolved and no longer existed, and there were also indications that the sale and distribution of the preparations concerned had been discontinued by respondent individuals, it was the opinion of the Commission that, while the corporate respondent under the circumstances was not included in the cease and desist order, the public interest required issuance of such an order prohibiting respondent individuals from resuming or continuing use of the unfair and deceptive acts and practices employed at the time when the complaint was issued and subsequent thereto.

Before *Mr. John P. Bramhall*, trial examiner.
Mr. Randolph W. Branch for the Commission.
Dykema, Jones & Wheat, of Detroit, Mich., 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 Koch Laboratories, Inc., a corporation, William F. Koch, individually and as an officer of Koch Laboratories, Inc., and Louis G. Koch, individually and as an officer of Koch Laboratories, Inc., hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent Koch Laboratories, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan and maintains its principal office and place of business at 8181 East Jefferson Avenue, Detroit, Mich.

PAR. 2. Respondent William F. Koch is president and Louis G. Koch is secretary-treasurer of Koch Laboratories, Inc., and they both are actively engaged in the conduct of the business of respondent Koch Laboratories, Inc. The aforesaid individual respondents direct and control the sales and advertising policy of the corporate respondent.

PAR. 3. The respondents are now and for several years last past have been engaged in the business of selling and distributing preparations designated as "Glyoxylide," "B–Q," and "Malonide Ketene Solution," which preparations have been offered for sale and sold by respondents as treatments for various diseases and conditions of the human body. The respondents manufacture the said preparations and cause them to be transported from Detroit, Mich., to purchasers thereof located in various States of the United States other than the State of Michigan. The respondents maintain and at all times mentioned herein have maintained a course of trade in said preparations in commerce among and between the various States of the United States.

PAR. 4. In the course and conduct of their aforesaid business, the respondents have disseminated and are now disseminating and have caused and are now causing the dissemination of false advertisements concerning their said preparations by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, and the respondents have also disseminated and are now disseminating and have caused and are now causing the dissemination of false advertisements concerning the said preparations by various means for the purpose of inducing and which are likely to induce directly or indirectly the purchase of their said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinbefore set forth by the United States mails, by advertisements in periodicals, by pamphlets, circulars, and other advertising literature, are the following:

The BASIS OF IMMUNITY is, after all, the vital principle, the OXIDATION MECHANISM. When its catalysis ceases, death is the result. When its activity wanes, the toxins that support pathogenic germ activity, that produce allergy, or that cause cancer, are not destroyed in the body, and can execute their effects. All of these toxins depend upon their free valencies between carbon atoms, between carbon and oxygen, and between carbon and nitrogen for their pathogenic photochemic action.

Our SYNTHETIC ANTITOXINS not only activate oxygen, but they activate the toxic free valencies of germ and allergy poisons to accept the activated oxygen and thus become burned to harmless structures. Our active principles are fundamentally and universally useful, therefor.

Certain polymerization phases have specific pathogenic action, while others have no action at all. The rapidity of the recovery from virus caused disease after one dose of our Benzoquinone solution or one of the transition forms, Glyoxylide or Malonide, can only be accounted for by this assumption, for recovery from early acute infantile paralysis has taken place in twenty-four hours and measles recover regularly in twelve hours.

SYNTHETIC ANTITOXINS

For the INFECTIONS—

* * *

1:4 Benzoquinone.

* * *

For the ALLERGIES—
Malonide.
Ketene.

For CANCER and the REGENERATIVE diseases—
Glyoxylide OCCO.
Glyoxlide * * * for allergy, cancer, infection.
B-Q * * * for the infections and their sequelae.

In both coronary occlusion and obliterative endarteritis besides the allergy to such toxins as that in tobacco which excite the angiospasms and the hypertrophic response in the cells of the intima, the pain of the vascular spasms and muscle spasms occurring with occlusion and circulatory failure are due to the presence of incompletely burned materials produced by muscle contraction in the absence of a supply of oxygen and glucose. In such areas the oxidation catalyst must also be exhausted, and a fresh supply behaves specifically in reducing the pain and correcting the pathology. The spasms and hyperplasia of the original allergic response are quickly corrected and sufficient circulation is soon restored to the part to burn up the pain producing products of muscle spasm through the catalysis of the glyoxylide. The toxic substances and their effects are thus removed and with reasonable time the whole pathology is corrected.

ANGIONEUROTIC OEDEMA * * * Condition seemed almost fatal for a half-hour before glyoxylide was given intra-muscularly. In less than two minutes relief was perhaps 80 per cent. Recovery complete within one hour.

OBLITERATIVE ENDARTERITIS * * * Obliterative Endarteritis, both legs and feet to the knees. Much pain, bedfast. Amputation at knees requested by surgeon. Blood sugar 380. One dose glyoxylide followed in three months by much improvement and in six months by complete recovery. Blood sugar 80. No return of trouble.

Hay fever, asthma, severe sinusitis, generalized, pigmented, itching hives constantly. * * * One dose of glyoxylide was given in May, 1934. Recovery complete in all respects within six months.

Dementia Praecox * * * recovery was complete in two years after two doses of Glyoxylide solution.

Epilepsy * * * one dose of glyoxylide solution given August 12, 1929, was followed by a gradual recession of the disease, so that by the twelfth week only a few petit mal were observed and thereafter recovery became complete, with no more fits.

PSORIASIS * * * At the time of glyoxylide injection body was generally covered, hair and nails affected. Ears almost separated from scalp. Recovery completed and heart action returned to normal fourteen weeks after one injection of glyoxylide * * *.

POLIOMYELITIS * * *. Recovery started to show within ten minutes after the first injection (Glyoxylide).

According to reports by expert clinicians more is accomplished in tuberculosis in three months by one dose of Glyoxylide than by five years of sanitarium care. Many of the most advanced cases of tuberculosis of the lungs and bones recover on one dose. The results in leprosy, malaria, syphilis, multiple sclerosis and infantile paralysis are good but no statistical estimates have been made as yet. Cases of insanity and epilepsy have responded well also. Thus the field of action is general and the efficiency is extraordinary.

ARTHRITIS * * *. One dose of Glyoxylide was given in December, 1927. Pain was soon better and in three months she was able to walk a few steps. In one year recovery had become about 90% of normal and has so remained.

TUBERCULAR ARTHRITIS AND OSTEOMYELITIS * * *. One dose of Glyoxylide given July 23, 1934, was followed by a rapid decrease in the pain and a steady restoration of joint and bone to normal functionally and structurally, with perfect use of leg and full motion within nine months.

A case of abscess of the prostate with septicaemia becoming worse after Sulfathiazole recovered splendidly following a dose of Glyoxylide.

In a series of some three hundred cases of asthma, eczema and hay fever eighty-five percent made full recovery on one or two doses of Glyoxylide.

We recommend BQ * * * 1:4 Benzoquinone in the treatment of all infections and their sequelae including gonorrhea, salpingitis, sinusitis, meningitis, infantile paralysis, scepticaemia, streptococcus sore throat, pneumonia, undulant fever, malaria, coronary thrombosis, the allergies, diabetes, cancer, arthritis, degenerative diseases.

Malonide Ketene Solution has served well in the allergies, infections and cancer. A boy of two with double pneumonia and osteomyelitis of the left tibia, which had to be opened the full length; the prognosis given by all attendants was early death. Two doses of Malonide Ketene Solution brought full recovery with rapid recuperation. A case of postoperative meningitis caused by the staphlococcus pyogenes aureus that had passed beyond the convulsive stage into coma and was expected to pass on any minute made a rapid recovery (ten days) on one dose of Malonide Ketene Solution.

An efficient single dose treatment for diabetes on a full carbohydrate diet without insulin. * * * The period of observation includes scattered cases treated since 1929 and recent systematic studies. The cases studied cover about every type known including a few of diabetes insipidus.

The treatment material consists of cataleptic delusions of the carriers of aerobic oxidation which we have described elsewhere. (1) the substances are 1:4 Benzoquinone and its transition products Glyoxylide (OCCO) and Malonide (OCCCO) and also Ketene. * * *. After the remedy is injected one should watch for periodic reactions which play their part in the recovery process. These have already been described. They generally come at three and a half day or three week intervals until recovery is complete. If an intervening factor prevents recovery it should be identified and removed and the dose repeated.

Acute Appendicitis * * * Twenty-four hours after treatment of one dose of Benzoquinone white count was 3,500, pain nearly gone, no vomiting or nausea. Desiring food. Pulse 92, temperature 99°. Forty-eight hours after treatment white count 10,350, temperature normal, pulse 80, feeling good. Slight sore spot still remaining in appendicitis region. Recovery rapid thereafter.

PAR. 5. Through the use of the statements and representations hereinabove set forth and other similar statements and representations not specifically set out herein which purport to be descriptive of the therapeutic value of respondents' preparations and of the benefits to be derived from their use, the respondents represent directly and by implication that the preparation "Glyoxylide" is an adequate treatment for any type or stage of cancer, leprosy, malaria, coronary occlusion or thrombosis, multiple sclerosis, arteriosclerosis, angioneurotic oedema, obliterative endarteritis, asthma, hay fever, dementia praecox, epilepsy, psoriasis, poliomyelitis, tuberculosis, syphilis, arthritis and osteomyelitis, any type of allergy or infection, abscess of the prostate gland, septicaemia, and insanity; that the product "B-Q" constitutes an adequate treatment for all infections and their sequelae, including gonorrhea, salpingitis, sinusitis, meningitis, infantile paralysis, septicaemia, streptococcus sore throat, pneumonia, undulant fever, malaria, coronary thrombosis, the allergies, diabetes, cancer, arthritis, and the degenerative diseases; and

that the preparation "Malonide Ketene Solution" constitutes an adequate treatment for the allergic diseases, infections, diabetes, cancer, double pneumonia, ostemyelitis, and post-operative meningitis. Through the use of the term "for allergy, cancer, infection" to describe and refer to properties of the aforementioned products, they have represented such products to be of therapeutic value in the treatment of all infections, cancer and allergies.

PAR. 6. The foregoing advertisements and representations and others similar thereto not specifically set out herein, used and disseminated by the respondents as hereinabove described, are false and misleading. In truth and in fact, respondents' products "Glyoxylide," "B–Q," and "Malonide Ketone Solution" do not possess any therapeutic value and their use will not benefit any disease.

PAR. 7. The use by respondents of their advertising matter heretofore described has had and now has the capacity and tendency to and did and does deceive and mislead prospective purchasers and purchasers of their products into the belief that such representations are true and that such products possess the therapeutic properties represented. On account of such mistaken and erroneous belief a substantial portion of the purchasing public has been and is induced to purchase said products from the respondents.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 13, 1942, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondents' joint answer to the complaint, testimony, and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, respondents' answer, testimony, and other evidence, the trial examiner's recommended decision and exceptions thereto, briefs in support of and in opposition to the allegations of the complaint, and

oral argument; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the public interest and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. At the time this proceeding was instituted, the respondent Koch Laboratories, Inc., was a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, and maintained its principal office and place of business at 8181 East Jefferson Avenue, Detroit, Mich. Respondents William F. Koch and Louis G. Koch are individuals who have acted respectively as president and treasurer of respondent Koch Laboratories, Inc. Respondents William F. Koch and Louis G. Koch have been actively engaged in the conduct of the business of respondent Koch Laboratories, Inc., and have directed and controlled the sales and advertising policies of such corporate respondent.

PAR. 2. Respondents for many years prior to the time when this proceeding was instituted engaged in the business of selling and distributing certain preparations designated as "Glyoxylide," "B-Q," and "Malonide Ketene Solution," which preparations have been offered for sale and sold by respondents as treatments for various diseases and conditions of the human body and in animals. The respondents have manufactured said preparations and caused them to be transported from Detroit, Mich., to purchasers thereof located in various States of the United States other than the State of Michigan and in the District of Columbia, and during the period aforesaid have maintained a course of trade in said preparations in commerce among and between the various States of the United States.

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

PAR. 4. Among and typical of the statements and representations contained in advertisements in periodicals, pamphlets, circulars and other promotional matter disseminated as aforesaid and caused to be disseminated or mailed by respondents subsequent to March 21,

1938, to doctors of medicine, including homeopathic physicians and other practitioners of the healing arts, including naturopaths, in furtherance of the sale and distribution of their preparations, are the following statements and representations:

THE BASIS OF IMMUNITY is, after all, the vital principle, the OXIDATION MECHANISM. When its catalysis ceases, death is the result. When its activity wanes, the toxins that support pathogenic germ activity, that produce allergy, or that cause cancer, are not destroyed in the body, and can execute their effects. All of these toxins depend upon their free valencies between carbon atoms, between carbon and oxygen, and between carbon and nitrogen for their pathogenic photochemic action.

OUR SYNTHETIC ANTITOXINS not only activate oxygen, but they activate the toxic free valencies of germ and allergy poisons to accept the activated oxygen and thus become burned to harmless structures. Therefore, our active principles are fundamentally and universally useful.

* * * Certain polymerization phases have specific pathogenic action, while others have no action at all. The rapidity of the recovery from virus caused disease after one dose of our Benzoquinone solution or one of the transition forms, Glyoxylide or Malonide, can only be accounted for by this assumption, for recovery from early acute infantile paralysis has taken place in twenty-four hours and measles recovers regularly in twelve hours.

SYNTHETIC ANTITOXINS

For the INFECTIONS—

* * *

1:4 Benzoquinone,

* * *

For the ALLERGIES—

Malonide * * *
Ketene * * *

For CANCER, and the DEGENERATIVE diseases—

Glyoxylide, O=C=C=O

* * * * * *

GLYOXYLIDE

* * *

for

ALLERGY

CANCER

INFECTION

* * *

B-Q

* * *

FOR THE INFECTIONS AND THEIR SEQUELAE.

In both coronary occlusion and obliterative endarteritis besides the allergy to such toxins as that in tobacco which excite the angiospasms and the hypertrophic response in the cells of the intima, the pain of the vascular spasms and muscle spasms occurring with occlusion and circulatory failure are due to the presence of incompletely burned materials produced by muscle contraction in the absence of a supply of oxygen and glucose. In such areas the oxidation catalyst must also be exhausted, and a fresh supply behaves specifically in reducing the pain and correcting the pathology. The spasms and hyperplasia of the original allergic response are quickly corrected and sufficient circulation is soon restored to the part to burn up the pain producing products of muscle spasm through the catalysis of the glyoxylide. The toxic substances and their effects are thus removed and with reasonable time the whole pathology is corrected.

* * *

ANGIONEUROTIC OEDEMA * * *. Condition seemed almost fatal for a half-hour before glyoxylide was given intramuscularly. In less than two minutes relief was perhaps 80 percent. Recovery complete within one hour.

OBLITERATIVE ENDARTERITIS * * *. Obliterative endarteritis, both legs and feet to the knees. Much pain, bedfast. Amputation at knees requestioned by surgeon. Blood sugar 380. One dose glyoxylide followed in three months by much improvement and in six months by complete recovery. Blood sugar 80. No return of trouble. * * *

* * * Hay fever, asthma, severe sinusitis, generalized, pigmented, itching hives constantly. * * * One dose of glyoxylide was given in May, 1934. Recovery complete in all respects within six months.

DEMENTIA PRAECOX * * *. Recovery was complete in two years after two injections of glyoxylide solution. * * *

EPILEPSY * * *. One dose of glyoxylide solution given August 12, 1929 was followed by a gradual recession of the disease, so that by the twelfth week only a few petit mal were observed and thereafter recovery became complete, with no more fits. * * *

PSORIASIS * * *. At the time of glyoxlide injection body was generally covered, hair and nails affected. Ears almost separated from scalp. Recovery completed and heart action returned to normal fourteen weeks after one injection of glyoxylide * * *.

* * * POLIOMYELITIS * * *. Recovery started to show within ten minutes after the first injection [Glyoxylide] * * *.

According to reports by expert clinicians more is accomplished in *tuberculosis* in three months by one dose of *Glyoxylide* than by five years of sanitarium care. Many of the most advanced cases of *tuberculosis of the lungs and bones* recover on one dose.

The results in *leprosy, malaria, syphilis, multiple sclerosis,* and *infantile paralysis* are good, but no statistical estimates have been made as yet.

* * *

Cases of *insanity* and *epilepsy* have responded well also. Thus the field of action is general, *and the efficiency is extraordinary.*

* * *

ONE OR TWO DOSES are sufficient generally for complete recovery, where this is possible.

* * *

234 Findings

SELECTION OF THE REMEDY

* * * They are all good.

ARTHRITIS * * *. One dose of glyoxylide was given in December, 1927, pain was soon better and in three months she was able to walk a few steps. In one year recovery had become about ninety per cent of normal and has so remained. * * *

TUBERCULAR ARTHRITIS AND OSTEOMYELITIS * * *. One dose of glyoxylide given July 23, 1934 was followed by rapid decrease in the pain and a steady restoration of joint and bone to normal, functionally and structurally, with perfect use of leg and full motion within nine months. * * *

A case of *abscess of the prostate* with *septicemia* becoming worse after Sulfathiazole recovered splendidly following a dose of *Glyoxylide.*

In a series of some three hundred cases of asthma, eczema, and hay fever, over eighty-five per cent made full recoveries on one or two doses of Glyoxylide.

WE RECOMMEND

BQ
1:4 BENZOQUINONE

IN THE TREATMENT OF ALL INFECTIONS
AND THEIR SEQUELAE INCLUDING

Gonorrhea, Salpingitis, Sinusitis, Meningitis, Infantile Paralysis, Septicaemia, Streptococcus Sore Throat, Pneumonia, Undulant Fever, Malaria, Coronary Thrombosis, The Allergies, Diabetes, Cancer, Arthritis, Degenerative Diseases. * * *

MALONIDE, KETENE SOLUTION, has served well in the *Allergies, Infections* and *Cancer,* * * *.

* * *

A boy of two with double *pneumonia* and *osteomyelitis* of the left tibia which had to be opened the full length; the prognosis given by all attendants was early death. Two doses of the Malonide Ketene solution brought full recovery with rapid recuperation. * * *

A case of *postoperative meningitis* caused by the *Staphlococcus Pyogenes Aureus,* that had passed beyond the convulsive stage into *coma,* and was expected to pass on any minute, made a rapid recovery (ten days) on one dose of *malonide ketene* solution.

AN EFFICIENT SINGLE DOSE TREATMENT FOR DIABETES

On a Full Carbohydrate Diet Without Insulin

* * *

The period of observation includes scatttered cases treated since 1922 and recent systematic studies. The cases treated cover about every type known, including a few of diabetes insipidus.

The treatment material consists of catalytic dilutions of the carriers of aerobic oxidation which we have described in the past elsewhere. (1) These substances are 1:4 Benzoquinone and its transition products of Glyoxylide, (O=C=C=O), and Malonide, (O=C=C=C=O), and also Ketene. * * *

* * *

After the remedy is injected one should watch for periodic reactions which play their part in the recovery process. These have already been described. * * * They generally come at three and a half day or three-week intervals until recovery is complete. If an interfering factor prevents recovery it should bfe identified and removed and the dose repeated. * * *

The curative fields of Glyoxylide and Benboquinone overlap. From experience, Benzoquinone is recommended in the simple allergies, the acute infections, and diabetes; while Glyoxylide is preferred in the chronic infections and their sequelae, cancer, arthritis, and the degenerative diseases. * * *

One dose is given, and then plenty of time allowed for the recovery process to manifest itself. Acute infections respond very quickly. For example, early acute gonorrhea generally recovers in one or two days after one dose, but the chronic conditions require a period that is proportionate to the length of time the disease has been established in the individual and his ancestry. It may take three to six months, or even a year or two, for complete recovery. However, the dose is not repeated so long as recovery or good reactions are evident. Thus many of the so-called incurable diseases get entirely well on one dose. But the dose may be repeated if desired. * * *

Acute Appendicitis, * * *. Twenty-four hours after treatment of one dose of benzoquinone, white count was 13,500, pain nearly gone, no vomiting or nausea, desiring food, pulse 92, temperature 99°. Forty-eight hours after treatment white count 10,350, temperature normal, pulse 80, feeling good, slight sore spot still remaining in appendix region, recovery rapid thereafter.

PAR. 5. Through use of the statements and representations hereinabove set forth and other similar statements and representations not specifically set out herein which purport to be descriptive of the benefits to be derived from use of respondents' preparations, the respondents have represented directly and by implication that the preparation designated "Glyoxylide" is an adequate treatment for and possesses substantial therapeutic value in the presence of any type or stage of cancer, leprosy, malaria, coronary occlusion or thrombosis, multiple sclerosis, arteriosclerosis, angioneurtoic oedema, obliterative endarteritis, asthma, hay fever, dementia praecox, epilepsy, psoriasis, poliomyelitis, tuberculosis, syphilis, arthritis and osteomyelitis, any type of allergy or infection, abscess of the prostate gland, septicaemia, and insanity; that the product "B–Q" constitutes an adequate treatment for and possesses substantial therapeutic value in the presence of all infections and their sequelae including gonorrhea, salpingitis, sinusitis, meningitis, infantile paralysis, septicaemia, streptococcus sore throat, pneumonia, undulant fever, malaria, coronary thrombosis, the allergies, diabetes, cancer, arthritis, and the degenerative diseases; and that the preparation "Malonide Ketene Solution" constitutes an adequate treatment for and possesses substantial therapeutic value in the presence of the allergic diseases, infections, diabetes, cancer, double pneumonia, osteomyelitis, and post operative meningitis. Through use of the expressions "for the infections," "for the allergies,"

and "for cancer, and the degenerative diseases" to describe and refer to the properties of their preparations, respondents have represented respectively that their products are of therapeutic value in the treatment of all infections, allergies, cancer and degenerative diseases.

PAR. 6. Designated in respondents' pamphlets and literature as constituting the Koch method, respondents' products have been sold in ampules variously containing 2 cubic centimeters or 2½ cubic centimeters of solution and are designed to be administered by intramuscular or by intravenous injection. The premise or theoretical basis for the efficacy attributed by respondents to their method is that natural immunity or resistance to disease is brought about by a vigorous oxidation mechanism and that such state of the mechanism destroys and renders harmless germ structures and cancer producing organisms. It is stated by respondents in the advertising that tissues deficient in catalysts promoting and accelerating oxidation lose their immunity or power to burn up the germs causing disease. The substances contained in respondents' products, according to the writings and literature used in promoting the sale thereof, are oxidation catalysts which are described as being synthetically derived and very unstable and delicate in nature.

To the product "Glyoxylide" respondents ascribe the formula O=C=C=O and in substance designate this preparation in some of the promotional matter as an aqueous solution of 1 part Glyoxylide to 1 trillion parts of water. The product "B–Q," also referred to as "1:4 Benzoquinone," is an aqueous solution of 1 to 1 million parts of water. "1:4 Benzoquinone" is a recognized chemical entity. "Malonide Ketene Solution," sometimes referred to by respondents as "Ketene," is stated by respondents to have two components. To the component which respondents designated as "Malonide" they ascribe the chemical formula of O=C=C=C=O, which substance is said to be prepared as an aqueous solution of 1 part malonide and 1 trillion parts of water. The formula O=C=C=C=O is the formula of carbon suboxide, a known product. $H_2C=C=O$, the formula of the other component, is referred to also as "Ketene." "Ketene," that is, the formula $H_2C=C=O$, is a known product.

Respondent William F. Koch affirms that he has isolated the compound O=C=C=O, designated by him as "Glyoxylide." In the opinion of other scientific witnesses, including one trained in the field of biochemistry whose testimony was introduced in this proceeding by counsel supporting the complaint, the compound O=C=C=O does not exist. A basis for this opinion is that various attempts to prepare the anhydride of glyoxylic acid, as reported in the scientific litera-

ture, have been failures. Assuming that it exists, however, it would constitute the anhydride of glyoxylic acid. If combined with water, O=C=C=O would be transformed into glyoxylic acid and the transition normally would be a rapid one. With respect to the compound "Malonide," an aqueous solution of carbon suboxide when diluted to 10 to the minus 12 power would become malonic acid probably within an hour. $H_2C=C=O$, or Ketene, combined with water rapidly will form acetic acid, which acid is known to many persons because of its presence in vinegar.

Inasmuch as it is asserted by respondents that their products are identical except with respect to the grade of their activity, further differentiation between them is unnecessary for the purposes of this proceeding. It is apparent, however, from the statements set out hereinbefore, that respondents' products represent highly dilute solutions. With respect to the product "Glyoxylide," for example, the relationship proportionately between 1 part O=C=C=O and 1 trillion parts of water can be said to approximate mathematically that which 1 second bears in point of time to the total seconds which have elapsed since the year 29738 B. C. down to the date on which this case was orally argued before the Commission. There is testimony in the record to the effect that certain of the highly dilute solutions under consideration here cannot be distinguished from water by any tests known to chemical science.

PAR. 7. The testimony of various scientific witnesses which was introduced into the record by counsel supporting the complaint is to the effect that the oxidation processes have no direct bearing on natural immunity, that the degenerative diseases and allergies are not caused by a defect of the oxidation mechanism of the body, and that although a decline in metabolic processes may cause more susceptibility to some types of infection, other forms of pathogenic germ activity are not dependent on the state of the oxidation mechanism. Moreover, the administration of substances such as thyroid and nitrophenols, which are known to increase oxidation in the body, are not effective treatments for infections, allergic diseases, or degenerative diseases, and in many cases they tend to make the disease worse or adversely affect the patient. In the opinion of certain of the witnesses, no valid scientific basis exists for ascribing to respondents' products any beneficial role whatsoever in connection with carbohydrate or glucose oxidation.

The witnesses testifying in support of the complaint have had wide experience in various fields of medical science, including biochemistry, internal medicine, pediatrics and communicable diseases, pathology,

diseases of the metabolism, and degenerative diseases, and they affirm, in substance, that respondents' products, irrespective of the dilution in which they may be used, are of no value in the treatment of any disease or disorder whatsoever. Although these witnesses have not prescribed respondents' products or observed their effects in concrete cases, their broad knowledge, individually and in the aggregate, respecting the fields under inquiry is such that their testimony should be accorded very great weight.

Considered also is the evidence introduced into the record pertaining to several series of scientific experiments entailing the administration in various dilutions of diperoxide of diformaldehyde. The subjects were mice having tumors of spontaneous origin or in which various types of growths had been induced. The experimental procedures also utilized other groups of mice, for purposes of control, which received no injections of the peroxide. The conclusion of the scientific witness who conducted these experiments at an eastern university is that the product there under study had no effect, inhibitory or stimulatory, on such growths. The experiments with diperoxide of diformaldehyde are relevant to a consideration of the products here involved inasmuch as this peroxide is allied to the product designated "Glyoxylide" and appears to have been used earlier by respondent William F. Koch in the treatment of cancer.

The record here further reveals that a commission appointed pursuant to legislation enacted by the Legislative Assembly of the Province of Ontario, Canada, to inquire into treatments offered for cancer, in rendering official report under date of February 7, 1942, to the Minister of Health, stated that, in nine cases of cancer "treated by Glyoxylide" and observed until final termination, no curative or remedial effects were observed from the standpoint either of prolongation of life, regression of tumor, or suppression of symptoms.

PAR. 8. In opposition to the allegations of the complaint, respondents have introduced testimony and other evidence relating to specific instances in which their products have been administered to human patients or to animals and other testimony respecting the opinions which certain of the witnesses who are doctors of medicine or practitioners of other healing arts have formed as to respondents' products. These opinions, formed primarily on the basis of their use of such preparations, are to the general effect that respondents' products have significant therapeutic value. It is urged by respondents that this testimony including that pertaining to instances of actual use demonstrates that their products have substantial therapeutic value.

It is the view of the Commission that the evidence relating to the case histories of these selected cases is unconvincing and that it con-

stitutes a wholly inadequate basis for a conclusion that respondents' products possess therapeutic value. For instance, very grave doubts are warranted as to the correctness of the diagnoses made in various instances and this is particularly true in certain of the cases where, in the absence of corroborative biopsy, the patient was deemed to have cancer or to have had a recurrence of cancer. The improvement in condition apparently manifested in some instances following administration of one of respondents' products undoubtedly was attributable to such conventional therapeutic treatment as was rendered to the patient previously, simultaneously or subsequently rather than to the effects of the administration of respondents' products. In other instances the particular disease being treated belongs in that category of disorders the symptoms of which may be subject to complete or substantial remission causing them to disappear, perhaps to reappear months or years later, and in still others the diseases themselves are self-limiting and/or their symptoms are of definite duration.

In no single category of the diseases and ailments does the testimony relating to clinical use in specific cases embrace a substantial number of cases, and in reference to more than 20 of such categories the testimony in each instance relates to use of respondents' treatment on one patient. The evaluation of a therapeutic preparation, however, requires study of a substantial number of cases correctly diagnosed. Evaluation, moreover, usually contemplates some knowledge of the ratio of cures to trials. Considering that respondents' products have been in existence for more than two decades, there is a singular lack of test data or information obtained from controlled clinical work to corroborate the representations for therapeutic value used by respondents in promoting the sale of these products.

PAR. 9. The preponderant weight of qualified scientific opinion is that the oxidation processes have no direct bearing on natural immunity, that the degenerative diseases and the allergies are not caused by a defect of the oxidation mechanism, and that respondents' products have no beneficial role whatsoever in carbohydrate or glucose oxidation. On the basis of the greater weight of the evidence received in this proceeding, it is the conclusion of the Commission that respondents' preparations possess no therapeutic value and that their use in any dilution will not benefit any disease or condition of the human body or in animals.

PAR. 10. The statements appearing in the advertising and promotional matter used by respondents, of which the statements contained in paragraph 4 hereof are typical and which, as found in paragraph 5 hereof, represent directly and by implication that respondents' prod-

ucts have therapeutic value in the treatment of the diseases, disorders, and conditions referred to, including those statements which represent directly and by implication that the efficacy of respondents' products and their method of treatment is attested, demonstrated or proved by the results afforded in the clinical use of such preparations, constitute false representations of material facts. The Commission, therefore, finds that such advertisements are false and misleading and constitute false advertisements.

Respondents contend that no public interest exists in this proceeding for the reason that dissemination of the advertising statements has been restricted to members of the medical profession having the requisite training to understand and evaluate therapeutic claims made for medicinal products. As previously stated, respondents' promotional literature has been disseminated to doctors of medicine, including homeopathic physicians, and to practitioners of other healing arts including naturopathy. It is noted, moreover, in this connection that representations phrased in somewhat different language but similar in general import to certain of the advertising statements appearing in paragraph 4 hereinbefore, particularly as they relate to the treatment of cancer, also have appeared in media coming to the attention of the lay public. An example is certain folders furnished by respondents for distribution to patients of practitioners purchasing respondents' preparations. It is not true, therefore, that the dissemination of respondents' advertising matter has been limited to such persons as have the requisite training to accurately appraise the false representations of material facts appearing in the advertising, but, even if that situation had obtained, the provisions of, and the public policy expressed in the Federal Trade Commission Act, as amended, would require the corrective action being taken in this proceeding to eliminate the false representations found to have been made.

PAR. 11. The use by respondents of the advertising matter heretofore described has had the capacity and tendency to deceive and mislead prospective purchasers and purchasers of respondents' products into the belief that the statements and representations are true and, by reason of the erroneous and mistaken beliefs so engendered, to induce the purchase of respondents' products.

CONCLUSION

The aforesaid acts and practices as herein found have been to the prejudice of the public and constitute unfair and deceptive acts in commerce within the intent and meaning of the Federal Trade Commission Act.

It appears from certain documents which have been filed on behalf of respondents that, subsequent to the institution of this proceeding, the respondent corporation, Koch Laboratories, Inc., was dissolved and that it does not exist as a corporation. In the circumstances, therefore, respondent Koch Laboratories, Inc., is not being included as a party to the order to cease and desist which is issuing separately herein. The documents referred to contain indication also that the sale and distribution of the products here involved have been discontinued by the respondent individuals. In the opinion of the Commission, however, the public interest, in the circumstances here, requires issuance of an order prohibiting the respondent individuals from resuming or otherwise continuing the use of the unfair and deceptive acts and practices which were being used at the time and subsequent to the time when the complaint in this case was issued.

ORDER TO CEASE AND DESIST

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

It is ordered, That respondents William F. Koch and Louis G. Koch and their respective agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the preparations designated "Glyoxylide," "B–Q," also referred to as "1:4 Benzoquinone," "Malonide Ketene Solution," and the components of said last-named preparation designated as "Malonide" and "Ketene," or any other products of substantially similar composition or possessing substantially similar properties, whether sold under the same 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, 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 the preparation "Glyoxylide" is an adequate treatment for cancer, leprosy, malaria, coronary occlusion or thrombosis, multiple sclerosis, arteriosclerosis, angioneurotic oedema, obliterative endar-

teritis, asthma, hay fever, dementia praecox, epilepsy, psoriasis, poliomyelitis, tuberculosis, syphilis, arthritis, osteomyelitis, allergy, infection, abscess of the prostate gland, septicaemia, or insanity, or that said preparation has any therapeutic value in the treatment of any of such conditions;

(*b*) That the preparation "B–Q" constitutes an adequate treatment for any of the infections or sequelae thereof, gonorrhea, salpingitis, sinusitis, meningitis, infantile paralysis, septicaemia, streptococcus sore throat, pneumonia, undulant fever, malaria, coronary thrombosis, any of the allergies, diabetes, cancer, arthritis, or any degenerative disease, or that said preparation possesses any therapeutic value in the treatment of any of such conditions;

(*c*) That the preparation "Malonide Ketene Solution," or either of its components "Malonide" and "Ketene" constitutes an adequate treatment for any of the allergies or infections, diabetes, cancer, double pneumonia, osteomyelitis, or post-operative meningitis, or that said preparations possess any therapeutic value in the treatment of any of such conditions;

(*d*) That any of said preparations possess therapeutic value or that their use will be of benefit in the treatment of any disease of the human body or in animals.

(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 products in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited under paragraph 1 hereof.

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

IN THE MATTER OF

CONSOLIDATED COMPANIES, INC., ET AL.

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

Docket 5879. Complaint, May 7, 1951—Decision, Sept. 1, 1951

Where a corporate broker or manufacturer's agent, associated with two corporations which were engaged in the wholesale and retail grocery business in Louisiana and elsewhere, were, like it, under the control and management, through stock ownership, of four families, and members of the families of officers, directors and other key employees; included one of the largest wholesalers of food products in the state, owner and operator of thirty branch wholesale houses, and operator of associated companies in which certain of its stockholders had a substantial financial interest, and of wholesale and retail grocery companies owned in whole or in part by family members; and included, as the second, a large corporate operator of six branch wholesale grocery houses in said state, and, to a certain extent, of wholesale grocery organizations in Texas and in Mississippi, with controlling interests in two chains of nineteen and ten retail grocery stores in Baton Rouge and New Orleans, respectively, and with a large stock interest in said first named wholesaler—

Acting as the agent or representative of said two corporations, and subject to their control and that of members of said four families and that of members of the families of their officers, directors and key employees—

(*a*) Received and accepted commissions or brokerage fees on purchases of food products made through it by said two corporations and associated companies, from many vendors in other states, and transmitted and paid said fees to members of said families and of families of officers and directors and other key employees of the three corporations, in the form of dividends on their stock in it; and

Where said two corporations, and various individuals, including their officers and directors, joined individually and collectively as the owners or as representative, agent or other fiduciary of the owners of a substantial majority of the capital stock of the three—

(*b*) Received and accepted commissions or brokerage fees directly or indirectly upon the purchases of a substantial portion of said two corporations' requirements of food products:

Held, That such acts and practices of said respondents, corporate, individually and collectively, and each of them, in accepting and receiving commission or brokerage fees, directly or indirectly, under the circumstances set forth, constituted a violation of subsection (c) of section 2 of the Clayton Act as amended by the Robinson-Patman Act.

Before *Mr. Frank Hier*, trial examiner.

Mr. George W. Williams and *Mr. Rufus E. Wilson* for the Commission.

Miller & Chevalier, of Washington, D. C., for respondents.

COMPLAINT

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

PARAGRAPH 1. Respondent, Consolidated Cos., Inc., hereinafter referred to as Consolidated, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with its principal office and place of business located at 743 South Cortez Street, in the city of New Orleans, State of Louisiana. Said respondent is now and since several years prior to June 19, 1936, has been engaged in the business of buying and selling food and other products at wholesale within the United States. Such products include a complete line of fancy and staple groceries, such as fruits, vegetables, canned goods, sugar, salt, milk, tobacco, soap, flour, candy, and produce, as well as various items of hardware. Consolidated has three private brands or labels, namely, Red Ball, Autocrat and Conco. It is one of the largest wholesalers of food products in the State of Louisiana. Said respondent owns and operates some 30 branch wholesale houses in Louisiana, as well as operating others designated as associated companies. These latter companies are separate legal entities in which certain of the stockholders of Consolidated have a substantial financial interest. Such designation also includes respondent United and those companies in which United has a financial interest.

The following-named individuals are now, or have been during the time mentioned herein, officers of said respondent Consolidated, and as such, and individually, are named as respondents herein:

Victor J. Kurzweg, Jr., president.

Paul H. Kurzweg, Jr., M. D., vice president.

Charles J. Kurzweg, secretary-treasurer.

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The following-named individuals are or have been during the time hereinafter mentioned, members of the board of directors of Consolidated, and as such, and individually, are named as respondents herein:

Victor J. Kurzweg, Sr., chairman of the board.

Victor J. Kurzweg, Jr.	James I. Lipscomb.
Paul H. Kurzweg, Jr., M. D.	Henry J. Waguespack.
Charles J. Kurzweg.	Henry J. Le Blanc.

PAR. 2. Respondent United Investment Corp., hereinafter referred to as United, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana, with its principal office and place of business located at 743 South Cortez Street, in the city of New Orleans, State of Louisiana. Said respondent is now, and since several years prior to June 19, 1936, has been engaged in the business of buying and selling food and other products at wholesale within the United States. Such products include fruit, vegetables, canned goods, sugar, salt, milk, tobacco, soap, flour, and candy. It is one, among others, of a group of large wholesalers of food products in the State of Louisiana. Said respondent controls and operates a total of some six branch wholesale grocery houses located in the State of Louisiana, and in addition thereto, partially owns, operates, and controls certain wholesale grocery organizations located in Orange, Tex., and Pascagoula, Miss.

Said respondent United is also engaged in the retail grocery business through its ownership of the majority of stock in Capital Stores, Inc., a Louisiana corporation, Baton Rouge, La. There are 19 retail stores in this chain. In addition thereto, Capital Stores, Inc., owns the entire capital stock of the Orleans Capital Stores, Inc. The latter is also a Louisiana corporation and operates 10 retail grocery stores under this name in New Orleans.

In addition to the wholesale and retail stores hereinabove listed as being owned, controlled, and operated by United, said respondent corporation also owns and controls through its officers and directors 8,000 shares of stock in respondent Consolidated.

The following-named individuals are, or have been during the time hereinafter mentioned, officers of said respondent United, and as such, and individually, are named as respondents herein:

Frank T. Kurzweg, M. D., president.
Colquitt O. Dupuy, executive vice president.
Clarence R. Caster, secretary.
George T. Vicknair, Treasurer.

The following-named individuals are, or have been during the time hereinafter mentioned, members of the board of directors of respondent United, and as such, and individually, are named as respondents herein:

Frank T. Kurzweg, M. D.
Colquitt O. Dupuy.
Clarence R. Caster.
Margaret L. Kurzweg.
George T. Vicknair.

PAR. 3. In addition to the wholesale and retail grocery companies hereinabove referred to as being owned, operated, and controlled by respondents Consolidated and United, there are a number of other wholesale and retail grocery companies owned in whole or in part by members of the Kurzweg family which are operated as associated companies under the direction and control of respondent Consolidated.

PAR. 4. Respondent Progressive Brokerage Co., Inc., hereinafter referred to as Progressive, is a corporation organized, existing, and doing business under the laws of the State of Louisiana, with its principal office and place of business located at 208-210 Cigali Building, 107 Camp Street, city of New Orleans, State of Louisiana. Said respondent was incorporated some years prior to June 19, 1936, and since its incorporation and continuing to the present time, has been, and is now, engaged in operating as a broker or manufacturer's agent, dealing primarily in food products.

Said respondent maintains a branch office at 318 Railroad Avenue, Lake Charles, La. This branch is managed by Arthur G. Waguespack (not a respondent herein), a relative of respondent Henry J. Waguespack, director of Consolidated.

The following-named individuals are, or have been during the time hereinafter mentioned, officers of said respondent Progressive, and as such, and individually, are named as respondents herein:

James M. Kinberger, Jr., president.
Eugene Holloway, M. D., vice president.
Edmund Kinberger, secretary-treasurer.

The above-named individuals also serve as directors of said respondent Progressive, and as such, and individually, are named as respondents herein.

PAR. 5. Respondent Consolidated, prior to March 1929, owned all of the capital stock of respondent Progressive Brokerage Co., Inc. In March 1929, Consolidated declared a stock dividend consisting, among other stocks, of the entire capital stock of Progressive. At this time a committee of three individuals was appointed as trustees to receive the stock dividends for the then stockholders of Consolidated and for

the purpose of organizing a holding company. United Investment Corp. was thus formed, to which corporation the said trustees transferred title to all stocks they were then holding in trust, including that of Progressive Brokerage Co., Inc. All stock of respondent United was thereafter distributed to the then shareholders in Consolidated and subsequently transferred by the officers and directors to their children. On or about July 1936, respondent United distributed to its stockholders the entire capital stock of Progressive, consisting of 18,033 shares.

PAR. 6. Kurzweg, Le Blanc, Waguespack and Lipscomb, among others, are family names. At all times mentioned herein a substantial majority of the capital stock of said corporate respondents was and is owned by individuals who were and are now members of such families, by blood or marriage. Furthermore, there is a substantial number of branch managers or key employees of the corporate respondents, who, together with their families, by blood or marriage, own stock in the respective respondent corporations and who, because of their position or connection with said respondent corporations, are now and have been for the period of time mentioned herein, under the control, authority, direction, management, and domination of the Kurzweg, Le Blanc, Waguespack, and Lipscomb group who, through these individuals and their families, and in combination with their own holdings, exercise control and ownership over a substantial majority of the capital stock of the three corporations as hereinafter set forth.

For some time, and at the present, respondent Consolidated has had issued and outstanding approximately 64,000 shares of common stock. The Kurzweg, Le Blanc, Waguespack, and Lipscomb families, together with the families of other officers and directors of the three corporate respondents, own and thus control, approximately 37,900 shares, or 59.2 percent of Consolidated stock. This includes the 8,000 shares of Consolidated stock owned by respondent United and which is under control of this group. Furthermore, the stockholdings in the three respondent corporations of the managers of branch stores of respondents Consolidated and United, as well as other key employees, together with their families, by blood or marriage, amount to an additional holding of approximately 6,280 shares, or 9.8 percent of Consolidated stock.

For some time, and at the present, respondent United has had issued and outstanding some 18,033 shares of stock. The Kurzweg, Le Blanc, Waguespack, and Lipscomb families, together with the families of other officers and directors of the three respondent corporations, own, and thus control, approximately 12,631 shares, or 70 percent of

United stock. Furthermore, the stockholdings in the three respondent corporations of the managers of branch stores of respondents Consolidated and United, as well as other key employees, together with their families, by blood or marriage, as hereinbefore set forth, amount to an additional holding of approximately 756 shares, or 4.2 percent of United stock.

For some time, and at the present, respondent Progressive has had issued and outstanding some 18,033 shares of stock. The Kurzweg, Le Blanc, Waguespack, and Lipscomb families, together with the families of other officers and directors of the three respondent corporations own, and thus control, approximately 11,504 or 63.8 percent of Progressive stock. Furthermore, the stockholdings in the three respondent corporations of the managers of branch stores of respondents Consolidated and United, as well as other key employees, together with their families, by blood and marriage, as hereinbefore set forth, amount to an additional holding of approximately 1,724 shares, or 9.6 percent of Progressive stock.

PAR. 7. At all times mentioned herein, including the present, individuals who were or are members of the Kurzweg, Le Blanc, Waguespack, or Lipscomb families, by blood or marriage, together with individual representatives of the families of other officers and directors of the three respondent corporations, and each of them, directly or indirectly, and acting collectively as owners or as representative, agent or other fiduciary of the owners of a substantial majority of the capital stock of the respondent corporations, have controlled, regulated, directed, managed, and dominated, and do now control, regulate, direct, manage, and dominate all of said corporate respondents, including respondent Progressive, formulating, authorizing, managing, and directing all of their policies, practices, and acts as herein alleged.

PAR. 8. In the course and conduct of their wholesale food business since on or about June 19, 1936, said respondents, as aforesaid, continuously purchased, through respondent Progressive, food products from many vendors with places of business located in several States of the United States; and said respondents, individually and collectively, and each of them, caused such food products to be transported when purchased from said States to destinations in other States.

PAR. 9. In the course of said business in commerce, as aforesaid, beginning on or about June 19, 1936, and continuing to the present time, said respondents Consolidated and United, as well as those associated companies operating under Consolidated, as aforesaid, purchased through respondent Progressive Brokerage Co., Inc., and still continue to purchase, a substantial portion of their

requirements of food products from vendors, all, or substantially all, of whom paid said Progressive Brokerage Co., Inc., commissions or brokerage fees on said purchases.

Progressive Brokerage Co., Inc., received and accepted such fees and transmitted and paid them to, and a substantial amount thereof was received and accepted by, members of the Kurzweg, Le Blanc, Waguespack, and Lipscomb families and members of the families of other officers and directors of the three respondent corporations, as well as other key employees, together with their families, in the form of dividends on the capital stock of Progressive Brokerage Co., Inc., owned by them.

In making said purchases and (*a*) in receiving and accepting and (*b*) in transmitting and paying said fees, directly or indirectly, as above alleged, Progressive Brokerage Co., Inc., was, and is now, acting as agent or representative of respondents Consolidated and United, subject to the direct or indirect control of Consolidated and United and of those individuals who were and are members of the Kurzweg, Le Blanc, Waguespack, and Lipscomb families by blood or marriage, together with members of the families of other officers and directors of respondents Consolidated and United, and other key employees and their families, who, together, own a substantial majority of its capital stock, as aforesaid.

PAR. 10. The acts and practices of respondents, corporate, individually and collectively, and each of them, since June 19, 1936, in accepting and receiving commissions or brokerage fees, directly or indirectly, as above alleged, are in violation of subsection (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman 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 September 1, 1951, the initial decision in the instant matter of trial examiner Frank Hier, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY FRANK HIER, TRIAL EXAMINER

Pursuant to the provisions of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., title 15, sec. 13), the Federal Trade Commission on May 7, 1951, issued and subsequently served its complaint in this proceeding upon Consolidated Cos., Inc., a corporation; United Investment Corp., a corpora-

tion; Progressive Brokerage Co., Inc., a corporation; Victor J. Kurzweg, Sr., Victor J. Kurzweg, Jr., Paul H. Kurzweg, Jr. (M. D.), Charles J. Kurzweg, Frank T. Kurzweg (M. D.), James I. Lipscomb, Henry J. Waguespack, Henry J. Le Blanc, Colquitt O. Dupuy, Clarence R. Caster, George T. Vicknair, Margaret L. Kurzweg, James M. Kinberger, Jr., Eugene Holloway (M. D.), and Edmund Kinberger, as individuals, individually and collectively as the owners or as representative, agent, or other fiduciary of the owners of a substantial majority of the capital stock of the corporate respondents, charging them with violation of subsection (c) of section 2 of said act, as amended. On June 1, 1951, counsel for all respondents filed answer thereto which answer solely for the purpose of this proceeding, the enforcement or review thereof in the court of appeals and for any review thereof in the Supreme Court of the United States and for any court proceeding brought or instituted by or on behalf of the Federal Trade Commission or other department or agency of the Federal Government for the enforcement or for any violation of the order issued herein and not to be taken as admissions or prima facie evidence, for any purpose in any other of different proceedings by other parties, admitted all the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearing as to the said facts. Thereupon, the trial examiner, theretofore duly designated by the Commission, closed the proceeding, and, it coming on for final consideration upon said complaint and answer thereto, the said trial examiner, having duly considered the record herein, makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Consolidated Cos., Inc., hereinafter referred to as Consolidated, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with its principal office and place of business located at 743 South Cortez Street, in the city of New Orleans, State of Louisiana. Said respondent is now and since several years prior to June 19, 1936, has been engaged in the business of buying and selling food and other products at wholesale within the United States. Such products include a complete line of fancy and staple groceries, such as fruits, vegetables, canned goods, sugar, salt, milk, tobacco, soap, flour, candy and produce, as well as various items of hardware. Consolidated has three private brands or labels, namely, Red Ball, Autocrat and Conco. It is one of the largest wholesalers of food products in the State of Louisiana. Said respondent owns and operates some 30 branch whole-

sale houses in Louisiana, as well as operating others designated as associated companies. These latter companies are separate legal entities in which certain of the stockholders of Consolidated have a substantial financial interest. Such designation also includes respondent United and those companies in which United has a financial interest.

The following-named individuals are now, or have been during the time mentioned herein, officers of said respondent Consolidated, and as such, and individually, are named as respondents herein:

Victor J. Kurzweg, Jr., president.
Paul H. Kurzweg, Jr., M. D., vice president.
Charles J. Kurzweg, secretary-treasurer.

The following named individuals are or have been during the time hereinafter mentioned, members of the board of directors of Consolidated, and as such, and individually, are named as respondents herein:

Victor J. Kurzweg, Sr., chairman of the board.

Victor J. Kurzweg, Jr.	James I. Lipscomb.
Paul H. Kurzweg, Jr., M. D.	Henry J. Waguespack.
Charles J. Kurzweg.	Henry J. Le Blanc.

PAR. 2. Respondent United Investment Corp., hereinafter referred to as United, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana, with its principal office and place of business located at 743 South Cortez Street, in the city of New Orleans, State of Louisiana. Said respondent is now, and since several years prior to June 19, 1936, has been, engaged in the business of buying and selling food and other products at wholesale within the United States. Such products include fruit, vegetables, canned goods, sugar, salt, milk, tobacco, soap, flour, and candy. It is one, among others, of a group of large wholesalers of food products in the State of Louisiana. Said respondent controls and operates a total of some six branch wholesale grocery houses located in the State of Louisiana, and in addition thereto, partially owns, operates and controls certain wholesale grocery organizations located in Orange, Tex., and Pascagoula, Miss.

Said respondent United is also engaged in the retail grocery business through its ownership of the majority of stock in Capital Stores, Inc., a Louisiana corporation, Baton Rouge, La. There are 19 retail stores in this chain. In addition thereto, Capital Stores, Inc., owns the entire capital stock of the Orleans Capital Stores, Inc. The latter is also a Louisiana corporation and operates 10 retail grocery stores under this name in New Orleans.

In addition to the wholesale and retail stores hereinabove listed as being owned, controlled, and operated by United, said respondent corporation also owns and controls through its officers and directors 8,000 shares of stock in respondent Consolidated.

The following-named individuals are, or have been during the time hereinafter mentioned, officers of said respondent United, and as such, and individually, are named as respondents herein.

Frank T. Kurzweg, M. D., president.
Colquitt O. Dupuy, executive vice president.
Clarence R. Caster, secretary.
George T. Vicknair, treasurer.

The following-named individuals are, or have been during the time hereinafter mentioned, members of the board of directors of respondent United, and as such, and individually, are named as respondents herein:

Frank T. Kurzweg, M. D.
Colquitt O. Dupuy.
Clarence R. Caster.
George T. Vicknair.
Margaret L. Kurzweg.

PAR. 3. In addition to the wholesale and retail grocery companies hereinabove referred to as being owned, operated, and controlled by respondents Consolidated and United, there are a number of other wholesale and retail grocery companies owned in whole or in part by members of the Kurzweg family which are operated as associated companies under the direction and control of respondent Consolidated.

PAR. 4. Respondent Progressive Brokerage Co., Inc., hereinafter referred to as Progressive, is a corporation organized, existing and doing business under the laws of the State of Louisiana, with its principal office and place of business located at 208–210 Cigali Building, 107 Camp Street, city of New Orleans, State of Louisiana. Said respondent was incorporated some years prior to June 19, 1936, and since its incorporation and continuing to the present time, has been, and is now, engaged in operating as a broker or manufacturer's agent, dealing primarily in food products.

Said respondent maintains a branch office at 318 Railroad Avenue, Lake Charles, La. This branch is managed by Arthur G. Waguespack (not a respondent herein), a relative of respondent Henry J. Waguespack, director of Consolidated.

The following-named individuals are, or have been during the time hereinafter mentioned, officers of said respondent Progressive, and as such, and individually, are named as respondents herein:

James M. Kinberger, Jr., president.
Eugene Holloway, M. D., vice president.
Edmund Kinberger, secretary-treasurer.

The above-named individuals also serve as directors of said respondent Progressive, and as such, and individually, are named as respondents herein.

PAR. 5. Respondent Consolidated, prior to March 1929, owned all of the capital stock of respondent Progressive Brokerage Co., Inc. In March 1929, Consolidated declared a stock dividend consisting, among other stocks, of the entire capital stock of Progressive. At this time a committee of three individuals was appointed as trustees to receive the stock dividends for the then stockholders of Consolidated and for the purpose of organizing a holding company. United Investment Corp. was thus formed, to which corporation the said trustees transferred title to all stocks they were then holding in trust, including that of Progressive Brokerage Co., Inc. All stock of respondent United was thereafter distributed to the then shareholders in Consolidated and subsequently transferred by the officers and directors to their children. On or about July 1936, respondent United distributed to its stockholders the entire capital stock of Progressive, consisting of 18,033 shares.

PAR. 6. Kurzweg, Le Blanc, Waguespack, and Lipscomb, among others, are family names. At all times mentioned herein a substantial majority of the capital stock of said corporate respondents was and is owned by individuals who were and are now members of such families, by blood or marriage. Furthermore, there is a substantial number of branch managers or key employees of the corporate respondents, who, together with their families, by blood or marriage, own stock in the respective respondent corporations and who, because of their position or connection with said respondent corporations, are now and have been for the period of time mentioned herein, under the control, authority, direction, management, and domination of the Kurzweg, Le Blanc, Waguespack, and Lipscomb group who, through these individuals and their families, and in combination with their own holdings, exercise control and ownership over a substantial majority of the capital stock of the three corporations as hereinafter set forth.

For some time, and at the present, respondent Consolidated has had issued and outstanding, approximately 64,000 shares of common stock. The Kurzweg, Le Blanc, Waguespack, and Lipscomb families, together with the families of other officers and directors of the three corporate respondents, own and thus control, approximately 37,900

shares, or 59.2 percent of Consolidated stock. This includes the 8,000 shares of Consolidated stock owned by respondent United and which is under control of this group. Furthermore, the stockholdings in the three respondent corporations of the managers of branch stores of respondents Consolidated and United, as well as other key employees, together with their families, by blood or marriage, amount to an additional holding of approximately 6,280 shares, or 9.8 percent of Consolidated stock.

For some time, and at the present, respondent United has had issued and outstanding some 18,033 shares of stock. The Kurzweg, Le Blanc, Waguespack, and Lipscomb families, together with the families of other officers and directors of the three respondent corporations, own, and thus control, approximately 12,631 shares, or 70 percent of United stock. Furthermore, the stockholders in the three respondent corporations of the managers of branch stores of respondents Consolidated and United, as well as other key employees, together with their families, by blood or marriage, as hereinbefore set forth, amount to an additional holding of approximately 756 shares, or 4.2 percent of United stock.

For some time, and at the present, respondent Progressive has had issued and outstanding some 18,033 shares of stock. The Kurzweg, Le Blanc, Waguespack, and Lipscomb families, together with the families of their officers and directors of the three respondent corporations own, and thus control, approximately 11,504, or 63.8 percent of Progressive stock. Furthermore, the stockholdings in the three respondent corporations of the managers of branch stores of respondents Consolidated and United, as well as other key employees, together with their families, by blood or marriage, as hereinabefore set forth, amount to an additional holding of approximately 1,724 shares, or 9.6 percent of Progressive stock.

PAR. 7. At all times mentioned herein, including the present, individuals who were or are members of the Kurzweg, Le Blanc, Waguespack, or Lipscomb families, by blood or marriage, together with individual representatives of the families of other officers and directors of the three respondent corporations, and each of them, directly or indirectly, and acting collectively as owners or as representative, agent or other fiduciary of the owners of a substantial majority of the capital stock of the respondent corporations, have controlled, regulated, directed, managed, and dominated, and do now control, regulate, direct, manage, and dominate all of said corporate respondents, including respondent Progressive, formulating, authorizing, managing, and directing all of their policies, practices, and acts as herein alleged.

PAR. 8. In the course and conduct of their wholesale food business since on or about June 19, 1936, said respondents, as aforesaid, continuously purchased, through respondent Progressive, food products from many vendors with places of business located in several States of the United States; and said respondents, individually and collectively, and each of them, caused such food products to be transported when purchased from said States to destinations in other States.

PAR. 9. In the course of said business in commerce, as aforesaid, beginning on or about June 19, 1936, and continuing to the present time, said respondents Consolidated and United, as well as those associated companies operating under Consolidated, as aforesaid, purchased through respondent Progressive Brokerage Co., Inc., and still continue to purchase, a substantial portion of their requirements of food products from vendors, all, or substantially all, of whom paid said Progressive Brokerage Co., Inc., commissions or brokerage fees on said purchases.

Progressive Brokerage Co., Inc., received and accepted such fees and transmitted and paid them to, and a substantial amount thereof was received and accepted by, members of the Kurzweg, Le Blanc, Waguespack, and Lipscomb families and members of the families of other officers and directors of the three respondent corporations, as well as other key employees, together with their families, in the form of dividends on the capital stock of Progressive Brokerage Co., Inc., owned by them.

In making said purchases and (*a*) in receiving and accepting and (*b*) in transmitting and paying said fees, directly or indirectly, as above found, Progressive Brokerage Co., Inc., was, and is now, acting as agent or representative of respondents Consolidated and United, subject to the direct or indirect control of Consolidated and United and of those individuals who were and are members of the Kurzweg, Le Blanc, Waguespack, and Lipscomb families by blood or marriage, together with members of the families of other officers and directors of respondents Consolidated and United, and other key employees, and their families, who, together, own a substantial majority of its capital stock, as aforesaid.

CONCLUSION

The acts and practices of respondents, corporate, individually and collectively, and each of them, since June 19, 1936, in accepting and receiving commissions or brokerage fees, directly or indirectly, as above found, are in violation of subsection (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

ORDER

I. *It is ordered*, That the respondent, Progressive Brokerage Co., Inc., a corporation, its officers, directors, agents, representatives, and employees, directly or through any corporate or other device, in connection with the purchase of fruits, vegetables, produce, groceries, household and other products of whatsoever nature in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from:

(*a*) Receiving or accepting, directly or indirectly, from any seller anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon any purchase in connection with which respondent Progressive Brokerage Co., Inc., is the buyer or is the agent, representative, or other intermediary acting for, or in behalf of, or subject to the direct or indirect control of any buyer exercised through the ownership or control of capital stock of Progressive Brokerage Co., Inc., by any stockholder or cooperating group of stockholders in such buyer who directly or indirectly controls such buyer.

(*b*) Transmitting, paying, or granting, directly or indirectly, any part of any commission, brokerage, compensation, allowance or discount, which is referred to in paragraph I (*a*) above, to any buyer or to any stockholder in any buyer, who is referred to in paragraph I (*a*) above, in the form of money, dividends, credits, services, facilities, or in any other form.

II. *It is further ordered*, That the respondents Consolidated Cos., Inc., and United Investment Corp., and their respective officers, directors, agents, representatives, and employees, directly or through any intermediary (including Progressive Brokerage Co., Inc.) in connection with the purchase of fruits, vegetables, produce, groceries, household and other products of whatsoever nature in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Receiving or accepting from any seller, or from any agent, representative, or other intermediary acting for, or in behalf of, or subject to the direct or indirect control of respondents Consolidated Cos., Inc., and United Investment Corp., including such control by said respondents exercised through the ownership or control of capital stock of any such agent, representative, or other intermediary by any stockholder or cooperating group of stockholders of respondents Consolidated Cos., Inc., and United Investment Corp., or either of them who directly or indirectly controls said respondents or either of them, anything of value as a commission, brokerage, or other com-

pensation, or any discount or allowance in lieu thereof, in the form of money, dividends, credits, or in any other form, upon purchases for their own accounts.

III. *It is further ordered*, That the respondents, Victor J. Kurzweg, Sr., Victor J. Kurzweg, Jr., Paul H. Kurzweg, Jr. (M. D.), Charles J. Kurzweg, Frank T. Kurzweg (M. D.), James I. Lipscomb, Henry J. Waguespack, Henry J. Le Blanc, Colquitt O. Dupuy, Clarence R. Caster, George T. Vicknair, Margaret L. Kurzweg, James M. Kinberger, Jr., Eugene Holloway (M. D.), Edmund Kinberger, either in their individual or other representative capacities, in connection with the purchase of fruits, vegetables, produce, groceries, household and other products of whatsoever nature in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from:

Receiving or accepting any part of any commission, brokerage, compensation, allowance, or discount which, in paragraphs I (*a*) and I (*b*) above, respondent Progressive Brokerage Co., Inc., is ordered to cease and desist from receiving or accepting and from transmitting, paying or granting, and which, in paragraph II above, respondents Consolidated Cos., Inc., and United Investment Corp. are ordered to cease and desist from receiving or accepting.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of September 1, 1951].

Syllabus

IN THE MATTER OF

MARLBORO TOBACCO BOARD OF TRADE 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 5857. Complaint, Mar. 7, 1951—Decision, Sept. 5, 1951

Where a number of concerns in various states, which (1) were engaged as sellers, buyers, brokers, warehousers, packers, processors or manufacturers of tobacco products; and which (2), in the case of three operated auction warehouses near the town of Upper Marlboro, Md., through which there had been marketed, prior to the 1949 tobacco selling period, the entire loose leaf tobacco crop sold in said vicinity; and which (3) were members of an association or "Board of Trade", which they organized to regulate and control the marketing of tobacco in said town and adjacent territory (natural or preferential market for tobacco growers in three Maryland counties, where was produced the major portion of the leaf tobacco grown in the state), and which so dominated and controlled said market area that it was impossible to engage in the tobacco market therein without having been admitted to membership—

Entered into and carried out agreements and understandings between and among themselves to suppress competition in the sale and purchase of tobacco in said market area; and pursuant thereto concertedly and collectively—

(1) Established and maintained a monopoly in the auction sale of tobacco on said market, in their aforesaid three member warehouses;

(2) Denied membership in their said association or board to a tobacco warehouse corporation which desired to conduct a fourth tobacco auction warehouse in such area in addition to the aforesaid three, which had been unable to handle all the tobacco presented for sale by the Maryland growers, with resulting hardship and inconvenience;

(3) Required that all member warehouses charge uniform fees;

(4) Established and maintained a boycott of a potential competitor of said board's member warehouses; and

(5) Made use of said board as a medium for effectuating and carrying out said agreements, etc. and the acts and practices herein set out;

Capacity, tendency and effect of which agreements, and the things done in pursuance thereof were to unreasonably restrain competition and trade in the sale, purchase and distribution of tobacco and tobacco products in various states and in foreign countries; and deprive the public of the advantage of competitive prices and other advantages which they would receive and enjoy under conditions of unobstructed competition; and otherwise to operate as a restraint upon free and legitimate competition in such trade and industry:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public, and had a dangerous tendency to and did actually hinder and prevent competition and restrain trade between and among said member respondents and others in the sale, purchase and distribution of their said products; placed in themselves the power to control and enhance prices and terms and conditions of sale; had a dangerous tend-

ency to create in said member warehouses a monopoly in the auction and sale of tobacco in commerce; unreasonably restrained such commerce in the merchandise concerned; and constituted unfair methods of competition in commerce and unfair acts and practices therein.

Before *Mr. Frank Hier*, trial examiner.

Mr. George W. Williams and *Mr. Rufus E. Wilson* for the Commission.

Barton, Wilmer, Bramble, Addison & Semans, of Baltimore, Md., for respondents, and along with

Mr. William B. Oliver, of Fuquay Springs, N. C., for Arthur R. Talley.

Davies, Richberg, Tydings, Beebe & Landa, of Washington, D. C., for R. J. Reynolds Tobacco 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 each and all of the parties named in the caption hereof and hereinafter more particularly described, designated, and referred to as respondents, have violated and are violating the provisions of section 5 of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent Marlboro Tobacco Board of Trade is an unincorporated association organized on or about September 6, 1939, with its principal office and place of business located in the town of Upper Marlboro (sometimes referred to as Marlboro), State of Maryland. The membership of said respondent Marlboro Tobacco Board of Trade, hereinafter referred to as respondent Board, is composed of corporations, partnerships and individuals located in the various States of the United States and who are generally engaged in the tobacco marketing business either as sellers, buyers, brokers, warehouses, packers, processors, or the manufacturers of various tobacco products, such as cigarettes and pipe smoking tobaccos.

The names of the officers of said respondent Board who, individually and as such officers of said respondent Board, are named as respondents herein, and in such capacity have been, and are now, in the position of dominating and controlling the affairs of said respondent Board, including the practices set forth herein, are:

James J. Buchheister, president.

A. Hamilton King, secretary-treasurer.

PAR. 2. Respondent Edelen Bros. Warehouse, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland with its principal office located at 315 South Charles Street, in the city of Baltimore, within said State of Maryland and operating a tobacco auction warehouse in or near the town of Upper Marlboro, also within said State of Maryland.

The following-named individuals are now, or have been during the time mentioned herein, officers and directors of said respondent Edelen Bros. Warehouse, Inc., and as such and individually are named as respondents herein, and in such capacity have been and are now in the position of dominating and controlling the affairs of said corporation, including the practices set forth herein:

Robert S. Jameson, president.
Peter W. Duvall, vice president.
Wilson C. Bowling, treasurer.
W. R. Schult, secretary.

Respondent Marlboro Tobacco Market, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office located in the town of Upper Marlboro within said State of Maryland, where it is engaged in operating a tobacco auction warehouse.

The following-named individuals are now, or have been during the time mentioned herein, officers and directors of said respondent, Marlboro Tobacco Market, Inc., and as such, and individually, are named as respondents herein, and in such capacity have been and are now in the position of dominating and controlling the affairs of said corporation, including the practices set forth herein:

Frank M. Hall, president.
Robert L. Hall, secretary.
Paul F. Summers, treasurer.

Respondent Edw. J. O'Brien & Co. (Inc.), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kentucky, with its principal office located at 815–17 West Main Street in the city of Louisville within said State of Kentucky. Said respondent Edw. J. O'Brien & Co. (Inc.), is a tobacco buyer and maintains a branch office and tobacco warehouse in or near the town of Upper Marlboro, State of Maryland, under the trade name of E. J. O'Brien & Co.

The following-named individuals are now, or have been during the time mentioned herein, officers and directors of said respondent, Edw. J. O'Brien & Co. (Inc.), and as such, and individually, are named

as respondents herein, and in such capacity have been and are now in the position of dominating and controlling the affairs of said corporation, including the practices set forth herein:

Edw. J. O'Brien, Jr., president.
Joseph Boyd O'Brien, vice president.
James Graves O'Brien, secretary-treasurer.

Respondent Central Leaf Tobacco Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its principal office located at Third and Cary Streets, in the city of Richmond, within the said State of Virginia. Said respondent, Central Leaf Tobacco Co., is a tobacco buyer and maintains a branch office and tobacco warehouse in or near the town of Upper Marlboro, State of Maryland.

The following-named individuals are now, or have been during the time mentioned herein, officers of said respondent, Central Leaf Tobacco Co., and as such, and individually, are named as respondents herein, and in such capacity, together with the members of the board of directors hereinafter named, have been, and are now, in the position of dominating and controlling the affairs of said corporation, including the practices set forth herein:

J. Shields Harvey, president-treasurer.
Greenhow Maury, Jr., vice president.
L. L. Harvey, vice president.
J. M. Duhling, secretary.
C. L. Ball, Jr., assistant secretary.
R. J. Wilkerson, assistant treasurer.

The following-named individuals are now, or have been during the time mentioned herein, members of the board of directors of said respondent, Central Leaf Tobacco Co., and as such, and individually, are named as respondents herein, and in such capacity, together with the officers herein above named, have been and are now in the position of dominating and controlling the affairs of said corporation, including the practices set forth herein:

J. Shields Harvey.
Greenhow Maury, Jr.
L. L. Harvey.
W. P. Henry.
J. Ross Newell.
George R. Penn.
Mrs. A. B. Tuck.

Respondent Planters Tobacco Warehouse, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located in or near the town of Upper Marlboro, within the said

State of Maryland. Said respondent is engaged in operating a tobacco auction warehouse.

The following-named individuals are now, or have been during the time mentioned herein, officers and directors of said respondent, Planters Tobacco Warehouse, Inc., and as such, and individually are named as respondents herein, and in such capacity have been and are now in the position of dominating and controlling the affairs of said corporation, including the practices set forth herein:

Gustave A. Buchheister, president.
George Y. Klinefelter, vice president.
James J. Buchheister, secretary-treasurer.

Respondents Alfred H. Tolzman, G. Nelson Davis, and Orville W. Davis are copartners trading under the name and style of Southern Maryland Tobacco Co., a partnership, engaged in purchasing tobacco, with their principal office and place of business located in or near the town of Upper Marlboro, State of Maryland, and as such, and individually, are named as respondents herein.

Respondents George Cassels-Smith and Edward Gieske are copartners trading under the name and style of Gieske & Niemann, a partnership, engaged in purchasing tobacco, with their principal office and place of business located in or near the town of Upper Marlboro, State of Maryland, and as such, and individually, are named as respondents herein.

Respondent Arthur R. Talley is an individual operating as an independent tobacco broker, having his office and place of business in the city of Fuquay Springs, State of North Carolina.

The membership of the respondent Board is as above described, and from time to time the membership therein is changed by the addition and withdrawal of members so that all of the members of said Board, at any given time, cannot be properly described herein for the purpose of naming them as respondents without considerable inconvenience and delay, and also said respondent Board's membership constitutes a class so numerous as to make it impracticable, without considerable inconvenience and delay, to name them all as respondents herein; wherefore, the respondents hereinbefore named as respondents, and as such officers, directors and members, are also made respondents as representative of and as representing all of the members of said respondent Board, including those members not specifically named herein.

PAR. 3. Tobacco, produced in the State of Maryland, is brought by the growers thereof to the respondent tobacco auction warehouses, members of respondent Board, as aforesaid, where it is sold at auction

to purchasers, or agents or representatives thereof, who are also members of said respondent Board and who are, in a great many instances, engaged in the export tobacco trade or in the manufacture of tobacco products in States other than that of Maryland and shipped or otherwise transported by them from said State of Maryland to other States within the United States and to foreign countries, and there has been, and now is, a constant current and course of trade and commerce in said tobacco and tobacco products between and among the several States of the United States, as well as with foreign countries.

PAR. 4. Respondent Board was organized by its members to regulate and control the marketing of tobacco in the "Marlboro and adjacent territory" and to that end to provide for rules and regulations that would be uniform in their application and in the mutual interests of the producers, warehousemen and buyers. The rules and regulations adopted, commonly referred to as bylaws were and are a part of the agreement under which said Board was organized, and the pertinent provisions thereof, among others, are as follows:

4. Any person, firm or corporation may become a member of the Marlboro Tobacco Board of Trade upon producing evidence satisfactory to the warehouse, of his financial responsibility and his good character and upon the payment of membership fee hereinafter provided for; and further agreeing to abide by all rules and regulations of the Board of Trade.

5. No person, firm or corporation shall be entitled to purchase tobacco on the Marlboro Tobacco Market unless he or it is a member in good standing of the Marlboro Tobacco Board of Trade.

6. * * * Every member of the Marlboro Tobacco Board of Trade selling tobacco at auction shall charge uniform fees for all tobacco sold at auction and shall not make any rebate or pay any gratuity or perform any services or do any other act which may in any way be calculated to reduce the Commission and other charges.

To effectuate and enforce said bylaws, fines are provided, in certain instances, for their violation. In 1947 the following new bylaw was added:

26. That the Marlboro Tobacco Board of Trade shall be authorized and empowered to employ a supervisor under such terms and conditions they might think right and proper and that any supervisor employed shall have full authority to enforce all the By-Laws of the Marlboro Tobacco Board of Trade; to arbitrate all differences of opinion or interpretations which may arise; to regulate and adjust selling hours; to impose fines for the violation of the rules and regulations of the Marlboro Tobacco Board of Trade and to perform any other duties necessary to promote the honest and efficient sale of tobacco on said markets.

PAR. 5. There are five counties in the State of Maryland within which tobacco is produced, namely, Prince Georges, Anne Arundel,

Calvert, Charles, and St. Marys. Prior to the 1949 market period there were eight auction warehouses in these respective counties from which the entire crop of loose-leaf Maryland tobacco was sold. Three of the said warehouses are located in or near the town of Upper Marlboro, in Prince Georges County, Md. The others are located in or near Waldorf, La Plata, and Hughesville, Charles County, Md.

In the year 1949, there were 34,950,000 pounds of loose-leaf tobacco marketed from the five counties hereinabove named, the greater portion of which, consisting of 22,564,000 pounds, was produced in Prince Georges, Anne Arundel and Calvert Counties. Of this amount Prince Georges County alone accounted for 10,187,000 pounds. The town of Upper Marlboro, and its vicinity, because of its accessibility, is at the present time, and heretofore has been, the natural or preferential market for a substantial number of the tobacco growers in Prince Georges, Anne Arundel, and Calvert Counties. Up to and immediately prior to the opening of the 1949 tobacco selling period the entire loose-leaf tobacco crop sold in the town of Upper Marlboro and vicinity was marketed through three auction warehouses, as aforesaid, namely, respondents Edelen Bros. Warehouse, Inc., Planters Tobacco Warehouse, Inc., and Marlboro Tobacco Market, Inc., all of which are located approximately one-fourth mile to the east of the said town of Upper Marlboro, on United States Highway 301. In the past few years the three respondent warehouses aforesaid have been and are now unable to handle all the tobacco when and as presented in the usual course of business for sale by the Maryland growers, as the floors of said warehouses become so crowded at times that it becomes necessary to close down in order to clear out the tobacco thereon. This operates as a hardship and inconvenience to the growers who are then compelled to leave it on their trucks, find storage, or return same to their farms, to be brought again to the market on another day.

The market for the sale of Maryland tobacco opens on or about the first of May of each year and normally does not close until some time during the month of August. In the 1949 market season a fourth tobacco auction warehouse was opened at Waysons Corner, Anne Arundel County, which is some 2.6 miles from the nearest respondent warehouse near the said town of Upper Marlboro but in that market area, for the purpose of buying and selling tobacco at auction.

PAR. 6. Said respondent Board, and its members, operating under and by virtue of its bylaws, have in the past and now continue, among other things, to allot or apportion, regulate and adjust the selling time among said member warehouses, pass upon applications for membership in said respondent Board, although sole authority in this respect is actually vested in the warehouse members thereof, impose

fines for violations of said bylaws, require the charging of uniform fees and at all times herein mentioned the Upper Marlboro tobacco market has been dominated and controlled, and is now under the domination and control of respondent Board and its members.

The authority of said respondent Board is respected, acknowledged, and adhered to by the buyers, agents, and representatives of the principal tobacco manufacturing companies and by the independent buyers and speculators and whose presence is necessary for a successful sale so that it is virtually impossible for any person, firm or corporation to engage in the tobacco business, other than as a producer, in the Marlboro market area, without first having been admitted into membership in respondent Board.

During the years 1949 and 1950 numerous applications were made by the officers of the warehouse at Waysons Corner to respondent Marlboro Tobacco Board of Trade for admission to membership in said respondent Board. Notwithstanding that admission to membership in said respondent Board is, according to the provisions of its bylaws, as aforesaid, nominally open to any applicant of good character and financial responsibility engaged in the tobacco industry of "Marlboro and adjacent territory," said respondent Board refused and still continues to refuse to admit the aforesaid warehouse into membership of said respondent Board. Consequently, the refusal of respondent Board to admit the Waysons Corner warehouse, or any other like situated warehouses, and although in the Upper Marlboro market area, into its membership, as aforesaid, or to allot said warehouse selling time was, in practical effect, to exclude it completely from the Upper Marlboro market and to eliminate it as a competitor of respondent Board's member warehouses as hereinafter set forth.

PAR. 7. The respondent members of said respondent Board who own and operate tobacco auction warehouses in said area, as aforesaid, would be in competition with each other for the tobacco of growers in connection with the sale and marketing thereof, and with such other tobacco auction warehouse, as aforesaid, if it were not for the act of said respondents in refusing to admit such warehouse into membership in said respondent Board. As a result thereof respondent Board's member warehouses continue to enjoy a virtual monopoly in the auction sale of tobacco in the market area in or surrounding the town of Upper Marlboro.

PAR. 8. Said respondents, beginning on or about September 1939, and particularly within the last 2 years, including the present time, have entered into, maintained and carried out agreements, understandings, combinations and conspiracies, between and among themselves, to suppress, hinder, stifle and lessen competition in the sale

and purchase of tobacco in the market area of Upper Marlboro, State of Maryland.

Pursuant to, and in furtherance of, and to make effective said agreements, understandings, combinations and conspiracies, said respondents have cooperatively, concertedly and collectively adopted, engaged in, and carried out, the following methods, acts and practices:

1. Established and is now maintaining a monopoly in respondent member warehouses in the auction sale of tobacco on the Upper Marlboro market.

2. Denied membership in respondent Board to a tobacco auction warehouse corporation, engaged or that desired to engage, in the business of conducting a tobacco auction warehouse in such area.

3. Required that all respondent member warehouses charge uniform fees.

4. Established and maintained a boycott of potential competitor of respondent Board's member warehouses.

5. Used respondent Board as a medium for effectuating and carrying out the said agreements, understandings, combinations, and conspiracies alleged herein and have by and through said respondent Board carried out and done, and are now carrying out and doing, the acts and practices herein alleged.

PAR. 9. The capacity, tendency and effect of the aforesaid agreements, understandings, combinations, and conspiracies in the methods, acts, and practices and things done and performed by respondents in pursuance thereof are, and have been, to unreasonably lessen, suppress, stifle and restrain competition and trade in the sale, purchase, manufacture, and distribution of tobacco and tobacco products, in the various States of the United States and with foreign countries, and to deprive the purchasing, using, and consuming public of the advantage of competitive prices, terms, and conditions in connection with the purchase thereof, and other advantages which they would receive and enjoy under conditions of normal, unobstructed, free and fair competition in said trade and industry and to otherwise operate as a restraint upon, obstruction and detriment to, the freedom of fair and legitimate competition in such trade and industry.

PAR. 10. The acts and practices of said respondents, and the things done and performed by them, as herein alleged, are all to the prejudice of the public; have a dangerous tendency to hinder and prevent, and actually hindered and prevented, competition and restrained trade between and among said members of respondents and others in the sale, purchase manufacture, and distribution of their said articles of merchandise in commerce, within the intent and meaning of the Federal Trade Commission Act; and placed in respondents the power

to control and enhance prices and other terms and conditions in connection with the sale, purchase, manufacture, and distribution of the said articles of merchandise; have a dangerous tendency to create in said respondent member warehouses a monopoly in the auction sale of tobacco in said commerce; have unreasonably restrained such commerce in their said articles of merchandise, and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

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 September 5, 1951, the initial decision in the instant matter of trial examiner Frank Hier, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY FRANK HIER, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 7, 1951, issued and subsequently served its complaint in this proceeding upon respondents Marlboro Tobacco Board of Trade, an unincorporated association, James J. Buchheister and A. Hamilton King, individually and as officers of the Marlboro Tobacco Board of Trade, its members; Edelen Bros. Warehouse, Inc., a corporation, Robert S. Jameson, Peter W. Duvall, Wilson C. Bowling and W. R. Schult, individually and as officers and directors of Edelen Bros. Warehouse, Inc.; Marlboro Tobacco Market, Inc., a corporation, Frank M. Hall, Robert L. Hall and Paul F. Summers, individually and as officers and directors of Marlboro Tobacco Market, Inc.; Edw. J. O'Brien & Co. (Inc.), a corporation, Edw. J. O'Brien, Jr., Joseph Boyd O'Brien and James Graves O'Brien, individually and as officers and directors of Edw. J. O'Brien & Co. (Inc.); Central Leaf Tobacco Co., a corporation, J. Shields Harvey, Greenhow Maury, Jr., L. L. Harvey, J. M. Duhling, C. L. Ball, Jr., R. J. Wilkerson, W. P. Henry, J. Ross Newell, George R. Penn, and Mrs. A. B. Tuck, individually and as officers and directors of Central Leaf Tobacco Co.; Planters Tobacco Warehouse, Inc., a corporation; Gustave A. Buchheister, George Y. Klinefelter, and James J. Buchheister, individually and as officers and directors of Planters Tobacco Warehouse, Inc.; Alfred H. Tolzman, G. Nelson Davis, and Orville W. Davis, individually and as copartners trading

under the name and style of Southern Maryland Tobacco Co., a partnership; George Cassels-Smith and Edward Gieske, individually and as copartners trading under the name and style of Gieske & Niemann, a partnership; and Arthur R. Talley, an individual, the above-named respondent members, officers and individuals named also as representatives of the entire membership of respondent Marlboro Board of Trade, charging them with the use of unfair methods of competition and unfair acts and practices in commerce in violation of the provision of said act. After respondents filed their answers in this proceeding, a stipulation was entered into and incorporated in the record with the approval of the trial examiner, theretofore duly, designated by the Commission, on behalf of all respondents named with the exception of respondents Greenhow Maury, Jr., and R. J. Reynolds Tobacco Co., with counsel supporting the complaint.

By the terms of said stipulation, it was agreed that the attorneys supporting the complaint have and can produce competent witnesses who, if called, would testify that all the allegations of fact in the complaint are true and correct, that the record may be taken as if they had been so called and had so testified, that the stipulation should be made a part of the record and may be taken as the facts in this proceeding and in lieu of evidence in support of the charges stated in the complaint, or in opposition thereto, that the trial examiner may proceed thereupon to make his initial decision stating his findings as to the facts, including inferences which he may draw from said facts and his conclusions based thereon and to enter his order disposing of the proceeding without the filing of proposed findings and conclusions or the presentation of oral argument.

Said stipulation further provided that the Federal Trade Commission may, if the proceeding comes before it on appeal from the initial decision of the trial examiner or by review upon the Commission's own motion, set aside the stipulation and remand the case to the trial examiner for further proceeding under the complaint.

By said stipulation, each respondent agreeing thereto waived any right to offer or have received in evidence any testimony, documents or other evidence in opposition to the allegations of the complaint, waived any right to submit any proposed findings, conclusions or reasons therefor and all other intervening procedure, and waived any right to challenge or contest any findings as to the facts in this proceeding based on the stipulation on the ground that such findings do not have substantial supporting evidence or that they are otherwise not proper and lawful.

Said stipulation further provided that it was entered into solely for the purpose of this proceeding, for the review thereof and for the

enforcement of any order issued in connection therewith and for no other purpose; that respondents do not admit or concede the accuracy of any findings to be made herein but agree that they may be made; and do not admit that they have violated or intended to violate any law.

Thereafter this proceeding regularly came on for final consideration by said trial examiner upon the complaint, answers thereto, said stipulation and the record, said stipulation having been approved by the trial examiner, who after duly considering the record herein finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent Marlboro Tobacco Board of Trade is an unincorporated association organized on or about September 6, 1939, with its principal office and place of business located in the town of Upper Marlboro (sometimes referred to as Marlboro), State of Maryland. The membership of said respondent Marlboro Tobacco Board of Trade, hereinafter referred to as respondent Board, is composed of corporations, partnerships and individuals located in the various States of the United States and who are generally engaged in the tobacco marketing business either as sellers, buyers, brokers, warehouses, packers, processors or the manufacturers of various tobacco products, such as cigarettes and pipe-smoking tobaccos.

The names of the officers of said respondent Board, who, individually and as such officers of said respondent Board, have been, and are now, in the position of dominating and controlling the affairs of said respondent Board, including the practices set forth herein, are James J. Buchheister, president, and A. Hamilton King, secretary-treasurer.

PAR. 2. Respondent Edelen Bros. Warehouse, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its principal office located at 315 South Charles Street, in the city of Baltimore, within said State of Maryland and operating a tobacco auction warehouse in or near the town of Upper Marlboro, also within said State of Maryland.

The following-named individuals are now, or have been during the time mentioned herein, officers and directors of said respondent Edelen Bros. Warehouse, Inc., and in such capacity have been and are now in the position of dominating and controlling the affairs of said corporation, including the practices set forth herein: Robert S. Jameson, president; Peter W. Duvall, vice president; Wilson C. Bowling, treasurer; and W. R. Schult, secretary.

Respondent Marlboro Tobacco Market, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office located in the town of Upper Marlboro within said State of Maryland, where it is engaged in operating a tobacco auction warehouse.

The following-named individuals are now, or have been during the time mentioned herein, officers and directors of said respondent, Marlboro Tobacco Market, Inc., and in such capacity have been and are now in the position of dominating and controlling the affairs of said corporation, including the practices set forth herein: Frank M. Hall, president; Robert L. Hall, secretary; and Paul F. Summers, treasurer.

Respondents Edw. J. O'Brien & Co. (Inc.) is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kentucky, with its principal office located at 815–17 West Main Street in the city of Louisville within said State of Kentucky. Said respondent Edw. J. O'Brien & Co. (Inc.) is a tobacco buyer and maintains a branch office and tobacco warehouse in or near the town of Upper Marlboro, State of Maryland, under the trade name E. J. O'Brien & Co.

The following-named individuals are now, or have been during the time mentioned herein, officers and directors of said respondent, Edw. J. O'Brien & Co. (Inc.), and in such capacity have been and are now in the position of dominating and controlling the affairs of said corporation, including the practices set forth herein: Edw. J. O'Brien, Jr., president; Joseph Boyd O'Brien, vice president; and James Graves O'Brien, secretary-treasurer.

Respondent Central Leaf Tobacco Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia, with its principal office located at Third and Cary Streets, in the city of Richmond, within the said State of Virginia. Said respondent, Central Leaf Tobacco Co., is a tobacco buyer and maintains a branch office and tobacco warehouse in or near the town of Upper Marlboro, State of Maryland.

The following-named individuals are now, or have been during the time mentioned herein, officers of said respondent, Central Leaf Tobacco Co., and in such capacity, together with the members of the board of directors hereinafter named, have been, and are now, in the position of dominating and controlling the affairs of said corporation, including the practices set forth herein: J. Shields Harvey, president-treasurer; L. L. Harvey, vice president; J. M. Duhling, secretary; C. L. Ball, Jr., assistant secretary; and R. J. Wilkerson, assistant treasurer. The following-named individuals are now, or have been during the time mentioned herein, members of the board of directors

of said respondent, Central Leaf Tobacco Co., and in such capacity, together with the officers hereinabove named, have been and are now in the position of dominating and controlling the affairs of said corporation, including the practices set forth herein: J. Shields Harvey, L. L. Harvey, W. P. Henry, J. Ross Newell, George R. Penn, and Mrs. A. B. Tuck. Respondent Greenhow Maury, Jr., since July 1949, has had no connection with Central Leaf Tobacco Co. or the board.

Respondent Planters Tobacco Warehouse, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located in or near the town of Upper Marlboro, within the State of Maryland. Said respondent is engaged in operating a tobacco auction warehouse.

The following-named individuals are now, or have been during the time mentioned herein, officers and directors of said respondent, Planters Tobacco Warehouse, Inc., and in such capacity have been and are now in the position of dominating and controlling the affairs of said corporation, including the practices set forth herein: Gustave A. Buchheister, president; George Y. Klinefelter, vice president; James J. Buchheister, secretary-treasurer.

Respondents Alfred E. Tolzman, G. Nelson Davis, and Orville W. Davis are copartners trading under the name and style of Southern Maryland Tobacco Co., a partnership, engaged in purchasing tobacco, with their principal office and place of business located in or near the town of Upper Marlboro, State of Maryland.

Respondents George Cassels-Smith and Edward Gieske are copartners trading under the name and style of Gieske & Niemann, a partnership, engaged in purchasing tobacco, with their principal office and place of business located in or near the town of Upper Marlboro, State of Maryland.

Respondent Arthur R. Talley is an individual operating as an independent tobacco broker, having his office and place of business in the city of Fuquay Springs, State of North Carolina.

R. J. Reynolds Tobacco Co. was erroneously and inadvertently listed as a member of the Marlboro Tobacco Board of Trade through the unauthorized action of its tobacco buying agent. It at no time was aware of this, until this proceeding was commenced, never paid dues or took any part in the acts and practices herein found.

Respondent Board has a large and frequently changing membership, wherefor respondents specifically named herein, were named and are treated herein as being representative of the entire membership of respondent Board.

PAR. 3. Tobacco, produced in the State of Maryland, is brought by the growers thereof to the respondent tobacco auction warehouses, members of respondent Board, as aforesaid, where it is sold at auction to purchasers, or agents or representatives thereof, who are also members of said respondent Board and who are, in a great many instances, engaged in the export tobacco trade or in the manufacture of tobacco products in States other than that of Maryland and shipped or otherwise transported by them from said State of Maryland to other States within the United States and to foreign countries, and there has been, and now is, a constant current and course of trade and commerce in said tobacco and tobacco products between and among the several States of the United States, as well as with foreign countries.

PAR. 4. Respondent Board was organized by its members to regulate and control the marketing of tobacco in the "Marlboro and adjacent territory" and to that end to provide for rules and regulations that would be uniform in their application and in the mutual interests of the producers, warehousemen and buyers. The rules and regulations adopted, commonly referred to as bylaws, were and are a part of the agreement under which said Board was organized, and the pertinent provisions thereof, among others, are as follows:

4. Any person, firm or corporation may become a member of the Marlboro Tobacco Board of Trade upon producing evidence satisfactory to the warehouse, of his financial responsibility and his good character and upon the payment of membership fee hereinafter provided for; and further agreeing to abide by all rules and regulations of the Board of Trade.

5. No person, firm or corporation shall be entitled to purchase tobacco on the Marlboro Tobacco Market unless he or it is a member in good standing of the Marlboro Tobacco Board of Trade.

6. * * * Every member of the Marlboro Tobacco Board of Trade selling tobacco at auction shall charge uniform fees for all tobacco sold at auction and shall not make any rebate or pay any gratuity or perform any services or do any other act which may in any way be calculated to reduce the Commission and other charges.

To effectuate and enforce said bylaws, fines are provided, in certain instances for their violation. In 1947 the following new bylaw was added:

26. That the Marlboro Tobacco Board of Trade shall be authorized and empowered to employ a supervisor under such terms and conditions they might think right and proper and that any supervisor employed shall have full authority to enforce all the Bylaws of the Marlboro Tobacco Board of Trade; to arbitrate all differences of opinion or interpretations which may arise; to regulate and adjust selling hours; to impose fines for the violation of the rules and regulations of the Marlboro Tobacco Board of Trade and to perform any other duties necessary to promote the honest and efficient sale of tobacco on said markets.

PAR. 5. There are five counties in the State of Maryland within which tobacco is produced, namely, Prince Georges, Anne Arundel, Calvert, Charles, and St. Marys. Prior to the 1949 market period there were eight auction warehouses in these respective counties from which the entire crop of loose-leaf Maryland tobacco was sold. Three of the said Warehouses are located in or near the town of Upper Marlboro, in Prince Georges County, Md. The others are located in or near Waldorf, La Plata, and Hughesville, Charles County, Md.

In the year 1949, there were 34,950,000 pounds of loose-leaf tobacco marketed from the five counties hereinabove named, the greater portion of which, consisting of 22,564,000 pounds, was produced in Prince Georges, Anne Arundel, and Calvert Counties. Of this amount Prince Georges County alone accounted for 10,187,000 pounds. The town of Upper Marlboro, and its vicinity, because of its accessibility, is at the present time, and heretofore has been, the natural or preferential market for a substantial number of the tobacco growers in Prince Georges, Anne Arundel, and Calvert Counties. Up to and immediately prior to the opening of the 1949 tobacco selling period the entire loose-leaf tobacco crop sold in the town of Upper Marlboro and vicinity was marketed through three auction warehouses, as aforesaid, namely, respondents Edelen Bros. Warehouse, Inc., Planters Tobacco Warehouse, Inc., and Marlboro Tobacco Market, Inc., all of which are located approximately one-fourth mile to the east of the said town of Upper Marlboro, on United States Highway 301. In the past few years the three respondent warehouses aforesaid have been and are now unable to handle all the tobacco when and as presented in the usual course of business for sale by the Maryland growers, as the floors of said warehouses become so crowded at times that it becomes necessary to close down in order to clear out the tobacco thereon. This operates as a hardship and inconvenience to the growers who are then compelled to leave it on their trucks, find storage, or return same to their farms, to be brought again to the market on another day.

The market for the sale of Maryland tobacco opens on or about the first of May of each year and normally does not close until sometime during the month of August. In the 1949 market season a fourth tobacco auction warehouse was opened at Waysons Corner, Anne Arundel County, which is some 2.6 miles from the nearest respondent warehouse near the said Town of Upper Marlboro but in that market area, for the purpose of buying and selling tobacco at auction.

PAR. 6. Said respondent Board, and its members, operating under and by virtue of its bylaws, have in the past and now continue, among other things, to allot or apportion, regulate and adjust the selling time among said member warehouses, pass upon applications for

membership in said respondent Board, although sole authority in this respect is actually vested in the warehouse members thereof, impose fines for violations of said bylaws, require the charging of uniform fees and at all times herein mentioned the Upper Marlboro tobacco market has been dominated and controlled, and is now under the domination and control of respondent Board and its members.

The authority of said respondent Board is respected, acknowledged and adhered to by the buyers, agents and representatives of the principal tobacco manufacturing companies and by the independent buyers and speculators and whose presence is necessary for a successful sale so that it is virtually impossible for any person, firm, or corporation to engage in the tobacco business, other than as a producer, in the Marlboro market area, without first having been admitted into membership in respondent Board.

During the years 1949 and 1950 numerous applications were made by the officers of the warehouse at Waysons Corner to respondent Marlboro Tobacco Board of Trade for admission to membership in said respondent Board. Notwithstanding that admission to membership in said respondent Board is, according to the provisions of its bylaws, as aforesaid, nominally open to any applicant of good charcter and financial responsibility engaged in the tobacco industry of "Marlboro and adjacent territory," said respondent Board refused and still continues to refuse to admit the aforesaid warehouse into membership of said respondent Board. Consequently, the refusal of respondent Board to admit the Waysons Corner warehouse, or any other like situated warehouses, and although in the Upper Marlboro market area, into its membership, as aforesaid, and to allot said warehouse selling time was, in practical effect, to exclude it completely from the Upper Marlboro market and to eliminate it as a competitor of respondent Board's member warehouses as hereinafter set forth. Membership carries with it a fair allocation of selling time.

PAR. 7. The respondent members of said respondent Board who own and operate tobacco auction warehouses in said area, as aforesaid, would be in competition with each other for the tobacco of growers in connection with the sale and marketing thereof, and with such other tobacco auction warehouse, as aforesaid, if it were not for the act of said respondents in refusing to admit such warehouse into membership in said respondent Board. As a result thereof respondent Board's member warehouses continue to enjoy a virtual monopoly in the auction sale of tobacco in the market area in or surrounding the town of Upper Marlboro.

PAR. 8. Said respondents, beginning on or about September 1939, and particularly within the last 2 years, including the present time,

have entered into, maintained, and carried out agreements, understandings, combinations and conspiracies, between and among themselves, to suppress, hinder, stifle, and lessen competition in the sale and purchase of tobacco in the market area of Upper Marlboro, State of Maryland.

Pursuant to, and in furtherance of, and to make effective said agreements, understandings, combinations and conspiracies, said respondents have cooperatively, concertedly and collectively adopted, engaged in, and carried out, the following methods, acts and practices:

1. Established and is now maintaining a monopoly in respondent member warehouses in the auction sale of tobacco on the Upper Marlboro market.

2. Denied membership in respondent Board to a tobacco auction warehouse corporation, engaged or that desired to engage, in the business of conducting a tobacco auction warehouse in such area.

3. Require that all respondent member warehouses charge uniform fees.

4. Establish and maintain a boycott of potential competitor of respondent Board's member warehouses.

5. Used respondent Board as a medium for effectuating and carrying out the said agreements, understandings, combinations and conspiracies found herein and have by and through said respondent Board carried out and done, and are now carrying out and doing, the acts and practices herein found.

PAR. 9. The capacity, tendency and effect of the aforesaid agreements, understandings, combinations and conspiracies in the methods, acts and practices and things done and performed by respondents in pursuance thereof are, and have been, to unreasonably lessen, suppress, stifle and restrain competition and trade in the sale, purchase, and distribution of tobacco and tobacco products, in the various States of the United States and with foreign countries, and to deprive the purchasing, using and consuming public of the advantage of competitive prices, terms, and conditions in connection with the purchase thereof, and other advantages which they would receive and enjoy under conditions of normal, unobstructed, free, and fair competition in said trade and industry and to otherwise operate as a restraint upon, obstruction and detriment to, the freedom of fair and legitimate competition in such trade and industry.

CONCLUSION

The acts and practices of said respondents, and the things done and performed by them, as herein found, are all to the prejudice of

the public; have a dangerous tendency to hinder and prevent, and actually hindered and prevented, competition and restrained trade between and among said member respondents and others in the sale, purchase, and distribution of their said articles of merchandise in commerce, within the intent and meaning of the Federal Trade Commission Act; and placed in respondents the power to control and enhance prices and other terms and conditions in connection with the sale, purchase, and distribution of the said articles of merchandise; have a dangerous tendency to create in said respondent member warehouses a monopoly in the auction sale of tobacco in said commerce; have unreasonably restrained such commerce in their said articles of merchandise, and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents Marlboro Tobacco Board of Trade, an unincorporated membership association, its officers and directors, individually and as such officers and directors, its members, or any group of such respondents, their agents, representatives, and employees, James J. Buchheister, individually and as president, and A. Hamilton King, individually and as secretary-treasurer, respectively, of such association; Edelen Bros. Warehouse, Inc., a corporation, its officers, directors, representatives, agents, and employees; Robert S. Jameson, Peter W. Duvall, Wilson C. Bowling and W. R. Schult, individually and as president, vice president, treasurer and secretary, respectively, of respondent Edelen Bros. Warehouse, Inc.; Marlboro Tobacco Market, Inc., a corporation, its officers, directors, representatives, agents, and employees, Frank M. Hall, Robert L. Hall and Paul F. Summers, individually and as president, secretary, and treasurer, respectively, of Marlboro Tobacco Market, Inc.; Edw. J. O'Brien & Co. (Inc.), a corporation, its officers, directors, representatives, agents, and employees, and Edw. J. O'Brien, Jr., Joseph Boyd O'Brien and James Graves O'Brien, individually and as president, vice president and secretary-treasurer, respectively, of Edw. J. O'Brien & Co. (Inc.); Central Leaf Tobacco Co., a corporation, its officers, directors, representatives, agents, and employees, and J. Shields Harvey, L. L. Harvey, J. M. Duhling, C. L. Ball, Jr., and R. J. Wilkerson, individually and as president-treasurer, vice president, secretary, assistant secretary and assistant treasurer, respectively, of Central Leaf Tobacco Company; and J. Shields Harvey, L. L. Harvey, W. P. Henry, J. Ross Newell, George R. Penn, and Mrs. A. B. Tuck, individually and as

directors of said Central Leaf Tobacco Co.; Planters Tobacco Warehouse, Inc., a corporation, its officers, directors, representatives, agents, and employees, Gustave A. Buchheister, George Y. Klinefelter, and James J. Buchheister, individually and as president, vice president and secretary-treasurer, respectively, of Planters Tobacco Warehouse, Inc.; Alfred H. Tolzman, G. Nelson Davis, and Orville W. Davis, individually and as copartners trading under the name and style of Southern Maryland Tobacco Co., a partnership, their representatives, agents, and employees; George Cassels-Smith and Edward Gieske, individually and as copartners trading under the name and style of Gieske & Niemann, a partnership, their representatives, agents and employees; and Arthur R. Tally, his representatives, agents, and employees in, or in connection with, the offering for sale, sale, purchase and distribution of tobacco and tobacco products 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, or directing, instigating or cooperating in, any planned common course of action, agreement, understanding, combination or conspiracy between and among any two or more of said respondents or between any one or more of said respondents and others not parties hereto to do or perform any of the following things:

1. Refusing membership in the Marlboro Tobacco Board of Trade of the American Tobacco Growers Corp., referred to in the complaint as the Waysons Corner Warehouse, or any other person, firm or corporation similarly situated.

2. Establishing, fixing or maintaining fees or adhering to any fees so established, fixed or maintained.

3. Employing or utilizing the Marlboro Tobacco Board of Trade or any other medium or central agency as an instrumentality, aid, or vehicle in performing or doing any of the things prohibited by this order.

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to the R. J. Reynolds Tobacco Co., a corporation, and Greenhow Maury, Jr., an individual.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of September 5, 1951].

Commissioner Mason not participating.

Syllabus

IN THE MATTER OF

ATOMIC PRODUCTS, INCORPORATED 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 5866. Complaint, Mar. 27, 1951—Decision, Sept. 8, 1951

Merchandisers have a custom of imprinting and otherwise labeling or marking foreign products and their containers with the name of the country of their origin, in legible English words in a conspicuous place, and a substantial portion of the buying and consuming public has come to rely upon such imprinting, labeling or marking, and is influenced thereby to distinguish between competing products of foreign and domestic origin, including foreign-made or imported mechanical pencils.

When products composed in whole or substantial part of imported articles are offered for sale and sold in the channels of trade in commerce throughout the United States and in the District of Columbia, they are purchased and accepted as products wholly of domestic manufacture and origin unless they are imprinted, labeled or marked in a manner which informs purchasers that the said products, or parts thereof, are of foreign origin.

There has been, and now is, among members of the buying and consuming public, including purchasers and users of mechanical pencils, in and throughout the United States and in the District of Columbia, a substantial and subsisting preference for products which are wholly of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin and from products which are made in substantial part of materials or parts of foreign manufacture or origin.

Where a corporation and its three officers, engaged in assembling mechanical pencils through a process whereby the words "Made in Occupied Japan", which appeared on the imported mechanisms they purchased, were completely concealed within the completed pencils; and in the interstate sale and distribution of said pencils, some boxed in sets with fountain pens, to jobbers and retailers—

(*a*) Sold said products without any imprinting, labeling, or conspicuous marking on the pencils and the individual cartons in which packed, to disclose that any part of the pencils was of foreign origin;

With tendency and capacity to deceive members of the buying public into the erroneous belief that said pencils were wholly of domestic manufacture, and thereby cause purchase thereof; and

(*b*) Followed the practice of furnishing, at the request of their retailers and jobbers, price tags and stickers in denominations of $3.50 and $7.50, for affixing to their boxed sets in which, in some cases, they sold their said pencils and pens at from $3.85 to $4.75 per dozen or from 32 cents to 39 cents per set; notwithstanding the fact that such sets sold at retail for about $1 each, and rarely, if ever, for as much as $3.50 or $7.50;

With tendency and capacity to deceive purchasers into the erroneous belief that said fictitious prices were the customary prices at which said articles were normally sold, and with tendency and capacity thereby to cause the purchase thereof:

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

Before *Mr. Abner E. Lipscomb*, trial examiner.
Mr. John M. Russell for the Commission.
Mr. Samuel J. Ernstoff, 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 Atomic Products, Inc., a corporation, and Sam Ginsberg, Edward Abraham, and Tiby Needleman, 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 Atomic Products, Inc., is a corporation organized, existing and doing business under the laws of the State of New York with its office and principal place of business at 18 West 20th Street, New York 10, N. Y.

Respondents Sam Ginsberg, Edward Abraham, and Tiby Needleman are president, vice president, and secretary-treasurer, respectively, of said corporation with their office and principal place of business at the same address as corporate respondent. Said individuals formulate, direct, and control the policies and practices of corporate respondent.

PAR. 2. The respondents are now and have been for several years last past engaged in the business, among other things, of assembling fountain pens and mechanical pencils, and selling and distributing said products.

PAR. 3. The respondents cause said products, when sold, to be shipped from their place of business in the State of New York to jobbers and dealers located in various other States of the United States and in the District of Columbia. Said jobbers and retailers in turn sell said products to the general public. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia. Their volume of business in such commerce is substantial.

PAR. 4. In the course and conduct of their business, respondents purchase mechanisms, actions, or movements for their pencils which

have been imported from Japan in bulk quantities. These mechanisms, actions, or movements as received by them have the words "Made in Occupied Japan" stamped on the spiral end thereof. Respondents assemble mechanical pencils by press-fitting these mechanisms, actions or movements into pencil barrels and by adding caps or erasers and pocket clips thereto. In this process of press-fitting, the words "Made in Occupied Japan" appearing on the mechanisms, actions or movements are completely concealed. At no place no these pencils, or on the boxes in which they are packed, is the fact disclosed that any part thereof is of foreign origin.

The mechanical pencils are in some cases boxed in sets with one or more fountain pens and sold as units. These boxed sets are sold by respondents at prices ranging from approximately $4 per dozen to $6 per dozen. Respondents furnish, on request of their jobbers or dealers, price tags or stickers in denominations of $3.50 and $7.50 which are intended to be affixed to individual sets before they are offered for sale to the public.

PAR. 5. By virtue of the practice of merchandisers, heretofore established and now existing, of imprinting and otherwise labeling or marking products of foreign origin and their containers with the name of the country of their origin, in legible English words in a conspicuous place, a substantial portion of the buying and consuming public has come to rely, and now relies, upon such imprinting, labeling, or marking, and is influenced thereby to distinguish and discriminate between competing products of foreign and domestic origin, including foreign-made or imported mechanical pencils. When products composed in whole or substantial part of imported articles are offered for sale and sold in the channels of trade in commerce throughout the United States and the District of Columbia, they are purchased and accepted as and for, and taken to be, products wholly of domestic manufacture and origin unless the same are imprinted, labeled, or marked in a manner which informs purchasers that the said products, or parts thereof, are of foreign origin.

At all times material to this complaint, there has been, and now is, among members of the buying and consuming public, including purchasers and users of mechanical pencils, in and throughout the United States and in the District of Columbia, a substantial and subsisting preference for products which are wholly of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin and from products which are in substantial part made of materials or parts of foreign manufacture or origin.

PAR. 6. The pen and pencil sets sold by respondents are rarely, if ever, sold to the purchasing public for $3.50 or $7.50 and such sums

are not the regular retail prices for the sets to which they are affixed. Respondents' practice of supplying price tags or stickers in such various denominations which may be and are affixed to boxes containing said sets provides a means and instrumentality by and through which dealers may grossly misrepresent the usual and customary prices of said sets.

PAR. 7. The practice of respondents as aforesaid in offering for sale, selling, and distributing mechanical pencils, the mechanisms, actions, or movements of which are of foreign origin, without any imprinting, labeling, or conspicuous marking on the pencils and on the individual cartons in which they are packed showing that the mechanisms, actions, or movements of said pencils are of Japanese origin, has had and now has the tendency and capacity to mislead and deceive purchasers and members of the buying and consuming public into the false and erroneous belief that said mechanical pencils are wholly of domestic manufacture and origin and into the purchase thereof in reliance upon such erroneous belief.

The further practice of respondents, as aforesaid, in supplying their customers with price tags or stickers with amounts thereon greatly in excess and disproportionate to the customary or usual selling price for said articles, has the tendency and capacity to mislead and deceive purchasers into the erroneous and mistaken belief that the said fictitious prices are the customary and usual prices at which said articles are normally sold, and induces a substantial number of the purchasing public to purchase said products as a result of such erroneous and mistaken belief.

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

DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's rules of practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated September 8, 1951, the initial decision in the instant matter of trial examiner Abner E. Lipscomb, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY ABNER E. LIPSCOMB, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 27, 1951, issued and subse-

quently served its complaint in this proceeding upon respondents, Atomic Products, Inc., a corporation; Sam Ginsberg, Edward Abraham and Tiby Needleman, individually and as officers of respondent corporation, charging them with the use of unfair or deceptive acts or practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, a hearing was held, at which testimony and other evidence in support of the allegations of said complaint and a stipulation as to certain facts were introduced before the above-named trial examiner theretofore duly designated by the Commission, and said testimony, stipulation, and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said trial examiner on the complaint, the answer thereto, testimony, stipulation as to certain facts, and other evidence, proposed findings as to the facts and conclusions presented by counsel supporting the complaint, respondents' counsel not having submitted proposed findings, and oral argument not having been requested. The said trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Atomic Products, Inc., is a corporation organized, existing and doing business under the laws of the State of New York, with its office and principal place of business at 18 West 20th Street, New York 10, N. Y.

Respondents Sam Ginsberg, Edward Abraham, and Tiby Needleman are president, vice president, and secretary-treasurer, respectively, of said corporation, with their office and principal place of business at the same address as corporate respondent. Said individuals formulate, direct, and control the policies and practices of the corporate respondent.

PAR. 2. Respondents are now and have been for several years last past engaged in the business of assembling fountain pens and mechanical pencils, and selling and distributing them.

The respondents cause said products, when sold, to be shipped from their place of business in the State of New York to jobbers and dealers located in various other States of the United States and in the District of Columbia. Said jobbers and retailers in turn sell said products to the general public. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said

products in commerce between and among the various States of the United States and in the District of Columbia. Their volume of business such commerce is substantial.

PAR. 3. In the course and conduct of their business, as herein found, respondents purchase mechanisms, actions, or movements for their mechanical pencils which have been imported from Japan in bulk quantities. These mechanisms, actions, or movements as received by respondents have the words "Made in Occupied Japan" stamped on the spiral end thereof. Respondents assemble mechanical pencils by press-fitting these mechanisms, actions, or movements into pencil barrels and by adding caps or erasers and pocket clips thereto. In this process of press-fitting, the words "Made in Occupied Japan" appearing on the mechanisms, actions, or movements are completely concealed. At no place on these pencils, or on the boxes in which they are packed, is the fact disclosed that any part of said pencils is of foreign origin. Respondents have sold said mechanical pencils, under the above-described conditions, subsequent to having been contacted by the Commission.

Respondents' mechanical pencils are in some cases boxed in sets with one or more fountain pens and sold as units. Respondents sell and have sold these sets, including the mechanical pencil, to retail dealers and jobbers for from $3.85 to $4.75 per dozen, or from about 32 cents to about 39 cents per set. Such sets are sold retail for about $1 each, and have rarely, if ever, been sold retail or otherwise for as much as $3.50 or $7.50 each.

Until about a year ago, the respondents followed the practice of furnishing, at the request of their retailers and jobbers, price tags and stickers in denominations of $3.50 and $7.50, which were intended to be affixed to such sets before they were offered for sale to the public. This practice of supplying price tags and stickers to retailers and jobbers was discontinued subsequent to the Commission's initial contact with respondents in 1950.

PAR. 4. Merchandisers have a custom, heretofore established and now existing, of imprinting and otherwise labeling or marking products of foreign origin and their containers with the name of the country of their origin, in legible English words in a conspicuous place, and a substantial portion of the buying and consuming public has come to rely, and now relies, upon such imprinting, labeling, or marking, and is influenced thereby to distinguish and discriminate between competing products of foreign and domestic origin, including foreign-made or imported mechanical pencils. When products composed in whole or substantial part of imported articles are offered for sale and sold in the channels of trade in commerce

throughout the United States and the District of Columbia, they are purchased and accepted as and for, and taken to be, products wholly of domestic manufacture and origin unless the same are imprinted, labeled or marked in a manner which informs purchasers that the said products, or parts thereof, are of foreign origin.

There has been, and now is, among members of the buying and consuming public, including purchasers and users of mechanical pencils, in and throughout the United States and in the District of Columbia, a substantial and subsisting preference for products which are wholly of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin and from products which are in substantial part made of materials or parts of foreign manufacture or origin.

PAR. 5. The practice of respondents as herein found in offering for sale, selling, and distributing mechanical pencils, the mechanisms, actions, or movements of which are of foreign origin, without any imprinting, labeling, or conspicuous marking on the pencils and on the individual cartons in which they are packed showing that the mechanisms, actions, or movements of said pencils are of Japanese origin, has had and now has the tendency and capacity to mislead and deceive purchasers and members of the buying and consuming public into the false and erroneous belief that said mechanical pencils are wholly of domestic manufacture and origin, and has had and now has the tendency and capacity to cause the purchase thereof as a result of such erroneous and mistaken belief.

The further practice of respondents, as herein found, in supplying their customers with price tags or stickers with amounts thereon greatly in excess of and disproportionate to the customary or usual selling price for said article, has the tendency and capacity to mislead and deceive purchasers into the erroneous and mistaken belief that the said fictitious prices are the customary and usual prices at which said articles are normally sold, and has had and now has the tendency and capacity to cause the purchase thereof as a result of such erroneous and mistaken belief.

CONCLUSION

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

ORDER

It is ordered, That respondent Atomic Products, Inc., a corporation, and its officers, representatives, agents, and employees, and respond-

ents Sam Ginsberg, Edward Abraham, and Tiby Needleman, individually and as officers of Atomic Products, Inc., and their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of fountain pens and mechanical pencils, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale or selling mechanical pencils, the mechanisms, actions, or movements of which are of foreign origin, without affirmatively and clearly disclosing thereon, or in immediate connection therewith, the country of origin of such pencils or the mechanisms, actions, or movements thereof;

2. Supplying customers or purchasers of fountain pens and mechanical pencils, in sets or otherwise, with price tags or stickers therefor bearing amounts which are, in fact, in excess of the prices at which such article or articles are usually and customarily offered for sale and sold in the usual course of business, or otherwise representing that such articles are sold for amounts in excess of their usual and customary selling prices.

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 September 8, 1951].

Commissioner Mason not participating.

IN THE MATTER OF

SEYDEL CHEMICAL CO. 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 5693. Complaint, Aug. 19, 1949—Decision, Sept. 11, 1951

Where a corporation and its two officers engaged in the interstate sale and distribution of their drug preparation "Subenon";

In advertising through radio continuities, and various booklets and leaflets entitled "What Should I Do for My Rheumatism and Arthritis," "Subenon for the Treatment of Arthritis," "Subenon in Rheumatoid Conditions," "Health and Science," and "Good Health," directly and by inference—

(*a*) Falsely represented that their said preparation, taken as directed, was an effective treatment for the underlying causes of all forms and types of rheumatism and arthritis, and would correct them;

(*b*) Falsely represented that it was an effective and reliable treatment for the symptoms and manifestations of all kinds of rheumatism and arthritis and would afford complete relief from the aches, pains and discomforts thereof;

(*c*) Falsely represented that it was an adequate and effective treatment for and would cure rheumatic fever, and the "growing pains" in children which might be indicative thereof;

(*d*) Falsely represented that it would prevent and cure all abnormalities of the body which might result from any and all of the aforesaid conditions, such as stiffness of muscles and joints, lack of motility of joints and cardiac complications which often result from rheumatic fever, and would restore the normal functions of the body;

(*e*) Falsely represented that it provided significant antispasmodic and antipyretic effects and would be of value in producing a healthy blood supply and a healthy body, and in restoring normal intestinal function and normal vigor and wellbeing;

(*f*) Falsely represented that it was superior to salicylates as an analgesic;

With effect of misleading a substantial portion of the purchasing public into the erroneous belief that such false representations were true, and with tendency and capacity so to do, and thereby induce its purchase of their 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.

Before *Mr. Frank Hier*, trial examiner.

Mr. Edward F. Downs and *Mr. Joseph Callaway* 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 Seydel Chemical

Co., a corporation, Herman Seydel, C. H. Seydel, and Lawless E. West, individually and as officers of said corporation, hereinafter referred to as respondents, having 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 Seydel Chemical Co., hereinafter referred to as respondent corporation, is, and at all times hereinafter mentioned has been, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its principal office and place of business at 225 Mercer Street, Jersey City, N. J.

Respondents Herman Seydel, whose address is 110 Gifford Avenue, Jersey City, N. J., C. H. Seydel, whose address is Sand Spring Road, R. F. D. 2, Morristown, N. J., and Lawless E. West, whose address is 291 East One Hundred and Sixty-second Street, New York 56, N. Y., are individuals and president, vice president and treasurer, and secretary, respectively, of respondent corporation. These individual respondents direct and control the business policies and activities of respondent corporation including the acts and practices hereinafter set out.

PAR. 2. The respondents are now and for several years last past have been engaged in the business of manufacturing, offering for sale, selling, and distributing a preparation containing drugs as "drug" is defined in the Federal Trade Commission Act.

The designation used by respondents for their said preparation and the formula and directions for use are as follows:

Designation: Subenon

Formula: Each tablet contains—

Calcium double salt of benzoic acid and succinic acid benzyl ester	5.5 grains
Starch	1.0 grain
Talc	0.3125 grain
Sodium stearate	0.125 grain
Magnesium stearate	0.0625 grain

Directions for use:

The general directions for use appearing in the labeling are as follows:

Where stiffness of joints is not extreme and muscular pains are not severe . . . or where the case is not one of long standing . . . take eight (5 gr.) Subenon tablets daily for the first month, two tablets with a half-glass of water before each meal and before retiring for the night. Continue for several months taking from two to four tablets daily.

In stubborn cases where joint-stiffness and pain are acute, it has been found beneficial to sustain the dosage of eight (5 gr.) Subenon tablets daily for the

first three months, two tablets with one half glass of water before each meal and before going to bed. When pain and stiffness subside reduce to four tablets per day for three months. Continue if necessary.

REMEMBER that Subenon is non-toxic and that, even when taken in large quantities, there is no bad effect on the heart.

IMPORTANT—To get most good from the Subenon treatment, cut the dosage in half after the first months, but even though stiffness and aches have lessened or are absent, keep on taking the smaller number of tablets regularly for at least three months more; by so doing you will minimize the chances of a recurrence of symptoms. Some people find some slight tendency toward upset stomach for a few days after beginning the treatment; this is nothing to worry about. Subenon is just getting to work. If your stomach feels queasy, cut by half the number of Subenon tablets you are taking, but keep on taking Subenon regularly.

DIET—A proper diet is all important in the rehabilitation of the body. Too much sugar, too much starch, too much pastry, and in fact too much food of any one type should be avoided. The daily menu of the average family has been arrived at after centuries of education. It will suit most everyone suffering from rheumatoid conditions. Tonics and vitamins may be taken upon advice of physician.

SPECIAL CASES—If you are overweight take Subenon before meals instead of after, for best results.

The dosage given in the booklet, Subenon in Rheumatoid Conditions, is as follows:

Adults—One or two tablets or capsules repeated three or four times daily. In acute rheumatic fever and in severe arthritis a total of 12 to 16 tablets daily should be employed.

Children—In proportion to age and severity of condition.

Additional directions as to dosage are given in the booklet entitled "What Should I Do for My Rheumatism and Arthritis," and are as follows:

For children weighing fifty pounds, or more: one tablet, three times daily. Especially indicated for "growing pains."

For muscular rheumatism: two tablets, four times daily for the first six weeks. Then, one tablet, four times daily until the symptoms disappear. Follow this with one tablet, twice a day for at least three months.

For arthritis: two tablets, four times daily for two months. Follow this with one tablet, twice daily for two months.

Specific directions for use in rheumatoid arthritis are as follows:

The sufferer from rheumatoid arthritis may take six to eight tablets a day, two after each meal. The treatment may be continued for two to three months. Pain and stiffness will usually decrease noticeably. The medicine should, however, be continued for two to three months after the pain and stiffness have disappeared . . . the essential factor in the treatment of rheumatoid arthritis is regular administration of Subenon in the proper dosage—six to eight tablets a day—one or two after each meal and before retiring—to be continued for two to three months. As symptoms are relieved, the dosage may be reduced to three

to four tablets a day. Subenon makes the sufferer from rheumatoid arthritis comfortable, restores impaired function and at the same time strikes at the root of the disease. It is a physiologic medicine.

Specific directions for use in osteoarthritis are as follows:

The sufferer from osteoarthritis may commence therapy by taking 8 tablets a day, 2 after each meal and 2 before retiring. Pain and stiffness will usually decrease in a few weeks. As the symptoms are relieved, the patient may reduce the dosage to 6 tablets a day. This should be continued indefinitely. Subenon when taken in this dosage will relieve symptoms without any harmful effect to the patient.

The dosage indicated in still other portions of the advertising literature is as follows:

Two tablets three to four times daily. In severe arthritis and acute rheumatic fever four tablets four to five times daily until the acute symptoms subside. Maintenance therapy for two to three months.

PAR. 3. Respondents cause said preparation, when sold, to be transported from their aforesaid place of business in the State of New Jersey to purchasers thereof located in various States of the United States, other than the State of New Jersey, and in the District of Columbia. Respondents maintain, and at all times herein mentioned have maintained, a course of trade in said preparation in commerce among and between the various States of the United States.

PAR. 4. In the course and conduct of their business respondents, subsequent to March 21, 1938, have disseminated and caused the dissemination of certain advertisements concerning said preparation by means of the United States mail and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to radio continuities, various booklets and leaflets, including but not limited to booklets entitled "What Should I Do for My Rheumatism and Arthritis," several leaflets entitled "Subenon for the Treatment of Rheumatism," "Subenon in Rheumatoid Conditions," "Health and Science," and "Good Health"; and respondents have disseminated and caused the dissemination of advertisements concerning said preparation, including but not limited to the advertisements referred to above, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of the said article in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among the statements and representations contained in said advertisements disseminated as aforesaid are the following:

Subenon alleviates the pain (of osteoarthritis), helps restore free motion to the joints and actually halts the progress of the disease.

* * * *

Regular administration of Subenon during an acute attack (or rheumatoid arthritis) relieves symptoms and may prevent the occurrence of the chronic stage.

* * * *

If Subenon is given after a patient is in the chronic state, the drug will often alleviate the pain and stiffness and prevent further crippling deformities. Subenon therapy may actually aid in restoring motion to the involved joints and check the destructive processes going on.

* * * *

Subenon given during an attack of acute rheumatic fever will relieve the joint pains, shorten the duration of the acute attack and often prevent cardiac complications.

Subenon relieves the fever, the swelling, and the severe crippling pains of arthritis.

Sciatica * * * responds well to treatment with Subenon.

Regular administration of Subenon relieves the symptoms, overcomes the inflammatory process and checks the disease (of muscular rheumatism).

With Subenon therapy the pain (of bursitis) is diminished, the swelling subsides and the inflammation clears up.

Subenon is made to overcome the cause of rheumatism.

Subenon is made to prevent the occurrence of ankylosis.

The sufferer who has been confined to bed for years, may find that after taking Subenon for a few months he is able to return to the normal routine of living.

The patient afflicted with rheumatoid arthritis usually complains of symptoms in other parts of the body, i. e., excessive fatigue, loss of appetite, loss of weight, nervousness, sleeplessness, and disturbed bowel function. Subenon relieves all these symptoms. Subenon helps to restore normal intestinal function because the medicine releases the flow of bile and stimulates the liver function, thus increasing the appetite and aiding disturbed bowel function.

Is Subenon of use for children's growing pains? Yes.

Subenon, by activating the liver and aiding in intestinal processes, helps nature to produce a healthy blood supply; this in turn helps to remove the causes of arthritis and rheumatism.

Subenon also has an analgesic and antispasmodic effect which relieves pain and spasm and increases motility of the joints.

Both the acute and chronic forms of lumbago respond well to Subenon therapy. Pain is relieved, stiffness disappears, muscle spasm is reduced, and the patient becomes more comfortable in every way.

. . . has shown Subenon to have an antipyretic effect.

SUBENON for the sympotmatic treatment of the rheumatic state, promotes patient cooperation by restoring joint mobility, relieving pain and improving general health and mental outlook.

Regular administration of the medication SUBENON alleviates the pain, helps restore free motion to the joints and actually halts the progress of the disease.

SUBENON established treatment for arthritis and rheumatism.

Subenon by activating the liver and aiding intestinal processes, helps nature to produce a healthy blood supply; this in turn helps to remove the causes of arthritis and rheumatism. A healthy blood stream makes for a healthy body, free from pain.

Salicylates, such as aspirin, etc., are used to allay pain for a few hours at a time, while arthritis and rheumatism continue to get a firmer hold. Drugs such as aspirin accumulate in the body. * * * Once the body is freed of salicylates, Subenon can help Nature restore your normal vigor and well being.

PAR. 6. Through the use of the advertisements containing the statements and representations hereinabove set forth and others of the same import, but not specifically set out herein, respondents have represented, directly and by inference, that their preparation Subenon, when taken as directed—

(*a*) is an adequate and effective treatment for and will correct the underlying causes of and cure all forms and types of rheumatism and arthritis.

(*b*) is an adequate, effective, and reliable treatment for the symptoms and manifestations of all kinds of rheumatism and arthritis and will afford complete relief from the aches, pains, and discomforts thereof;

(*c*) is an adequate and effective treatment for and will cure rheumatic fever and "growing pains" in children which may be indicative of rheumatic fever;

(*d*) will prevent and correct all abnormalities of the body which may result from any and all of the aforesaid conditions such as stiffness of muscles and joints, lack of motility of joints and cardiac complications often resulting from rheumatic fever and will restore the normal functions of the body;

(*e*) provides significant antispasmodic and antipyretic effects;

(*f*) will be of value in producing a healthy blood supply, a healthy body, in restoring normal intestinal function and normal vigor and well being;

(*g*) is superior to salicylates as an analgesic.

PAR. 7. The aforesaid advertisements are misleading in material respects and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, Subenon, however taken—

(*a*) will not correct the underlying causes of, is not an adequate or effective treatment for, and will not cure any form or type of rheumatism or arthritis;

(*b*) is not an adequate, effective or reliable treatment for the symptoms or manifestations of rheumatism or arthritis; the aches, pains and discomfort incident to these ailments may be of such a nature that they will be in no way alleviated by the use of this preparation, however taken, and in other cases the relief will be limited to such degree of temporary and mild analgesic effect as its calcium double salt of

benzoic acid and succinic acid benzel ester content may afford in individual cases;

(*c*) will not cure rheumatic fever and is not an adequate or effective treatment therefor. Its use will not be of value in "growing pains" in children;

(*d*) will not prevent or correct abnormalities which result from any of the conditions set out in (a), (b) and (c) above and will not restore the normal functions of the body;

(*e*) will not provide any significant antispasmodic or antipyretic effects;

(*f*) will not produce a healthy blood supply or a healthy body and will not restore normal intestinal function or normal vigor and well-being;

(*g*) is not superior to salicylates as an analgesic. On the contrary, salicylates are more effective in relieving pain than the analgesic ingredient in Subenon.

PAR. 8. The use by respondents of the foregoing false and misleading statements and representations, and others of similar nature, disseminated as aforesaid, has had and now has, the tendency and capacity to and does, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations are true, and to induce a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase respondents' preparation.

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.

ORDERS AND DECISION OF THE COMMISSION

Order denying respondents' appeal from initial decision of the trial examiner and decision of the Commission and order to file report of compliance, Docket 5693, September 11, 1951, follows:

This matter came on to be heard by the Commission upon respondents' "Petition to set aside order filed April 2, 1951, and for leave to amend and substitute answer" which was considered by the Commission as an appeal from the trial examiner's initial decision herein, and answer thereto filed by counsel supporting the complaint.

The grounds relied upon in support of said appeal are that the substitute answer filed by the respondents on March 8, 1951, in which they admitted all the material allegations of fact set forth in the complaint, was filed without counsel or legal advice and that the

respondents did not intend to admit certain allegations of the complaint. The respondents request that the trial examiner's initial decision be set aside or modified to permit the filing of a new answer; or, in the alternative, that said initial decision be suspended or held inoperative until the final decision in certain other proceedings now pending before the Commission. Counsel supporting the complaint in his answer contends that the petition should be denied for the reasons therein set forth.

The complaint herein charges the respondents with the dissemination of false advertisements of a drug preparation designated "Subenon." The allegations of the complaint are plain and unambiguous. In their original answer the respondents admitted in part and denied in part the allegations of the complaint. Subsequently respondents moved for permission to withdraw said answer and to substitute in lieu thereof an answer admitting all the material allegations of fact set forth in the complaint and waiving all intervening procedure and further hearing. This motion was granted and the substitute answer was filed. The respondents knew, or should have known, the contents of and the effect of the substitute answer filed by them. The Commission is of the opinion, therefore, that the respondents' request that the trial examiner's initial decision be set aside, or modified to permit the filing of a new answer, should be denied.

There does not appear to be any sufficient reason to warrant the suspension of this proceeding until the final disposition of certain other proceedings now pending before the Commission.

The Commission having duly considered respondents' appeal, answer thereto, and the record herein, and being of the opinion, for the reasons above stated, that said appeal is without merit and that the initial decision is appropriate in all respects to dispose of this proceeding:

It is ordered, That the respondents' appeal from the trial examiner's initial decision be, and it hereby is, denied.

It is further ordered, That the attached initial decision of the trial examiner shall, on the 11th day of September 1951, become the decision of the Commission.

It is further ordered, That the respondents, except Lawless E. West, 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 FRANK HIER, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 19, 1949, issued and subsequently served its complaint in this proceeding upon respondent Seydel Chemical Co., a corporation, and upon respondents Herman Seydel, C. H. Seydel, and Lawless E. West, individually and as officers of said corporation, charging them with the use of unfair and deceptive acts and practices in commerce through the dissemination of false advertisements in violation of the provisions of said act. On October 17, 1949, respondents filed an answer to the complaint but on March 13, 1951, moved to withdraw said answer and substitute in lieu thereof another answer, which motion on March 26, 1951, the trial examiner granted. Said substitute answer admits all the material allegations of fact set forth in said complaint, waives all intervening procedure and further hearing. Said substitute answer further sets forth that the representations challenged in the complaint were made by the respondents in good faith and without conscious intent to defraud. Thereafter, the proceeding regularly came on for final consideration by the trial examiner theretofore duly designated by the Commission, upon the complaint and the substitute answer thereto and said trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Seydel Chemical Co., hereinafter referred to as respondent corporation, is, and at all times hereinafter mentioned has been, a corporation organized and existing under and by virtue of the laws of the State of New Jersey with its principal office and place of business at 225 Mercer Street, Jersey City, N. J.

Respondents Herman Seydel, whose address is 110 Gifford Avenue, Jersey City, N. J., and C. H. Seydel, whose address is Sand Spring Road, R. F. D. 2, Morristown, N. J., are individuals and president and vice president, and treasurer, respectively, of respondent corporation. These individual respondents direct and control the business policies and activities of respondent corporation including the acts and practices hereinafter set out.

Respondent Lawless E. West, whose address is 291 East One Hundred and Sixty-second Street, New York 56, N. Y., was at one time secretary of respondent corporation, but, since prior to the issuance of the complaint herein, has had no connection with respondent corporation either as an officer, stockholder, employee, or otherwise.

PAR. 2. The respondents are now and for several years last past have been engaged in the business of manufacturing, offering for sale, selling, and distributing a preparation containing drugs as "drug" is defined in the Federal Trade Commission Act.

The designation used by respondents for their said preparation and the formula and directions for use are as follows:

Designation: Subenon

Formula: Each tablet contains—

Calcium double salt of benzoic acid and succinic acid benzyl ester	5.5	grains
Starch	1.0	grain
Talc	0.3125	grain
Sodium sterate	0.125	grain
Magnesium sterate	0.0625	grain

Directions for use:

The general directions for use appearing in the labeling are as follows:

While stiffness of joints is not extreme and muscular pains are not severe . . . or where the case is not one of long standing . . . take eight (5 gr.) Subenon tablets daily for the first month, two tablets with a half-glass of water before each meal and before retiring for the night. Continue for several months taking from two to four tablets daily.

In stubborn cases where joint-stiffness and pain are acute, it has been found beneficial to sustain the dosage of eight (5 gr.) Subenon tablets daily for the first three months, two tablets with one half glass of water before each meal and before going to bed. When pain and stiffness subside reduce to four tablets per day for three months. Continue if necessary.

REMEMBER that Subenon is nontoxic and that, even when taken in large quantities, there is no bad effect on the heart.

IMPORTANT—To get most good from the Subenon treatment, cut the dosage in half after the first months, but even though stiffness and aches have lessened or are absent, keep on taking the smaller number of tablets regularly for at least three months more; by so doing you will minimize the chances of a recurrence of symptons. Some people find some slight tendency toward upset stomach for few days after beginning the treatment; this is nothing to worry about. Subenon is just getting to work. If your stomach feels queasy, cut by half the number of Subenon tablets you are taking, but keep on taking Subenon regularly.

DIET—A proper diet is all important in the rehabilitation of the body. Too much sugar, too much starch, too much pastry, and in fact too much food of any one type should be avoided. The daily menu of the average family has been arrived at after centuries of education. It will suit most everyone suffering from rehumatoid conditions. Tonics and vitamins may be taken upon advice of physician.

SPECIAL CASES—If you are overweight take Subenon before meals instead of after, for best results.

The dosage given in the booklet, Subenon in Rheumatoid Conditions, is as follows:

Adults—One or two tablets or capsules repeated three or four times daily. In acute rheumatic fever and in severe arthritis a total of 12 to 16 tablets daily should be employed.

Children—In proportion to age and severity of condition.

Additional directions as to dosage are given in the booklet entitled "What Should I Do for My Rheumatism and Arthritis," and are as follows:

For children weighing fifty pounds, or more: one tablet, three times daily. Especially indicated for "growing pains."

For muscular rheumatism: two tablets, four times daily for the first six weeks. Then, one tablet, four times daily until the symptons disappear. Follow this with one tablet, twice a day for at least three months.

For arthritis, two tablets, four times daily for two months. Follow this with one tablet, twice daily for two months.

Specific directions for use in rheumatoid arthritis are as follows:

The sufferer from rheumatoid arthritis may take six to eight tablets a day, two after each meal. The treatment may be continued for two to three months. Pain and stiffness will usually decrease noticeably. The medicine should, however, be continued for two to three months after the pain and stiffness have disappeared . . . the essential factor in the treatment of rheumatoid arthritis is regular administration of Subenon in the proper dosage—six to eight tablets a day—one or two after each meal and before retiring—to be continued for two to three months. As symptons are relieved, the dosage may be reduced to three to four tablets a day. Subenon makes the sufferer from rheumatoid arthritis comfortable, restores impaired function and at the same time strikes at the root of the disease. It is a physiologic medicine.

Specific directions for use in osteoarthritis are as follows:

The sufferer from osteoarthritis may commence therapy by taking eight tablets a day, 2 after each meal and 2 before retiring. Pain and stiffness will usually decrease in a few weeks. As the symptoms are relieved, the patient may reduce the dosage to 6 tablets a day. This should be continued indefinitely. Subenon when taken in this dosage will relieve symptoms without any harmful effect to the patient.

The dosage indicated in still other portions of the advertising literature is as follows:

Two tablets three to four times daily. In severe arthritis and acute rheumatic fever four tablets four to five times daily until the acute symptoms subside. Maintenance therapy for two to three months.

PAR. 3. Respondents cause said preparation, when sold, to be transported from their aforesaid place of business in the State of New Jersey to purchasers thereof located in various States of the United States, other than the State of New Jersey, and in the District of Columbia. Respondents maintain, and at all times herein mentioned have maintained, a course of trade in said preparation in commerce among and between the various States of the United States.

PAR. 4. In the course and conduct of their business respondents, subsequent to March 21, 1938, have disseminated and caused the dissemination of certain advertisements concerning said preparation by means of the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to radio continuities, various booklets and leaflets, including but not limited to booklets entitled "What Should I Do for My Rheumatism and Arthritis," several leaflets entitled "Subenon for the Treatment of Rheumatism," "Subenon in Rheumatoid Conditions," "Health and Science," and "Good Health"; and respondents have disseminated and have caused the dissemination of advertisements concerning said preparation, including but not limited to the advertisements referred to above, 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 the statements and representations contained in said advertisements disseminated as aforesaid are the following:

Subenon alleviates the pain (of osteoarthritis), helps restore free motion to the joints and actually halts the progress of the disease.

* * * *

Regular administration of Subenon during an acute attack (of rheumatoid arthritis) relieves symptoms and may prevent the occurrence of the chronic stage.

* * * *

If Subenon is given after a patient is in the chronic state, the drug will often alleviate the pain and stiffness and prevent further crippling deformities. Subenon therapy may actually aid in restoring motion to the involved joints and check the destructive processes going on.

* * * *

Subenon given during an attack of acute rheumatic fever will relieve the joint pains, shorten the duration of the acute attack and often prevent cardiac complications.

Subenon relieves the fever, the swelling, and the severe crippling pains of arthritis.

Sciatica * * * responds well to treatment with Subenon.

* * * *

Regular administration of Subenon relieves the symptoms, overcomes the inflammatory process and checks the disease (of muscular rheumatism).

With Subenon therapy the pain (of bursitis) is diminished, the swelling subsides and the inflammation clears up.

Subenon is made to overcome the cause of rheumatism.

Subenon is made to prevent the occurrence of ankylosis.

The sufferer who has been confined to bed for years, may find that after taking Subenon for a few months he is able to return to the normal routine of living.

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The patient afflicted with rheumatoid arthritis usually complains of symptoms in other parts of the body, i. e., excessive fatigue, loss of appetite, loss of weight, nervousness, sleeplessness, and disturbed bowel function. Subenon relieves all these symptoms. Subenon helps to restore normal intestinal function because the medicine releases the flow of bile and stimulates the liver function, thus increasing the appetite and aiding disturbed bowel function.

Is Subenon of use for children's growing pains? Yes.

Subenon, by activating the liver and aiding in intestinal processes, helps nature to produce a healthy blood supply; this in turn helps to remove the causes of arthritis and rheumatism.

Subenon also has an analgesic and antispasmodic effect which relieves pain and spasm and increases motility of the joints.

Both the acute and chronic forms of lumbago respond well to Subenon therapy. Pain is relieved, stiffness disappears, muscle spasm is reduced, and the patient becomes more comfortable in every way .

. . . has shown Subenon to have an antipyretic effect.

SUBENON for the symptomatic treatment of the rheumatic state, promotes patient cooperation by restoring joint mobility, relieving pain and improving general health and mental outlook.

Regular administration of the medication SUBENON alleviates the pain, helps restore free motion to the joints and actually halts the progress of the disease.

SUBENON established treatment for arthritis and rheumatism.

Subenon by activating the liver and aiding intestinal processes, helps nature to produce a healthy blood supply; this in turn helps to remove the causes of arthritis and rheumatism. A healthy blood stream makes for a healthy body, free from pain.

Salicylates, such as aspirin, etc., are used to allay pain for a few hours at a time, which arthritis and rheumatism continue to get a firmer hold. Drugs such as aspirin accumulate in the body. * * * Once the body is freed of salicylates, Subenon can help Nature restore your normal vigor and well being.

PAR. 6. Through the use of the advertisements containing the statements and representations hereinabove set forth and others of the same import, but not specifically set out herein, respondents have represented, directly and by inference, that their preparation Subenon, when taken as directed—

(*a*) is an adequate and effective treatment for and will correct the underlying causes of and cure all forms and types of rheumatism and arthritis;

(*b*) is an adequate, effective, and reliable treatment for the symptoms and manifestations of all kinds of rheumatism and arthritis and will afford complete relief from the aches, pains, and discomfort thereof;

(*c*) is an adequate and effective treatment for and will cure rheumatic fever and "growing pains" in children which may be indicative of rheumatic fever;

(*d*) will prevent and correct all abnormalities of the body which may result from any and all of the aforesaid conditions such as stiff-

ness of muscles and joints, lack of motility of joints and cardiac complications often resulting from rheumatic fever and will restore the normal functions of the body;

(*e*) provides significant antispasmodic and antipyretic effects;

(*f*) will be of value in producing a healthy blood supply, a healthy body, in restoring normal intestinal function and normal vigor and well being;

(*g*) is superior to salicylates as an analgesic.

PAR. 7. The aforesaid advertisements are misleading in material respects and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, Subenon, however taken:

(*a*) will not correct the underlying causes of, is not an adequate or effective treatment for, and will not cure any form or type of rheumatism or arthritis;

(*b*) is not an adequate, effective, or reliable treatment for the symptoms or manifestations of rheumatism or arthritis; the aches, pains, and discomfort incident to these ailments may be of such a nature that they will be in no way alleviated by the use of this preparation, however taken, and in other cases the relief will be limited to such degree of temporary and mild analgesic effect as its calcium double salt of benzoic acid and succinic acid benzyl ester content may afford in individual cases;

(*c*) will not cure rheumatic fever and is not an adequate or effective treatment therefor. Its use will not be of value in "growing pains" in children;

(*d*) will not prevent or correct abnormalities which result from any of the conditions set out in (a), (b), and (c) above and will not restore the normal functions of the body;

(*e*) will not provide any significant antispasmodic or antipyretic effects;

(*f*) will not produce a healthy blood supply or a healthy body and will not restore normal intestinal function or normal vigor and well being;

(*g*) is not superior to salicylates as an analgesic. On the contrary, salicylates are more effective in relieving pain than the analgesic ingredient in Subenon.

PAR. 8. The use by respondents of the foregoing false and misleading statements and representations, and others of similar nature, disseminated as aforesaid, has had and now has the tendency and capacity to and does mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations are true, and to induce a substantial portion

of the purchasing public, because of such mistaken and erroneous belief, to purchase respondents' preparation.

CONCLUSION

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

ORDER

It is ordered, That respondent Seydel Chemical Co., a corporation, its officers, representatives, agents, and employees, and respondents Herman Seydel and C. H. Seydel, individually and as officers of said corporation, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of Subenon, or any product of substantially similar composition or possessing substantially similar properties, whether sold under the same or any other name, do forthwith cease and desist from directly or indirectly;

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

(*a*) That such product will correct the underlying causes of, or will cure any form or type of rheumatism or arthritis;

(*b*) That such product is an adequate or effective treatment for any form or type of rheumatism or arthritis;

(*c*) That such product is an adequate, effective or reliable treatment for the symptoms or manifestations of rheumatism or arthritis;

(*d*) That such product will alleviate, either permanently or completely, the aches, pains, or discomfort incident to rheumatism or arthritis;

(*e*) That such product will cure rheumatic fever or is an adequate or effective treatment therefor;

(*f*) That such product has any value in the treatment, relief, or cure of "growing pains" in children;

(*g*) That such product will prevent, or correct abnormalities, which may result from any kind of arthritis, rheumatism, or rheumatic fever;

(*h*) That such product will provide any significant antispasmodic or antipyretic effects;

(*i*) That such product will produce a healthy blood supply or a healthy body, or will restore normal intestinal function or normal vigor;

(*j*) That such product is superior to salicylates as an analgesic.

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 Subenon, any advertisement which contains any of the representations prohibited in paragraph 1 of this order.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to respondent Lawless E. West.

ORDER TO FILE REPORT OF COMPLIANCE

It is further ordered, That the respondents, except Lawless E. West, 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].

IN THE MATTER OF

RENE D. LYON CO., 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 5859. Complaint, May 15, 1951[1]*—Decision, Sept. 20, 1951*

In the absence of a disclosure showing the foreign origin of a product, the public understands and believes that it is 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 occupied Japan and China, including expansion watch bands.

Where a corporation and its two officers, engaged in the interstate sale and distribution of imported expansion watch bands, in competition with sellers of such products who adequately disclosed their importation and other sellers of such products of domestic manufacture—

Offered and sold said bands, upon the side of which, when received, the words "Made in Occupied Japan" or "Made in China" were stamped or imprinted, mounted on cards so as to conceal such marking, and enclosed in a cellophane wrapping so as to completely conceal said stamp until after purchase and removal of the wrapper, so that the purchasing public was not informed, until after purchase, of said foreign origin;

With tendency and capacity to mislead the purchasing public into the mistaken belief that said bands were of domestic origin and thereby into the purchase of substantial quantities thereof, and with effect of unfairly diverting trade to them from their competitors, to the substantial injury of competition in commerce; and with the result also of placing in the hands of dealers a means to deceive members of the purchasing public:

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

Before *Mr. Webster Ballinger*, trial examiner.
Mr. William L. Taggart for the Commission.

AMENDED COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Rene D. Lyon Co., Inc., a corporation, and Rene D. Lyon and Donald A. Lyon, 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

[1] Amended.

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

PARAGRAPH 1. Respondent Rene D. Lyon Co., Inc., is a corporation organized and existing under the laws of the State of New York with its office and principal place of business located at 903 Broadway, New York, N. Y. Respondent Rene D. Lyon is the president and respondent Donald A. Lyon is the secretary of the corporate respondent with their address at 903 Broadway, New York, N. Y. Said individual respondents formulate, direct, and control the policies, acts, and practices of the corporate respondent.

PAR. 2. Respondents now and for some time last past have, among other things, been engaged in the sale and distribution of expansion watch bands imported from Occupied Japan and China. In the course and conduct of said business respondents cause said products, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States and 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 business in such commerce is substantial.

PAR. 3. When said bands are received by respondents, the words "Made in Occupied Japan" and "Made in China," as the case may be, are stamped or imprinted on a link on the inside of the bands. Respondents, in the course of their business, wrap certain of said bands in cellophane and attach them to cards after which they are sold and distributed to dealers and ultimately offered for sale to the purchasing public. The wrapping of said bands and the manner in which they are attached to said cards completely conceal the aforesaid markings. At no place on the wrapping or cards, or otherwise, is the fact revealed that said bands are imported. As a result, the purchasing public is not informed, prior to purchase, that said bands are imported as aforesaid.

PAR. 4. In the absence of a disclosure showing that a product is imported, the purchasing public understands and believes that a product is 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 Occupied Japan and China, including expansion watch bands.

PAR. 5. Respondents, in the conduct of their business, are in substantial competition in commerce with other corporations and individuals who sell imported watch bands and who adequately disclose that

such bands are imported and with corporations and individuals who sell watch bands of domestic manufacture.

PAR. 6. The failure of respondents to disclose that the bands wrapped and attached to cards are of foreign origin has the tendency and capacity to mislead the purchasing public into erroneous and mistaken belief that said bands are of domestic origin and into the purchase of substantial quantities thereof, because of such mistaken belief. As a result thereof, trade has been unfairly diverted to respondents from their competitors and substantial injury has been done to competition in commerce.

Through the practices hereinabove set forth, respondents place in the hands of dealers a means and instrumentality whereby such dealers may mislead and deceive members of the purchasing public as to the source of origin of their said bands.

PAR. 7. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair 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 September 20, 1951, the initial decision in the instant matter of trial examiner Webster Ballinger, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WEBSTER BALLINGER, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 15th day of May 1951, issued and subsequently served its amended complaint in this proceeding upon respondents Rene D. Lyon Co., Inc., a corporation and Rene D. Lyon and Donald A. Lyon, individually and as officers of said corporation, charging them and each of them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. The respondents filed no answers. Thereafter a hearing was held at which respondent Donald A. Lyon appeared in his own behalf and for and on behalf of the other respondents. At said hearing testimony and other evidence in support of the allegations of the complaint and testimony in op-

position thereto were introduced before the above-named trial examiner duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said trial examiner on the complaint, testimony, and other evidence (permission to submit proposed findings as to the facts and conclusions was granted, but none were submitted, and oral argument was not requested); and said trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Rene D. Lyon Co., Inc., is a corporation organized and existing under the laws of the State of New York with its office and principal place of business located at 903 Broadway, New York, N. Y. Respondent Rene D. Lyon is the president and respondent Donald A. Lyon is the secretary of the corporate respondent with their address at 903 Broadway, New York, N. Y. Said individual respondents formulate, direct, and control the policies, acts, and practices of the corporate respondent.

PAR. 2. Respondents now and for some time last past have, among other things, been engaged in the sale and distribution of expansion watch bands imported from Occupied Japan and China. In the course and conduct of said business respondents cause said products, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States and 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 business in such commerce is substantial.

PAR. 3. Respondents, in the conduct of their business, are in substantial competition in commerce with other corporations and individuals who sell imported watch bands and who adequately disclose that such bands are imported and with corporations and individuals who sell watch bands of domestic manufacture.

PAR. 4. When said imported bands are received by respondents, the words "Made in Occupied Japan" or "Made in China," as the case may be, are stamped or imprinted on a link on the under or lower side of the bands. Respondents, in the course of their business, attach certain of the bands to cards so affixed as to conceal the marking of foreign origin, and seal the entire surface of the card with a cello-

phane wrapping, leaving only the top side visible and completely concealing the stamp showing the foreign origin of the band so that the purchaser has no notice until after purchase and the removal of the cellophane wrapper and the band from the card that the band is of foreign origin. Nowhere on the wrapping or cards, or otherwise, is the fact revealed that said bands are imported. As a result, the purchasing public is not informed, prior to and until after purchase, that said bands are imported from Japan or China.

PAR. 5. In the absence of a disclosure showing that a product is of foreign origin the public understands and believes that it is 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 Occupied Japan and China, including expansion watch bands.

PAR. 6. The failure of respondents to disclose that the bands wrapped and attached to cards are of foreign origin has the tendency and capacity to mislead the purchasing public into the erroneous and mistaken belief that said bands are of domestic origin and into the purchase of substantial quantities thereof, because of such mistaken belief. As a result thereof, trade has been unfairly diverted to respondents from their competitors and substantial injury has been done to competition in commerce.

Through the practices hereinabove found, respondents place in the hands of dealers a means and instrumentality whereby such dealers may mislead and deceive members of the purchasing public as to the source of origin of their said bands.

CONCLUSION

The aforesaid acts and practices of respondents, as set forth in the findings of fact, are all to the prejudice and injury of the public 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 respondent Rene D. Lyon Co., Inc., a corporation, its directors, officers, representatives, agents and employees, and respondents Rene D. Lyon and Donald A. Lyon, individually, directly or through any corporate device in connection with the offering for sale, sale, and distribution of expansion or other watch or wrist bands, or other similar products, in commerce, as "commerce" is defined in

the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale or selling expansion or other wrist bands which are imported from any foreign country without affirmatively disclosing thereon or in immediate connection therewith such foreign origin.

2. Representing in any manner that expansion or other wrist bands of foreign manufacture are of domestic manufacture.

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 September 20, 1951].

IN THE MATTER OF

SAMUEL ELIAS AND JACK OSTROW DOING BUSINESS AS MUTUAL TOGS CO.

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

Docket 5861. Complaint, Mar. 23, 1951—Decision, Sept. 20, 1951

Where two partners engaged in the manufacture and introduction into commerce, and offer, sale, and distribution therein, of wool products as defined in the Wool Products Labeling Act—

Misbranded ladies' skirts within the intent and meaning of said act and the rules and regulations promulgated thereunder in that, (1) contrary to the labels affixed thereto, they were not 60 percent "wool," as there defined, and they contained more than 40 percent of rayon; and, (2) the labels affixed thereto did not show the aggregate of all other fibers, each of which constituted less than 5 percent of the total fiber weight:

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

As respects the charge in the complaint that respondents removed tags affixed to the piece goods received from the manufacturer, and substituted tags and labels which contained different information: said charge, while true, was dismissed as not properly subject to the charge of violation of the Act under the circumstances.

Before *Mr. James A. Purcell*, trial examiner.
Mr. Russell T. Porter for the Commission.
Mr. Harold Henry, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that Sam Elias and Jack Ostrow, individually and as copartners doing business as Mutual Togs Co., hereinafter referred to as respondents, have violated the provisions of said acts and rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The Mutual Togs Co. is a partnership. Samuel Elias and Jack Ostrow, individually and as copartners doing business as Mutual Togs Co., are in control of the operations of the said company, whose principal place of business is located at 6605 Twentieth Avenue, Brooklyn 2, N. Y.

PAR. 2. Subsequent to May 1950, respondents manufactured for introduction into commerce, introduced into commerce, offered for sale in commerce, and sold and distributed in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool products" are defined therein. The said wool products included ladies' skirts which were made by respondents from a fabric designated as "Parker-Wilder 1121," purchased from Strand Woolen Co.

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

Mutual Togs Company
60% Wool
40% Rayon
Exclusive Ornamentation

PAR. 4. The said skirts were misbranded within the intent and meaning of said act and the rules and regulations promulgated thereunder, in that they were falsely and deceptively labeled with respect to the character and amount of their constituent fibers. In truth and in fact, the said skirts were not 60 percent wool as "wool" is defined in said act; the aggregate of the woolen fibers therein constituted less than 60 percent of the said skirts and they contained more than 40 percent of rayon. Said articles were further misbranded in that the labels affixed thereto did not show the aggregate of all other fibers, each of which constituted less than 5 percent of the total fiber weight.

PAR. 5. The person by whom the piece goods, from which said skirts were made by respondents, were manufactured for introduction into commerce affixed thereto labels and tags as required by said Act containing information with respect to its fiber content as follows:

20% Wool
30% Reprocessed Wool
50% Rayon.

Respondents have further violated the provisions of the Wool Products Labeling Act of 1939 by substituting for said tags and affixing to the said skirts tags and labels containing information set forth in paragraph 3 herein with respect to the content thereof which was not identical with the information with respect to such content upon the tags and labels as affixed to the wool product from which said

skirts were made by the person by whom it was manufactured for introduction into commerce.

PAR. 6. The aforesaid acts and practices of respondents as herein alleged were in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's rules of practice and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated September 20, 1951, the initial decision in the instant matter of trial examiner James A. Purcell, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JAMES A. PURCELL, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission on March 23, 1951, issued and subsequently served its complaint in this proceeding upon the respondents, Samuel Elias and Jack Ostrow, individually and as copartners doing business as Mutual Togs Co., charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of those acts. On April 12, 1951, respondents filed their answer to said complaint admitting all of the material allegations of fact therein set forth but alleging that the misbranding arose through inexperience in the trade and unfamiliarity with the acts cited; that since discovery of their violations as charged, respondents have taken all necessary steps to avoid future violations. Also, in said answer, respondents requested the privilege of entering into a stipulation with the Commission to cease and desist from the acts complained of which request was, on April 17, 1951, denied by formal order of the examiner. Proposed findings and conclusions were directed to be filed before May 4, 1951, pursuant to which order the attorney in support of the complaint did, on April 23, 1951, file proposed findings and conclusions, but none were submitted by respondents. Thereafter, the proceeding regularly came on for final consideration by the above-named trial examiner theretofore duly designated by the Commission upon said complaint and respondents' answer thereto; and said trial examiner, having duly

considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusions drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Samuel Elias and Jack Ostrow, individually, and as copartners doing business as Mutual Togs Co., with principal place of business located at 6605 Twentieth Avenue, Brooklyn, N. Y., are named as respondents and as such are in control of the operations of the Mutual Togs Co.

PAR. 2. Subsequent to the month of May 1950, respondents manufactured for introduction into commerce, introduced into commerce, offered for sale in commerce, and sold and distributed in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool products" are defined therein. The said wool products included ladies' skirts which were made by respondents from a fabric designated as "Parker-Wilder 1121," purchased from the Strand Woolen Co.

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

Mutual Togs Company
60% Wool
40% Rayon
Exclusive Ornamentation

PAR. 4. The said skirts were misbranded within the intent and meaning of said act, and the rules and regulations promulgated thereunder, in that they were falsely and deceptively labeled with respect to the character and amount of their constituent fibers. In truth and in fact, the said skirts were not 60 percent wool, as "wool" is defined in said act; the aggregate of the woolen fibers therein constituted less than 60 percent of the said skirts and they contained more than 40 percent of rayon. Said articles were further misbranded in that the labels affixed thereto did not show the aggregate of all other fibers, each of which constituted less than 5 percent of the total fiber weight.

PAR. 5. When the piece goods, from which said skirts were manufactured, was received by the respondents such piece goods had affixed thereto by the manufacturer thereof, labels and tags as required by said act containing information with respect to its fiber content as follows:

20% Wool
30% Reprocessed Wool
50% Rayon

Respondents did remove the tags and labels from such piece goods and substituted therefor, attaching same to said skirts, the labels as set forth in paragraph 3 hereof, the information contained in the two described tags or labels being at variance, one with the other, as will be seen upon comparison.

CONCLUSION

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

The charge contained in paragraph 5 of the complaint, as found to be true in these findings as to the facts (par. 5), setting forth an alleged violation by respondents in that the tags affixed to the piece goods, as received by respondents from the manufacturer thereof, were removed and in place thereof were substituted, by respondents, the tags and labels set forth in paragraph 3 hereof, is dismissed as not properly subject to the charge of violation of the act under the circumstances hereof.

ORDER

It is ordered, That the respondents Samuel Elias and Jack Ostrow, individually, and as copartners doing business as Mutual Togs Co., their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the sale, transportation, or distribution in commerce, as "commerce" is defined in the aforesaid acts, of ladies' skirts or other wool products, as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool," or "reused wool," as those terms are defined in said act, do forthwith cease and desist from misbranding such products:

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

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

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

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

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

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

Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (*a*) and (*b*) of section 3 of the Wool Products Labeling Act of 1939: *And provided further*, That nothing contained in this order shall be construed as limiting any applicable provisions of said act of the rules and regulations promulgated thereunder.

The charge of substitution of tags and labels by respondents, as charged in paragraph 5 of the complaint, is dismissed, such acts not being properly chargeable as a violation of the Act under the circumstances and conditions of the instant matter.

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 September 20, 1951].