

IN THE MATTER OF  
INTERNATIONAL CELLUCOTTON PRODUCTS COMPANY

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

*Docket 5883. Complaint, May 24, 1951—Decision, Nov. 13, 1951*

Where a corporation long engaged in the competitive interstate sale and distribution to wholesale and retail outlets of about seventy per cent of the sanitary napkins and about fifty per cent of the facial tissues purchased by the public in the United States; and through *del credere* arrangements or factory agreements with substantially all of the wholesale drug companies in the United States, and with many wholesale dry goods companies who retained 15 per cent on the single case selling price of the gross sales they made to retail outlets, and who were in competition with one another, as were many of their retail outlets—

Paid to said *del credere* agents or factors an additional special commission of 4½% semi-annually on all sales with the provisions that the factor, at respondent's request, conduct special promotions, including point of sale retail merchandising, and (a) furnish it with such information as it specified relating to the merchandising of products by the factor's customers, (b) permit attendance of its representatives at the factor's sales meetings, and (c) "to the extent that employees of Factor have received any special inducement in any form from Factor, or any other sources, for the sale or promotion of a commodity in competition with a product of [respondent] International provide an equivalent inducement to employees with International's competing product \* \* \* hereunder";

With the result that its said factors, who were not required by it under said conditions to spend the entire amount of additional compensation thus received, and whose sales of said corporation's "Kotex" and "Kleenex" products to retail outlets were approximately three times as great as the combined sales of similar products of all of respondent's competitors, were reluctant to permit respondent's competitors to make promotional payments or inducements to said factors' employees, since that would require them to make equivalent payments or inducements to their own employees to promote respondent's products, not otherwise required, and, by reason of the ratio of respondent's sales to the sales of competing products, to expend approximately three times the amount granted to the factor or any of its employees for promoting the sanitary products of a competitor;

With tendency to prevent its said *del credere* agents or factors or any of their employees from promoting the sale of competitive sanitary products, and with effect of so doing in many cases:

**Held**, That such arrangements and agreements were all to the prejudice of the public; had a dangerous tendency to create a monopoly in said corporation in the sale and distribution of sanitary products in commerce; suppressed and lessened competition in the sale and distribution in commerce of such products; had a capacity and tendency to restrain unreasonably and did restrain unreasonably such commerce therein; and constituted an unfair method of competition in commerce.

Before *Mr. James A. Purcell*, trial examiner.  
*Mr. Fletcher G. Cohn*, *Mr. Robert F. Quinn* and *Mr. Paul H. LaRue*  
for the Commission.  
*Crowell & Leibman*, of Chicago, Ill., for respondent.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the International Cellucotton Products Company has violated 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. Respondent, International Cellucotton Products Company, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 919 North Michigan Boulevard, Chicago, Illinois.

PAR. 2. Respondent is now, and for many years last past, has been engaged principally in the distribution and sale of sanitary napkins under the brand name "Kotex" and facial tissues under the trade name "Kleenex," which are commonly known as "sanitary products" and hereinafter referred to as such, and of related products. While the aforementioned products are not manufactured by the respondent, they are manufactured for it by various subsidiary corporations and by manufacturers of paper products which are located in various States of the United States.

Respondent distributes and sells its sanitary products to various retail outlets, which resell same to the consuming public, through and by means of consignment arrangements or "factor" agreements with substantially all of the wholesale drug companies in the United States, as well as many wholesale dry goods companies located in different States.

Under the terms of the said arrangements or agreements, the aforesaid wholesale drug and dry goods companies become del credere agents of the respondent. All of said agents, who are called "factors," receive a certain definite percentage, usually 15 percent, on the gross sales they make to the retail outlets, which they retain before remitting to respondent the proceeds of said sales. Many of said consignees or factors of the respondent, as well as many of the retail outlets for such products to whom said consignees sell same for purposes of

resale to the consuming public, are in competition in their respective lines of commerce in the sale and distribution of said sanitary products. The retail sales of Kotex for the year ending December 31, 1947, amounted to approximately \$41,500,000, and for Kleenex approximately \$32,000,000.

PAR. 3. In the course and conduct of its aforesaid business, respondent, for many years last past, has shipped or caused to be shipped, and now ships or causes to be shipped, across State lines and into the District of Columbia the aforesaid sanitary products from plants where they are manufactured to the aforesaid wholesale drug and dry goods companies as consignees or factors, the majority of whom are in States of the United States other than the States of origin of such shipments.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in the aforementioned sanitary products in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 4. Except insofar as it has been affected, in the manner hereinafter alleged, respondent, in the course and conduct of its said business has been, and is in competition with other corporations, individuals, partnerships and firms which were and are engaged in manufacturing, selling and distributing in "commerce," as commerce is defined by the Federal Trade Commission Act, sanitary products similar in composition and used for the same purposes as the sanitary products of the respondent.

PAR. 5. The following provisions appear in the aforesaid consignment or factor's agreements between respondent and its *del credere* consignees, agents or factors:

"9. *Special Promotions and Commission Therefor.*

Factor will exert Factor's best efforts to promote and increase the sales of products to retailers, and in connection therewith, at the request of International, which request shall not be made more than six times in any calendar year, Factor shall conduct special promotions of a character and at time specified by International, including point of sale retail merchandising; and shall: (a) furnish International with such information as International shall specify relating to the merchandising of products by Factor's customers; (b) permit attendance of International representatives at Factor's sales meetings, and (c) *to the extent that employees of Factor have received any special inducement in any form from Factor, or any other sources, for the sale or promotion of a commodity in competition with a product of International, provide an equivalent inducement to em-*

*ployees with respect to International's competing product during International's next promotion hereunder. (Italics supplied.)*

To reimburse Factor for such efforts and promotions, International will pay to Factor semi-annually after January 1 and July 1 of each year of all sales of products made during the preceding six months a special commission of  $4\frac{1}{3}\%$  computed upon Factor's single case selling prices in effect at the time of Factor's sales."

The purpose and intended effect of these provisions, especially of the above underscored clause, in the said arrangement or agreement, which respondent requires all of its consignees or factors to enter into, has been, and is to prevent said consignees or factors from promoting by any means or methods the sale by them, or similar sanitary products of respondent's competitors. Under the aforesaid provisions, to the extent that employees of a consignee or factor have received any special inducement in any form, including payments of money, either from the consignee or factor or from any other sources, including respondent's competitors, for the sale or promotion of products which compete with those of respondent, the consignee or factor must provide an equivalent inducement, in the form of money or otherwise to said employees with respect to respondent's products; said equivalent inducements must be paid or given during respondent's next promotion period.

PAR. 6. Furthermore, under the aforequoted provisions the consignee or factor is paid automatically by the respondent, semi-annually after January 1 and July 1 of each year on all sales of respondent's products made during the preceding six months, the aforesaid additional amount of  $4\frac{1}{3}$  percent.

From said additional amounts so paid, the consignees or factors reimburse themselves for expenditures made by them for the sale or promotion of respondent's products as well as for amounts they have had to pay their employees to match equivalently all inducements or allowances in any form which said employees received for selling or promoting competing products.

It is only to the extent that such expenditures and equivalent amounts or inducements are made or paid by a consignee or factor, that the aforesaid  $4\frac{1}{3}$  percent, the entire amount of which said consignee or factor receives from respondent, is affected. Since the respondent infrequently requires its consignees or factors to make expenditures for the sale or promotion of its products, and then only for small amounts, the aforesaid  $4\frac{1}{3}$  percent has been, and is to a very large extent, in the nature of extra compensation to the consignees or factors. For this reason, the consignees or factors have been, and are

reluctant to permit respondent's competitors to make promotional payments or inducements in any form to said consignees' or factors' employees, since they would have to make equivalent payments or inducements to the employees to promote respondent's products, which they otherwise would not do, or be required to do, were it not for the aforesaid provisions.

PAR. 7. The total purchases by the public of the respondent's sanitary products represent approximately 72 percent of the sanitary napkins and 66 percent of the facial tissues sold in the United States. The ratio of said consignees' or factors' sales of respondent's said products to retail outlets is approximately three times as great as their combined sales of similar products of all of respondent's competitors. Thus, under the aforequoted provisions, if such a consignee or factor, or any of its employees, is granted any amount by one of respondent's competitors for promoting the said sanitary products of a competitor, dependent on the amount sold, the consignee or factor would be required to expend approximately three times that amount for promoting respondent's products. These provisions and requirements have thus tended to prevent, and, in many cases, have prevented, respondent's consignees or *del credere* agents or factors or any of their employees from promoting the sale of similar sanitary products offered to the purchasing public in competition with those of respondent.

PAR. 8. The provisions, acts, practices, methods, arrangements and agreements, as herein set out and alleged, are all to the prejudice of the public; have a dangerous tendency to create a monopoly in respondent in the sale and distribution of sanitary products in commerce; have frustrated, hindered, suppressed and lessened competition in the sale and distribution in commerce of sanitary products within the meaning of the Federal Trade Commission Act; have a capacity and tendency to restrain unreasonably, and have restrained unreasonably, such commerce in said products; and constitute unfair methods of competition 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 November 13, 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 by virtue of the authority vested in it by said Act, the Federal Trade Commission on May 24, 1951, issued and subsequently served its complaint in this proceeding upon the respondent, International Cellucotton Products Company, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said Act. On July 12, 1951, respondent filed its answer, in which answer it admitted all of the material allegations of facts set forth in said complaint, but denied that such fact as alleged were committed with the purpose or intended effect of preventing its customer *del credere* factors from promoting the sale by them of the products of respondent's competitors or that such acts have in fact resulted in such a culmination. Said answer further denied that respondent's acts are to the prejudice of the public; or have a dangerous tendency to create a monopoly in respondent in the sale of its products; or have hindered or lessened competition in the sale and distribution of sanitary products within the meaning of the Act; or have a capacity or tendency to restrain unreasonably, or have restrained unreasonably, commerce in such products; or that such acts constitute unfair methods of competition within the intent and meaning of section 5 of the Federal Trade Commission Act. Said answer contains certain reservations to the respondent not necessary to be here considered, and which do not affect the issues herein.

No hearings were held for the taking of testimony, but formal pre-trial hearing was had at Chicago, Illinois, on July 1, 1951, before the above-named trial examiner, at which hearing certain evidence was received by stipulation and formal admissions made by counsel, all of which was necessary to clarify certain facts, circumstances and conditions at variance with the provable charges in the complaint and to supply or supplement certain deficiencies of the complaint, all of which were necessary to be of record to support the findings and conclusions hereinafter set forth. The proceedings had at this hearing, and the evidence received, were duly recorded and filed in the office of the Commission.

Thereafter the proceeding regularly came on for final consideration by the above-named trial examiner theretofore duly designated by the Commission upon said complaint and answer thereto; the record of the proceedings as above stated; proposed findings and conclusions submitted by counsel for all parties, oral argument not having been

requested, and said trial examiner, having duly considered the entire record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusions drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, International Cellucotton Products Company, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 919 North Michigan Boulevard, Chicago, Illinois.

PAR. 2. Respondent is now, and for many years last past has been, engaged principally in the distribution and sale of sanitary napkins under the brand name "Kotex," and of facial tissues under the trade name "Kleenex," which are commonly known as "sanitary products" and hereinafter referred to as such, and of related products. While the aforementioned products are not manufactured by the respondent, they are manufactured for it by various manufacturers of paper products which are located in various States of the United States.

Respondent distributes and sells its sanitary products to various wholesale and retail outlets, which resell same to the consuming public, and also through and by means of *del credere* arrangements or "factor" agreements with substantially all of the wholesale drug companies in the United States, as well as many wholesale dry goods companies located in different States.

Under the terms of the said arrangements or agreements, the aforesaid wholesale drug and dry goods companies become *del credere* agents of the respondent. All of said agents, who are called "factors," receive a certain definite percentage, namely 15 percent, on the single case selling price of the gross sales they make to the retail outlets, which percentage is retained before remitting to respondent the proceeds of said sales. Many of said factors of the respondent, as well as many of the retail outlets for such products to whom said factors sell same for purposes of resale to the consuming public, are in competition in their respective lines of commerce in the sale and distribution of said sanitary products.

Respondent's sales of Kotex for the year ending December 31, 1947, amounted to approximately \$41,500,000.00, and of Kleenex, approximately \$32,000,000.00, or a combined sales volume for that year amounting to \$73,500,000.00. Combined sales of the two products have been \$87,000,000.00 for the year 1948; \$95,000,000.00 for the year 1949, and \$102,000,000.00 for the year 1950.

PAR. 3. In the course and conduct of its aforesaid business, respondent, for many years last past, has shipped or caused to be shipped, and now ships or causes to be shipped, across State lines and into the District of Columbia, the aforesaid sanitary products from plants where they are manufactured, to the aforesaid wholesale drug and dry goods companies, as factors, the majority of whom are in States of the United States other than States of origin of such shipments.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in the aforementioned sanitary products in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 4. Except insofar as it has been affected, in the manner hereinafter set forth, respondent, in the course and conduct of its said business, has been and is in competition with other corporations, individuals, partnerships, and firms which were and are engaged in manufacturing, selling and distributing in commerce, as "commerce" is defined by the Federal Trade Commission Act, sanitary products similar in composition and used for the same or similar purposes as the sanitary products of the respondent.

PAR. 5. The following provisions appear in the aforesaid agreements between respondent and its *del credere* agents or factors:

*"9. Special Promotions and Commission Therefor.*

Factor will exert Factor's best efforts to promote and increase the sales of products to retailers, and in connection therewith, at the request of International, which request shall not be made more than six times in any calendar year, Factor shall conduct special promotions of a character and at times specified by International, including point of sale retail merchandising; and shall (a) furnish International with such information as International shall specify relating to the merchandising of products by Factor's customers; (b) permit attendance of International representatives at Factor's sales meetings, and (c) *to the extent that employees of Factor have received any special inducement in any form from Factor, or any other sources, for the sale or promotion of a commodity in competition with a product of International provide an equivalent inducement to employees with International's competing product during International's next promotion hereunder.* (Italics supplied. )

To reimburse Factor for such efforts and promotions, International will pay to Factor semiannually after January 1 and July 1 of each year on all sales of products made during the preceding six months a special commission of 4½% computed upon Factor's single case selling prices in effect at the time of Factor's sales."



The effect of the foregoing provisions (especially of the under-scored clause), in the said arrangement or agreement, which respondent requires all of its factors to execute, has been and is to prevent said factors from promoting by any means or methods the sale by them of similar sanitary products of respondent's competitors, except under the disadvantages and penalties as hereinafter found to result as a necessary and inevitable consequence of said agreement. Under the aforesaid provisions, to the extent that employees of a factor have received any special inducement in any form, including payments of money, either from the factor or from any other sources, including respondent's competitors, for the sale or promotion of products which compete with those of respondent, the factor must provide an equivalent inducement, in the form of money or otherwise, to said employees with respect to the promotion of the sale of respondent's products; said equivalent inducement must be paid or given during respondent's next ensuing promotion period.

PAR. 6. Under the aforesaid provisions the factor is paid by the respondent, semiannually after January 1 and July 1 of each year on all sales of respondent's products made during the preceding six months, the aforesaid additional amount of  $4\frac{1}{3}\%$ .

From said additional amounts so paid by reason of the  $4\frac{1}{3}\%$  clause, the factors reimburse themselves for expenditures made by them for the sale or promotion of respondent's products, as well as for amounts they have, or may have, had to pay their employees to match equivalently all inducements or allowances in any form which said employees received for selling or promoting the sale of competing products.

It is only to the extent that such expenditures and equivalent amounts or inducements are made or paid by a factor, that the aforesaid  $4\frac{1}{3}\%$ , the entire amount of which said factor receives from respondent, is affected. Since the respondent does not require its factors to make expenditures for the sale or promotion of its products equal to the aforesaid entire  $4\frac{1}{3}\%$ , it has been and is, to a substantial extent, in the nature of extra compensation to the factors. Prior to the calendar year 1950 respondent's factors were not required to expend any specific amount for promotional purposes in order to be entitled to receive the  $4\frac{1}{3}\%$  promotional allowance. During the year 1950 respondent required its factors to expend 50% of the amount of the  $4\frac{1}{3}\%$  promotional allowance for the promotion of its products in order to be entitled to receive any part of the said promotional allowance. Respondent's factors are now required to expend 75% of the amount of the said  $4\frac{1}{3}\%$  promotional allowance in order to become eligible for said discount. For this reason the factors have been, and

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are, reluctant to permit respondent's competitors to make promotional payments or inducements in any form to said factors' employees, because said factors would be required to make equivalent payments or inducements to their employees to promote respondent's products, which they otherwise would not do, or be required to do, were it not for the aforesaid contractual requirements.

PAR. 7. The total purchases by the public of the respondent's sanitary products represent approximately 70% of the sanitary napkins and approximately 50% of the facial tissues sold in the United States, thus placing respondent in an outstanding and dominant position in the industry. The ratio of said factors' sales of respondent's said products to retail outlets is approximately three times as great as their combined sales of similar products of all of respondent's competitors. Thus, under the aforequoted provisions, if such factor or any of its employees is granted any sum of money or other consideration by one of respondent's competitors for promoting the sanitary products of such competitor, dependent on the amount sold, the factor would be required to expend approximately three times such amount for promoting respondent's products, by reason of the ratio which the sale of respondent's products bears to the sale of competing products. These provisions and requirements have thus tended to prevent, and in many cases have prevented, respondent's *del credere* agents or factors, or any of their employees, from promoting the sale of similar sanitary products offered to the purchasing public in competition with those of respondent.

#### CONCLUSIONS

The provisions, acts, practices, methods, arrangements and agreements, as herein found to exist, are all to the prejudice of the public; have a dangerous tendency to create a monopoly in respondent in the sale and distribution of sanitary products in commerce; have frustrated, hindered, suppressed and lessened competition in the sale and distribution in commerce of sanitary products within the meaning of the Federal Trade Commission Act; have a capacity and tendency to restrain unreasonably, and have restrained unreasonably, such commerce in said products; and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

#### ORDER TO CEASE AND DESIST

*It is ordered*, That respondent, International Cellucotton Products Company, a corporation, its officers, representatives, agents and em-

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ployees, directly or through any corporate or other device, in offering for sale, sale or distribution of sanitary products, now commonly known under the brand or trade names of "Kotex" and "Kleenex," or by any other name or designation, and of related products, in commerce, as "commerce" is defined by the Federal Trade Commission Act, do forthwith cease and desist:

From granting or paying any promotional allowance, in the form of money or otherwise, in connection with any requirement for a promotional activity by any consignee, factor, *del credere* factor or agent, agent or purchaser of said products, or by an employee or representative of any of them, upon terms or conditions made by respondent, which cause or tend to cause such consignee, factor, *del credere* factor or agent, agent or purchaser, or an employee or representative of any of them, to refrain or abstain from accepting or using promotional activities or allowances offered or paid by a competitor of respondent.

## ORDER TO FILE REPORT OF COMPLIANCE

*It is ordered,* That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist (as required by said declaratory decision and order of November 13, 1951).

## Complaint

IN THE MATTER OF  
 NORMAN L. ROTHSTEIN TRADING AS EUREKA WOOLEN  
 MILLS, ETC. ET AL.

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 5806. Complaint, Sept. 6, 1950—Decision, Nov. 15, 1951*

Where an individual engaged in the sale and distribution of blankets, blanket robes, panting cloth and skirting cloth, along with two partners who acted as his sales agents and distributed blankets at wholesale—

- (a) Represented through circulars, newspaper advertising and other advertising media that his said blankets and other products were 100 percent wool, when in fact they contained in part fibers other than wool;
- (b) Misbranded certain blankets in violation of the Wool Products Labeling Act, through the use thereon of labels which stated in one place that they were "100% Wool" and in another "30% New, 70% Re-Processed"; with effect of confusing and deceiving the purchasing public as to their fiber content, and with capacity and tendency so to do;
- (c) Misbranded certain piece goods and blankets in that they failed to affix thereto the stamp, tag, label or other means of identification giving the information required by said Act;
- (d) Sent out samples of swatches and specimens of their wool products to prospective customers without labels to show their fiber content and other information required by said Act; and
- (e) Made use of the term "Virgin" as descriptive of wool products which were not composed wholly of Virgin wool which had never been used, or reclaimed, reworked, reprocessed or reused from any spun, woven, knitted, felted or manufactured or used product:

*Held*, That such acts, practices and methods, under the circumstances set forth, were in violation of said Wool Act and rules and regulations, and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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

*Mr. Jesse D. Kash* for the Commission.

*Mrs. Clarissa Shortall* and *Mr. Richard C. Shortall*, of San Francisco, Calif., 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 Norman L. Rothstein, an individual trading as Eureka Woolen Mills, Humboldt Bay Woolen Mills and

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Humboldt Bay Woolen Co. and Edwin B. Schwinger and Richard N. Goldman, copartners trading and doing business as Goldman-Schwinger & 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. Norman L. Rothstein is an individual trading as Eureka Woolen Mills, Humboldt Bay Woolen Mills, and Humboldt Bay Woolen Co., with his office and principal place of business located at Eureka, California.

Said respondent is now and for more than a year last past has been engaged in the distribution of blankets, blanket robes, panting cloth and skirting cloth.

Respondents Edwin B. Schwinger and Richard N. Goldman are individuals and copartners trading and doing business as Goldman-Schwinger & Co. with their office and principal place of business located at 24 California St., San Francisco, California. Said individuals are sales agents for respondent Norman L. Rothstein, trading as Eureka Woolen Mills, and are now and for more than a year last past have been engaged in the wholesale distribution of blankets.

PAR. 2. In the course and conduct of their aforesaid business, respondent Norman L. Rothstein, trading as above set forth and for the purpose of inducing the purchase of his blankets, panting cloth and skirting cloth has circulated and is now circulating among prospective purchasers throughout the United States by United States mails circulars, newspaper advertising, and other advertising media many statements and representations concerning his said products. Among and typical of such statements and representations disseminated as aforesaid are the following:

[Swatch]

[Swatch]

FOR YOUR BLANKET NEEDS

For the first time we offer you our Standard Hotel Blanket direct from our Mill.

Specifications are as follows:

CONTENT.....	100% wool
MEASUREMENTS.....	double bed size 72" x 84"
WEIGHT.....	over 4 pounds
EDGES.....	whip stitched

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We are pleased to quote the following attractive prices f. o. b. your establishment:

HEATHER GREY.....	\$6.90
FOREST GREEN, DEEP BLUE and MAROON.....	7.90

(please examine the above swatches for quality and color)

On orders of six or more blankets we will letter on each blanket individually the name of your establishment in three inch script. There will be no charge for this additional service.

At the time of this offering we are able to quote almost immediate delivery.

Trusting that we may have the pleasure of filling your blanket needs, we are

Very truly yours,

EUREKA WOOLEN MILLS,  
*Blanket Division.*

HUMBOLDT BAY WOOLENS

EUREKA WOOLEN MILLS,  
*Eureka, California.*

OF INTEREST TO YOU

For the convenience of your students, the Eureka Woolen Mills have instituted a new service to simplify choosing fine quality woolens.

Enclosed, you will find samples of present lines of our skirt and dress weight materials, and suit and coat weight woolens.

Our materials are all-wool and are from 58 to 60 inches wide.

From the enclosed samples your students may make their selections and order from our mill by direct mail.

As a woolen mill, we retain only a few bolts of each running pattern, so when making your selection, a second choice would be appreciated.

The Eureka Woolen Mills are located where long staple coastal wool is produced and have been manufacturing fine woolens for over 60 years.

We shall be pleased to be of service to you.

Sincerely,

EUREKA WOOLEN MILLS.

PAR. 3. Through the statements and representations set forth above respondent Normal L. Rothstein trading as Eureka Woolen Mills, Humboldt Bay Woolen Mills and Humboldt Bay Woolen Co. represents and has represented that his blankets and other products are made of 100 percent wool.

The foregoing representations are grossly exaggerated, false and misleading and in truth and in fact, respondents' blankets and other woolen material are not composed entirely of wool but contain in part fibers other than wool.

PAR. 4. Respondents' said wool products are composed in whole or in part of wool, reprocessed wool or reused wool, as these terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said Act and the Rules and Regula-

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tions promulgated thereunder. Since July 15, 1941, respondents have violated the provisions of said Act and said Rules and Regulations in the manufacture for introduction, and in the introduction into commerce and in the sale, transportation and distribution of said wool products in said commerce, by causing said wool products to be misbranded within the intent and meaning of said Act and said Rules and Regulations.

Among the said wool products sold and distributed by respondents in commerce as aforesaid are blankets which carry labels showing conflicting fiber content information. Among and typical of the conflicting labels used respondents as aforesaid is the following:

Humboldt Bay

All Purpose Blanket

Manufactured by

EUREKA WOOLEN MILLS

100% Wool\*

Approx. 3½ pounds

62 x 82 inches

\*30% New, 70% Re-Processed

The use on a blanket of a label which states in one place that said blankets are composed of "100% wool" and at another place states the content as "30% new, 70% re-processed" is conflicting and has the capacity and tendency to confuse and deceive and does confuse and deceive the purchasing public as to the fiber content of said blankets, and is a violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder.

PAR. 5. Among the wool products manufactured for introduction into commerce by respondents and introduced into commerce, sold, transported and distributed in commerce by respondents are piece goods and blankets. Exemplifying respondents' practice of violating said Act and the Rules and Regulations promulgated thereunder is their misbranding of the aforesaid wool products in violation of the provisions of said Act and the said Rules and Regulations by failing to affix to said wool products a stamp, tag, label or other means of identification, or a substitute in lieu thereof, as provided by said Act, showing (a) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding five percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool,

(4) each fiber other than wool where said percentum by weight of such fiber was five percentum or more, and (5) the aggregate of all other fibers; (b) the maximum percentage of the total weight of the wool product nonfibrous loading, filling, or adulterating matter; (c) the percentages in words and figures plainly legible by weight of the wool content of such wool product where said wool product contains a fiber other than wool; (d) the name of the manufacturer of the wool product or the name of one or more persons subject to section 3 of said Act with respect to such wool product, or the registered identification number of such person or persons as provided for in Rule 4 of the Regulations as amended.

The misbranded wool products referred to above were introduced, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce by each of the respondents.

PAR. 6. In addition to the acts and practices hereinabove set forth, the respondents, to promote the sale of their wool products in commerce, have sent out samples of swatches and specimens of their wool products to prospective customers without labeling said sample swatches and specimens to show their respective fiber contents and other information required by the Wool Products Labeling Act of 1939, and using the term "Virgin" as descriptive of their wool products when the products so described are not composed wholly of Virgin wool which has never been used, or reclaimed, reworked, repossessed or reused from any spun, woven, knitted, felted or manufactured or used product.

PAR. 7. The aforesaid acts, practices and methods of the respondents, as alleged herein, were and are in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and section 5 of the Federal Trade Commission Act as amended, 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 November 15, 1951, the initial decision in the instant matter of Trial Examiner John W. Addison, as set out as follows, became, on that date, the decision of the Commission.



## INITIAL DECISION BY JOHN W. ADDISON, 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 September 6, 1950, issued and subsequently served its complaint in this proceeding upon Norman L. Rothstein, individually and trading as Eureka Woolen Mills, Humboldt Bay Woolen Mills, and Humboldt Bay Woolen Co., and Edwin B. Schwinger and Richard N. Goldman, individually and as copartners trading and doing business as Goldman-Schwinger & Co., charging them with the use of acts, practices and methods in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and section 5 of the Federal Trade Commission Act and constituting unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. After filing their original answers to the complaint, respondents requested and obtained leave to withdraw said answers and to substitute therefor answers admitting all of the material allegations of fact in the complaint and waiving all intervening procedure and further hearings as to the facts. These substitute answers were in due course filed in the office of the Commission. 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 answers thereto, all intervening procedure having been waived, no proposed findings and conclusions having been presented by counsel, and oral argument not having been requested; and said trial examiner having 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. Norman L. Rothstein is an individual trading as Eureka Woolen Mills, Humboldt Bay Woolen Mills, and Humboldt Bay Woolen Co., with his office and principal place of business located at Eureka, California.

Said respondent is now and for more than a year last past has been engaged in the distribution of blankets, blanket robes, panting cloth and skirting cloth.

Respondents Edwin B. Schwinger and Richard N. Goldman are individuals and copartners trading and doing business as Goldman-Schwinger & Co. with their office and principal place of business

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located at 24 California St., San Francisco, California. Said individuals are sales agents for respondent Norman L. Rothstein, trading as Eureka Woolen Mills, and are now and for more than a year last past have been engaged in the wholesale distribution of blankets.

PAR. 2. In the course and conduct of their aforesaid business, respondent Norman L. Rothstein, trading as above set forth and for the purpose of inducing the purchase of his blankets, panting cloth and skirting cloth has circulated and is now circulating among prospective purchasers throughout the United States by United States mails circulars, newspaper advertising, and other advertising media many statements and representations concerning his said products. Among and typical of such statements and representations disseminated as aforesaid are the following:

[Swatch]

[Swatch]

FOR YOUR BLANKET NEEDS

For the first time we offer you our Standard Hotel Blanket direct from our Mill. Specifications are as follows:

CONTENT.....	100% wool
MEASUREMENTS.....	double bed size 72" x 84"
WEIGHT.....	over 4 pounds
EDGES.....	whip stitched

We are pleased to quote the following attractive prices f. o. b. your establishment:

HEATHER GREY.....	\$6.90
FOREST GREEN, DEEP BLUE AND MAROON.....	7.90

(please examine the above swatches for quality and color)

On orders of six or more blankets we will letter on each blanket individually the name of your establishment in three inch script. There will be no charge for this additional service.

At the time of this offering we are able to quote almost immediate delivery. Trusting that we may have the pleasure of filling your blanket needs, we are  
Very truly yours,

EUREKA WOOLEN MILLS,  
*Blanket Division.*

HUMBOLDT BAY WOOLENS

EUREKA WOOLEN MILLS,  
*Eureka, California.*

OF INTEREST TO YOU

For the convenience of your students, the Eureka Woolen Mills have instituted a new service to simplify choosing fine quality woolens.

Enclosed, you will find samples of present lines of our skirt and dress weight materials, and suit and coat weight woolens.

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Our materials are all-wool and are from 58 to 60 inches wide.

From the enclosed samples your students may make their selections and order from our mill by direct mail.

As a woolen mill, we retain only a few bolts of each running pattern, so when making your selection, a second choice would be appreciated.

The Eureka Woolen Mills are located where long staple coastal wool is produced and have been manufacturing fine woolens for over 60 years.

We shall be pleased to be of service to you.

Sincerely,

EUREKA WOOLEN MILLS.

PAR. 3. Through the statements and representations set forth above, respondent Norman L. Rothstein, trading as Eureka Woolen Mills, Humboldt Bay Woolen Mills and Humboldt Bay Woolen Co., represents and has represented that his blankets and other products are made of 100 percent wool.

The foregoing representations are grossly exaggerated, false and misleading and in truth and in fact, respondents' blankets and other woolen material are not composed entirely of wool but contain in part fibers other than wool.

PAR. 4. Respondents' said wool products are composed in whole or in part of wool, reprocessed wool or reused wool, as these terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said Act and the Rules and Regulations promulgated thereunder. Since July 15, 1941, respondents have violated the provisions of said Act and said Rules and Regulations in the manufacture for introduction, and in the introduction into commerce and in the sale, transportation and distribution of said wool products in said commerce, by causing said wool products to be misbranded within the intent and meaning of said Act and said Rules and Regulations.

Among the said wool products sold and distributed by respondents in commerce as aforesaid are blankets which carry labels showing conflicting fiber content information. Among and typical of the conflicting labels used by respondents as aforesaid is the following:

Humboldt Bay  
All Purpose Blanket  
Manufactured by  
EUREKA WOOLEN MILLS  
100% Wool\*

Approx. 3½ pounds 62 x 82 inches

\*30% New, 70% Re-Processed

The use on a blanket of a label which states in one place that said blankets are composed of "100% wool" and at another place states the content as "30% new, 70% reprocessed" is conflicting and has the capacity and tendency to confuse and deceive and does confuse and deceive the purchasing public as to the fiber content of said blankets, and is a violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder.

PAR. 5. Among the wool products manufactured for introduction into commerce by respondents and introduced into commerce, sold, transported and distributed in commerce by respondents are piece goods and blankets. Exemplifying respondents' practice of violating said Act and the Rules and Regulations promulgated thereunder is their misbranding of the aforesaid wool products in violation of the provisions of said Act and the said Rules and Regulations by failing to affix to said wool products a stamp, tag, label or other means of identification, or a substitute in lieu thereof, as provided by said Act, showing (a) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding five per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said per centum by weight of such fiber was five per centum or more, and (5) the aggregate of all other fibers; (b) the maximum percentage of the total weight of the wool product of nonfibrous loading, filling, or adulterating matter; (c) the percentages in words and figures plainly legible by weight of the wool content of such wool product where said wool product contains a fiber other than wool; (d) the name of the manufacturer of the wool product or the name of one or more persons subject to section 3 of said Act with respect to such wool product, or the registered identification number of such person or persons as provided for in Rule 4 of the Regulations as amended.

The misbranded wool products referred to above were introduced, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, by each of the respondents.

PAR. 6. In addition to the acts and practices hereinabove set forth, the respondents, to promote the sale of their wool products in commerce, have sent out samples of swatches and specimens of their wool products to prospective customers without labeling said sample swatches and specimens to show their respective fiber contents and other information required by the Wool Products Labeling Act of 1939, and using the term "Virgin" as descriptive of their wool products when the products so described are not composed wholly of Virgin wool which has never been used, or reclaimed, reworked, re-

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possessed or reused from any spun, woven, knitted, felted or manufactured or used product.

## CONCLUSION

The aforesaid acts, practices and methods of the respondents, as found herein, were and are in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and section 5 of the Federal Trade Commission Act as amended, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

## ORDER

*It is ordered*, That respondents Norman L. Rothstein, individually and trading as Eureka Woolen Mills, Humboldt Bay Woolen Mills, and Humboldt Bay Woolen Co., or under any other name, and Edwin B. Schwinger and Richard N. Goldman, individually and as copartners trading and doing business as Goldman-Schwinger & Co., or under any other name, jointly or severally their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of blankets or other wool products in commerce, as "commerce" is defined in the aforesaid Acts, do forthwith cease and desist from:

1. Misrepresenting in any way the constituent fiber or material used in its merchandise or the respective percentages thereof;

2. Describing, designating or in any way referring to any product or portion of a product which is "reprocessed wool" or "reused wool" as "wool";

3. Using the word "wool" to describe, designate or in any way refer to any product or portion of a product which is not the fiber from the fleece of the sheep or lamb, or hair of the Angora goat or Cashmere goat, or hair of the camel, alpaca, llama or vicuna which has never been reclaimed from any woven or felted product.

*It is further ordered*, That respondents, individually or trading as above described, jointly or severally, their representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, transportation, or distribution of such products in commerce, as "commerce" is defined in the aforesaid Acts, do forthwith cease and desist from misbranding blankets or other wool products as defined in and subject to the Wool Products Labeling Act of 1939, which contain, purport to contain or in any way are represented as containing, "wool," "reprocessed wool," or "reused wool" as these terms are defined in said Act, by

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1. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such product;

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

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

(1) wool,

(2) reprocessed wool,

(3) reused wool,

(4) each fiber other than wool where said percentage by weight of such fiber is five percentum or more, and

(5) the aggregate of all other fibers;

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

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

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

*Provided, further*, That nothing contained in this order shall be construed as limiting any applicable provisions of said Act or the Rules and Regulations promulgated thereunder.

## ORDER TO FILE REPORT OF COMPLIANCE

*It is ordered*, That the respondents herein shall, within 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 November 15, 1951].

IN THE MATTER OF  
MURRAY MENTZER AND SOLOMON W. WEINGAST DOING  
BUSINESS AS PRECISION APPARATUS COMPANY

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

*Docket 4732. Complaint, Mar. 17, 1942—Decision, Nov. 20, 1951*

Mutual conductance is an engineering technical term used to designate one of the characteristics of a radio tube, and is the ratio of a change in output current to the change in grid voltage which produces the change in current; so that an analysis of the mutual conductance of a tube and an expression thereof in terms of micromhos is a means of precisely and scientifically expressing the ability of a tube to respond to a change in grid voltage.

The overall worth of a tube is obviously dependent upon the merit of its various characteristics, among which are mutual conductance, amplification factor, plate resistance, and emission; and a change in one direction on the part of certain of them causes some corresponding variation in values for another.

Tube checking instruments offered and sold to the radio service and repair trade include mutual conductance testers which are held in high esteem by radio servicemen, and which, during the periods involved in the instant proceeding, included mutual conductance testers which determined and reported mutual conductance under static conditions, and those which determined such conductance under other conditions and reported the results quantitatively in micromhos or both quantitatively and qualitatively through a "replace-good" meter reading. Such tube checking instruments also include emission testers which in no sense afford a test of mutual conductance.

Where two partners engaged in the manufacture and interstate sale and distribution of certain tube checking radio instruments which, during part of the time concerned, they designated as "Dynamic Mutual Conductance Tube Testers" and which (1) were calibrated to compare the plate current of a suspected tube with that yielded by another tube selected for its adequacy in all characteristics, including emission and mutual conductance, so that a comparative reading indicating the presence of plate current value in a suspected tube similar to that of a new tube constituted a rough appraisal of the overall value of the tube under check rather than a scientific test of the merit of any separate tube characteristic; (2) enabled the user of the instrument to select the proper setting so that the meter reading would indicate "replace", "good", or "weak" depending on the average amount of current flowing through the tube and meter in comparison to that of a known-to-be-good sample tube or tubes; and (3) could not be used for checking tubes for which no data appeared in the roller chart furnished with the equipment—

(a) Made use, in certain catalogs, of the designation "Precision Dynamic Mutual Conductance Tube Testers" in referring thereto and represented through

such designations and other language, along with the failure to state that an actual determination in micromhos was not made available, that their said instruments were mutual conductance testers capable of performing all the functions of such devices, and that through their use the mutual conductance of radio tubes could be determined; and

- (b) Represented that their tester was a mutual conductance testing instrument or type thereof which, by segregating and appraising such change in plate current as resulted from a change or variation in voltage placed by their device upon the grid of the tube under check, would afford a qualitative evaluation, determination and test of the mutual conductance of an electronic tube through comparing the value thus disclosed with that displayed by tube of known merit; through use of the term "mutual conductance" in such trade or product names as "Combination Dynamic Mutual Conductance Type Tube Testers and 33 Range Rotary Selective A. C.-D. C. Multi-Range Set Tester" and explanatory matter which had reference to the properties and attributes of their devices, coupled with their failure to reveal that such change in plate current as resulted from a change in voltage placed by the device upon the grid was not evaluated incident to the determination of tube merit;

The facts being that apart from such value as the device possessed in checking emission, it was limited to a comparison of the averages of total plate currents occurring in a known-to-be good tube and a tube under check; it did not, and by reason of its construction could not, compare a tube of known merit and a suspected one by comparing those variations in their respective plate currents which stemmed from a similar change or variation in voltage applied to their grids; and it was not a mutual conductance tube tester or type thereof within the understanding of members of the radio repair and service trade;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to their instruments and thereby induce the purchase of a substantial quantity thereof;

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

The statement, among others, that calibration of the meter in micromhos was not afforded and that the merit indication was set forth on a "replace-weak-good scale" so as to "thereby avoid the confusion of a useless micromho scale" in determining tube merit, was not sufficient to counteract or avoid the representation otherwise made as to the nature of respondents' device as above noted.

In reaching its conclusion, the Commission was of the opinion that such correlation as existed between a marked decrease in the average value of plate current and a decrease in mutual conductance, stated as roughly proportional, should be rejected as the controlling factor in determining whether the device herein concerned was a mutual conductance type tube tester. To conclude otherwise would be to ignore the testimony adduced in the proceeding by numerous engineers and other expert witnesses called by counsel supporting the complaint who expressed opinions to the effect that respondents' product did not indicate values which could be directly inter-



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preted in terms of mutual conductance, and that inasmuch as its reading was limited to the average value of plate current flowing through the complete cycle of power impressed upon the plate, such device did not in any way indicate the effect of any modification that might be made by a signal impressed upon the control grid itself. And in such connection there was also to be weighed and appraised the testimony of other witnesses relating to the understanding of members of the radio repair and service trade of the term "mutual conductance" when used to designate a tube testing instrument.

Before *Mr. Webster Ballinger*, trial examiner.

*Mr. R. A. McOuat* and *Mr. Clark Nichols* for the Commission.

*James & Franklin*, of New York City, for respondents.

COMPLAINT<sup>1</sup>

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 Murray Mentzer and Solomon W. Weingast, copartners doing business as Precision Apparatus Company, 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. Respondents, Murray Mentzer and Solomon W. Weingast are copartners doing business as Precision Apparatus Company. Their place of business is at 647 Kent Avenue, Brooklyn, New York. They are now, and for several years last past have been, engaged in manufacturing and selling radio testing equipment among which are radio tube testing instruments designated by respondents as "Dynamic Mutual Conductance Tube Testers."

In the course and conduct of their business as aforesaid, the respondents cause and for several years last past have caused their said instruments, when sold, to be transported from their said place of business in Brooklyn, New York, to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and all times mentioned herein have maintained, a course of trade in said instruments in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their aforesaid business and for the purpose of inducing the sale of their said instruments, re-

<sup>1</sup>The complaint is published as amended by an order of the Commission dated October 24, 1947.

spondents have made certain false, deceptive and misleading statements, and representations with respect to the character of their said instruments, such representations being made in advertisements inserted in trade journals and catalogs circulated generally among the purchasing public. Among and typical of such statements and representations so used and circulated are the following:

The most perplexing issue confronting the radio service engineer is the choice of tube testing equipment that will definitely and unfailingly solve all tube test problems with constant accuracy and reliability. With this thought foremost in mind "PRECISION" engineers have devoted a great deal of research and development in collaboration with the engineering divisions of leading tube manufacturers, conducting all varieties of tests on thousands of tubes. The outcome of these tests, as performed on a large number of tube test circuits, firmly convinced the engineering staff that the resultant tube tester designed MUST definitely be based on two All-Important characteristics of a radio tube:

1. Dynamic Mutual Conductance.
2. Cathode Structure or Emission.

Neither one of these fundamental factors can be neglected.

The "PRECISION" Dynamic Mutual Conductance Test Tube Circuit, incorporated in all "PRECISION" Dynamic Electronometers (series 910, 912, 915, 920 and 922) has been designed with the foregoing as its foundation \* \* \*.

#### TUBE ANALYZING FEATURES

\*A DYNAMIC TUBE TESTER employing an exclusive "PRECISION" engineered circuit, which in one operation, effectively tests all radio receiving tubes for both MUTUAL CONDUCTANCE and CATHODE STRUCTURE.

Respondents also refer to and describe their said instruments as "Dynamic Mutual Conductance Type Tube Tester."

PAR. 3. Through the use of the aforesaid statements and representations, respondents represent that their said instruments are mutual conductance tube testers, capable of performing all of the functions of such a tester and that by their use the mutual conductance of radio tubes can be determined.

PAR. 4. The said statements and representations set forth in paragraph 2, above, and other similar import, not specifically therein set forth but disseminated in the same manner as those set out in paragraph 2, are false, misleading and deceptive. In truth and in fact, respondents' said instruments cannot properly be designated and described as mutual conductance tube testers and they are not capable of testing the mutual conductance of radio tubes.

PAR. 5. The use by the respondents of the aforesaid false, misleading, and deceptive statements and representations has had and now has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public with respect to the character, quality and performance ability of their said instruments and to in-

duce the purchase of a substantial quantity of said instruments as a result of the erroneous and mistaken belief so engendered.

PAR. 6. 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 March 17, 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 issuance of said complaint and the filing of respondents' answer thereto, 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 said testimony and other evidence were recorded and filed in the office of the Commission. This proceeding subsequently came on for hearing before the Commission upon the motion of counsel supporting the complaint to amend the complaint in certain respects to conform to the proof, and on October 24, 1947, the Commission, having duly considered such motion, issued its order granting the motion and amending the complaint in the respects stated in such order. Additional testimony and other evidence in support of and in opposition to the allegations of the complaint, as amended, subsequently were introduced before the trial examiner and 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, as amended, the answer of respondents, as amended, the testimony and other evidence received prior and subsequent to the date upon which the order amending the complaint was issued, recommended decision of the trial examiner and the exceptions thereto, and briefs in support of and in opposition to the complaint, as amended (counsel for respondents having failed to appear on the day designated for oral argument in this matter); 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. Respondents, Murray Mentzer and Solomon W. Weingast, individuals trading as copartners under the name of Precision Apparatus Company, for several years prior to the institution of this proceeding were engaged in the manufacture and sale of radio testing equipment, among which were radio tube checking instruments designated during a part of such period of time as "Dynamic Mutual Conductance Tube Testers," with their place of business at 647 Kent Avenue, Brooklyn, New York. Subsequent to the closing of this case for the taking of testimony, notice for the record was filed by counsel for respondents that Mr. Mentzer departed this life on July 23, 1949.

PAR. 2. Respondents, in the course and conduct of their business as aforesaid, caused their said instruments, when sold, to be transported from their place of business in Brooklyn, New York, to purchasers thereof located in various other States of the United States and in the District of Columbia, and during the period mentioned hereinabove respondents maintained a course of trade in said instruments in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business and for the purpose of inducing the sale of their tube checking instruments, respondents have made various statements and representations with respect to the character of their equipment, which representations have been made in advertising circulars and catalogs circulated generally among the purchasing public.

(a) Among and typical of the statements and representations so used and circulated are the following, which appeared in the catalog of respondents bearing the date of 1940:

COMBINATION DYNAMIC MUTUAL CONDUCTANCE TUBE TESTER AND  
33 RANGE ROTARY SELECTIVE A. C.-D. C. MULTI-RANGE SET TESTER.

\* \* \*

A complete service laboratory incorporating the "PRECISION" engineered  
"DYNAMIC MUTUAL CONDUCTANCE" tube tester \* \* \*

\* \* \*

## TUBE ANALYZING FEATURES

A DYNAMIC TUBE TESTER \* \* \* which in one operation, effectively  
tests all radio receiving tubes for both MUTUAL CONDUCTANCE and CATH-  
ODE STRUCTURE.

\* \* \*

The most perplexing issue confronting the radio service engineer is the choice  
of tube testing equipment that will definitely and unflinchingly solve all tube test  
problems with constant accuracy and reliability.

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With this thought foremost in mind, "PRECISION" engineers have devoted a great deal of research and development in collaboration with the engineering divisions of leading tube manufacturers, conducting all varieties of tests on thousands of tubes. The outcome of these tests, as performed on a large number of tube test circuits, firmly convinced the engineering staff that the resultant tube tester design MUST definitely be based on two ALL-Important characteristics of a radio tube:

1. Dynamic Mutual Conductance
2. Cathode Structure or Emission

Neither one of these fundamental factors can be neglected.

The "PRECISION" Dynamic Mutual Conductance Tube Test Circuit, incorporated in all "PRECISION" Dynamic Electronometers (Series 910, 912, 915, 920 and 922) has been designed with the foregoing as its foundation \* \* \*

\* \* \*

\* \* \* it can be readily seen that the over-all Quality or Merit of a tube is absolutely dependent on both MUTUAL CONDUCTANCE and EMISSION, neither one of which can possibly be neglected.

\* \* \*

As previously outlined, the over-all Quality or Merit of a tube is absolutely dependent on both MUTUAL CONDUCTANCE and EMISSION. For this reason, the "PRECISION" Dynamic Electronometer circuit places the TUBE MERIT METER only in the plate or output section of the tubes under test, and in this manner, the resultant meter reading is directly and simultaneously proportional to both CATHODE EMISSIVE quality and MUTUAL CONDUCTANCE and accordingly will reject all tubes which, as previously explained, may be the cause for little or no volume, noisy or distorted operation, or fading reception.

\* \* \*

## PRECISION DYNAMIC MUTUAL CONDUCTANCE TUBE TESTERS

\* \* \*

(b) Among and typical of the statements and representations used and circulated by respondents are the following, which appeared in a catalog of Precision Apparatus Company under date of 1941:

## COMBINATION DYNAMIC MUTUAL CONDUCTANCE TYPE TUBE TESTER AND 33 RANGE ROTARY SELECTIVE A. C.-D. C. MULTI-RANGE SET TESTER

\* \* \*

A complete service laboratory incorporating the "PRECISION" engineered "DYNAMIC MUTUAL CONDUCTANCE" type tube tester \* \* \*

\* \* \*

## TUBE ANALYZING FEATURES

A DYNAMIC TUBE TESTER employing an \* \* \* engineered circuit, which in one operation, effectively tests all radio receiving tubes for both DYNAMIC MUTUAL CONDUCTANCE and CATHODE STRUCTURE. \* \* \*

\* \* \*

PRINCIPLES OF  
DYNAMIC MUTUAL CONDUCTANCE TUBE TESTING

The most perplexing issue confronting the radio service engineer is the choice of tube-testing equipment that will permanently remove the "QUESTION MARK" from his tube test problems, and thereby definitely and unfailingly solve them with constant accuracy and reliability. With this thought foremost in mind, "PRECISION" engineers have devoted unlimited time in extensive research and development, in collaboration with the engineering divisions of leading tube manufacturers.

All varieties of tests were conducted on thousands of tubes, from which two vital points stood out above all others, which finally dictated that "the resultant tube tester design MUST definitely be based on the two all-important characteristics of a radio tube."

1. Dynamic Mutual Conductance.
2. Cathode Structure or Emission.

\* \* \*

NEITHER ONE OF THESE FUNDAMENTAL FACTORS  
CAN EVER BE NEGLECTED!

\* \* \*

In other words, direct micromho readings are ABSOLUTELY MEANINGLESS unless the tube tester can duplicate the exact voltages and loads under which the particular tube in question is ACTUALLY operating in the specific receiver from which it has been removed, and would furthermore require reference to the tube's characteristic curves in order to determine what the mutual conductance SHOULD BE under the particular conditions in which the receiver is using this tube.

\* \* \* it is found that it is impossible to design a SIMPLE instrument which could definitely duplicate all various applications of a given tube. Therefore, it would be meaningless, let alone misleading, to say that we are going to calibrate our tester numerically in micromhos when the merit indication may just as well be on a simple three-colored REPLACE-WEAK-GOOD scale and thereby avoid the confusion of a useless micromho scale, and at the same time be able to immediately determine the worth of a tube.

In the final analysis, our reason for putting a tube into a tester is not to determine how many micromhos the meter can be MADE to read under purely ARBITRARY conditions, but rather the very simple question of "IS THIS TUBE GOOD, WEAK, OR DECIDEDLY BAD?" and our English reading scale immediately tells the story.

The foregoing thoughts have strictly guided the development of the "PRECISION" Dynamic Mutual Conductance type tube test circuit, as incorporated in all "PRECISION" Dynamic Electronometers, Series 910, 912, 914, 915, 920, 922, and 954 \* \* \*

\* \* \*

To familiarize ourselves with the principles of this exclusive "PRECISION" innovation, let us briefly observe the operation of a simple pentrode such as the 2A5, in a standard power output stage, shown in diagram A, with the addition of a current-indicating meter in the plate circuit. \* \* \*

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Diagram B shows the "PRECISION" Dynamic Electronometer circuit set up to test the same type 2A5. It is interesting to note and compare the remarkable similarity between this schematic and that shown in Diagram A.

Note that separate plate, screen and grid voltages and loads are applied to the respective elements of the tube under test and it is thereby being tested in the manner for which the tube has been designed \* \* \*. \* \* \*

As previously outlined, the over-all quality or merit of a tube is absolutely dependent on both DYNAMIC MUTUAL CONDUCTANCE and EMISSION.

For this reason, the "PRECISION" Dynamic Electronometer circuit places the TUBE MERIT METER only in the plate or output section of the tubes under test, and accordingly the resultant meter reading is directly and simultaneously proportional to both CATHODE EMISSIVE quality and DYNAMIC MUTUAL CONDUCTANCE and will reject all tubes which do not come up to the standards as determined from the original laboratory tests from which the tube-chart data is gathered. \* \* \*

## PRECISION DYNAMIC MUTUAL CONDUCTANCE TYPE TUBE TESTERS

\* \* \*

COMBINATION DYNAMIC MUTUAL CONDUCTANCE TYPE TESTER  
AND 37 RANGE SUPERSENSITIVE AC-DC MULTIRANGE TESTER  
SERIES 954

The Series 954, combination tube tester and Supersensitive multirange set tester is truly a COMPLETE SERVICE LABORATORY answering the ever-increasing demand for one compact unit providing every facility for the accurate and reliable solutions of tube test and all measurement problems arising from modern Radio (A. M. and F. M.), Television, Industrial and Laboratory practice.

\* \* \*

PAR. 4. Before proceeding to a consideration of the circuit contained in respondents' instrument, brief reference to the structure and purpose of radio vacuum tubes is appropriate. Vacuum tubes are sometimes referred to as diode, triode, tetrode, or pentode, depending on whether the tube has 2, 3, 4, or 5 electrodes, respectively. An evacuated glass envelope or bulb houses these tube elements. The three electrodes which comprise a triode are the cathode, grid, and plate, the triode being the simplest form of tube having mutual conductance. Upon application of a voltage to the heater, which also is housed within the glass envelope, the heat causes the cathode to emit electrons which flow to the plate during periods when the plate is polarized positively and attracting these electrons, each of which has a negative potential. The grid or third electrode is placed between the cathode and the plate and is ordinarily a screen of open wire mesh which permits the electrons to flow through to the plate. In the absence of some other force, as long as the plate is positive in relation to the cathode, there will be a flow of electricity through the tube. The application of a voltage on the grid affects the flow of

electrons to the plate, which flow relatively increases as the voltage becomes more positive and is stayed when more negative. A vacuum tube essentially acts as a valve in controlling the flow of the electricity. There are, however, no connections within the tube itself between the three electrodes.

In the home radio set, various operating voltages are utilized to cause the basic elements of a typical tube to function. The signal placed on the air by a transmitting station is collected by the antenna and that signal is applied to the grid upon its appearance in the input circuit of the tube. After being greatly modified in the output circuit of the tube, it passes along and through the receiver and emerges as intelligence. The prime purpose of the tube is to modify these signals.

The circuit contained in respondents' instrument is so designed that a voltage is made available to the grid electrode of the tube which may be adjusted to desired value. The plate is connected to a meter in the instrument through a shunt or variable resistor which makes it possible to adjust the sensitivity or the response of the meter. The circuit from the meter is continued to a source of variable voltage which polarizes the plate of the tube positively. The voltages applied to the grid and to the plate are not D. C. voltages. They are 60-cycle A. C. voltages taken from a common power source and are in phase with each other. They therefore simultaneously sweep from zero to a maximum and back to zero. The current through the meter (plate) conforms, but inasmuch as the meter itself has too much inertia to follow such rapid fluctuations, the meter remains steady at the average value of the sweeps of current.

The operations of respondents' tube checker entails the use of a roller chart, furnished with their equipment by respondents, containing data for hundreds of tube types in common use. In preparing this chart, respondents secure known-to-be-good samples of a particular type of tube from the manufacturer. These tubes are inserted in the checker and appropriate voltage sweeps are selected which will bring the reading on the meter to the "good" scale. This is worked out in such manner that, when a certain lessened value of average plate current ensues, the meter will instead read only at the weak or bad part of the scale. The various settings are printed on the chart and by reference thereto the user of respondents' instrument can select the proper settings and his meter reading for the suspected tube will swing to a position which may be either at replace, good or weak, depending on the average amount of current flowing through the tube and meter in comparison to that of a known-to-be-good sample tube



or tubes. Respondents' instrument cannot be used for checking tubes for which no data appears in the chart.

PAR. 5. Mutual conductance is an engineering technical term used to designate one of the characteristics of a radio tube. It is the ratio of a change in output current to the change in grid voltage which produces the change in current. Thus, an analysis of the mutual conductance of a tube and an expression thereof in terms of micromhos is a means of precisely and scientifically expressing the ability of a tube to respond to a change in grid voltage. The mutual conductance of a tube is considered to be high if a large change in output current results from a small change in grid voltage.

Available to the radio industry and used for the testing of mutual conductance during the periods mentioned in this proceeding have been proportional mutual conductance testers which determine and report mutual conductance under static conditions and mutual conductance testers which determine mutual conductance under other conditions and report the result either quantitatively in micromhos or both quantitatively and qualitatively through a "replace-good" meter reading. The foregoing instruments determine and report the mutual conductance value of the tube separate and apart from the other tube characteristics. The instruments conventionally used in laboratories for measuring dynamic mutual conductance have complex circuits and included in the voltages utilized in such analyzers are constant D. C. potentials for the electrodes which can be applied in a manner simulating the actual conditions under which the tube has been designed to operate. One instrument being sold into radio repair shop channels for testing mutual conductance, prior to the time when this proceeding was instituted, differs from the two analyzers widely used in laboratories but it likewise affords a constant operating voltage for the grid of the tube under test and contains a patented circuit for determining mutual conductance through measuring, by means of a "bridge output circuit," the changes in plate current resulting from a signal voltage additionally applied to the grid. Mutual conductance testers are held in high esteem by radio servicemen. Among the other tube checking instruments offered for sale and sold to the radio service and repair trade are emission testers which in no sense afford a test of mutual conductance.

PAR. 6. In the advertising statements appearing in Paragraph Three, subparagraph (a), which were contained in the 1940 catalog of Precision Apparatus Company, the instrument is designated, among other things, as a complete service laboratory incorporating respondents' Precision engineered "Dynamic Mutual Conductance"

tube tester, which in one operation effectively "tests" all radio receiving tubes for both mutual conductance and cathode structure, and reference is made to certain technical data appearing at another page of the catalog. In addition to statements emphasizing that mutual conductance and cathode emission are bases for the engineering design of the instrument's circuit, these data further state that certain schematic diagrams there portrayed demonstrate great similarity between respondents' circuit and the operation of a tube in a standard audio power output stage. In this connection, it appears to the Commission that, for a pentode tube in its normal state of operation, a separate voltage conventionally is afforded for the grid entirely independent of the signal intended to be modified. Other language contained in the advertising represents that the meter reading is placed in the output section of the tubes under test and that the resultant meter reading is directly and simultaneously proportional to both cathode emissive quality and mutual conductance. Nowhere is it stated in this advertising that an actual determination in micromhos is not made available. The Commission has concluded, therefore, that the advertising statements set forth in Paragraph Three, subparagraph (a), as formerly used by respondents, have constituted representations that respondents' instruments designated variously as "Precision Dynamic Mutual Conductance Tube Testers" and as "Combination Dynamic Mutual Conductance Tube Tester and 33 Range Rotary Selective A. C.-D. C. Multi-Range Set Tester" are mutual conductance testers capable of performing all of the functions of such a device, and that by the use of this instrument the mutual conductance of radio tubes can be determined.

In the advertising subsequently used by respondents, many of the statements referred to in the foregoing paragraph are retained, as is the schematic diagram purporting to depict the circuit used in respondents' equipment and the reference in such connection to the remarkable similarity of the Precision circuit to the circuit of a vacuum tube. Added, however, to the descriptive material are the statements, among others, that calibration of the meter in micromhos is not afforded and that the merit indication appearing on the meter is set forth instead on a replace-weak-good scale so as to "thereby avoid the confusion of a useless micromho scale" in determining tube merit. Nowhere in the advertising is it revealed that such change in plate current as results from a change in voltage placed by respondents' device upon the grid is not evaluated incident to the determination of tube merit. The Commission is of the view that the explanatory matter appearing in the advertising having reference to the

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properties and attributes of respondents' devices, including the suggestions made in connection with the schematic circuit diagrams, serves in substantial measures to confirm and to heighten the impressions engendered by respondents, use of the words "Mutual Conductance" in the product names and elsewhere in the advertising. Respondents' use of the term "Mutual Conductance" in the trade or product names "Combination Dynamic Mutual Conductance Type Tube Tester and 33 Range Rotary Selective A. C.-D. C. Multi-Range Set Tester," "Precision Dynamic Mutual Conductance Type Tube Testers," and "Combination Dynamic Mutual Conductance Type Tube Tester and 37 Range Super-Sensitive AC-DC Multi-Range Set Tester" and otherwise as set forth in Paragraph Three, subparagraph (b), hereof, in the circumstances here, at the very least constitutes a representation that respondents' tester is a mutual conductance testing instrument or a type thereof which, by segregating and appraising such change in plate current as results from a change or variation in the voltage placed by respondents' device upon the grid of a radio tube under check and through comparing such value with that displayed by a tube of known merit, will afford a qualitative evaluation, determination and test of the mutual conductance of an electronic tube.

PAR. 7. Respondents conceded at the outset of this proceeding that their instrument does not afford a quantitative expression of mutual conductance in micromhos, but contend that their use of the words "Mutual Conductance" in the product names and in the advertising statements is justified for the reason, among others, that within reasonable limits and with such degree of accuracy as is required in the repair and servicing of radios, the values afforded determine whether a tube is good or bad for mutual conductance. Introduced into the record by respondents is the testimony of engineers and other expert witnesses who expressed the view that, when less current is flowing at the plate of the tube being checked than that afforded by a known-to-be-good tube, such decrease will be proportional to the decrease in mutual conductance which has occurred. Respondents rely also on other testimony to the effect that this instrument responds to the average or composite mutual conductance of a radio tube over the range or sweep of the voltages applied when a tube is being tested. Appropriate for consideration in this connection also is a report received into the record as rendered by Squier Signal Laboratory which states that the meter indications obtained on the Precision equipment were found to vary "almost proportionally" with the actual mutual conductance of the tubes examined and that the percentage deviation from proportionality between actual mutual conductance and the

meter readings was not more than fifteen percent. The conclusion set forth in this report is that respondents' equipment is "of the 'mutual conductance' type." According to a report of the Evans Signal Laboratory, Army Service Forces, respondents' circuit measures characteristics of a tube which vary in proportion with its mutual conductance.

The overall worth of a tube obviously is dependent upon the merit of its various characteristics, among which are mutual conductance, amplification factor, plate resistance, and emission. A change in one direction on the part of certain of them causes some corresponding variation in values for another. This interrelation between and among the tube elements and characteristics moreover is illustrated by the algebraic equations which are used in identifying various tube values. For example, mutual conductance is expressed as amplification factor divided by plate resistance and by rearrangement of the equation, plate resistance can be expressed as amplification factor divided by the mutual conductance.

Respondents' instrument has been calibrated to compare the plate current of a suspected tube with that yielded by another tube selected in the first instance for its adequacy in respect to all characteristics, including emission and mutual conductance. A comparative reading indicating the presence of plate current values in a suspected tube similar to those of a new tube essentially constitutes a rough appraisal of the overall value of the tube under check rather than a scientific test of the merit of any separate tube characteristic. By the same token, a reading revealing a marked decrease in current indicates merely a decrease in overall merit even though such decrease may be attributable to a realignment of values among the separate tube characteristics, including mutual conductance.

Another way of expressing such correlation as exists between a marked decrease in the average value of plate current and a decrease in mutual conductance is to state that the marked decrease in current is proportional, or roughly or almost proportional, to the decrease in mutual conductance. The Commission is of the opinion that this relationship should be rejected as the controlling factor in a determination of whether respondents' instrument is a mutual conductance type tube tester. To conclude otherwise would be to ignore the testimony adduced in this proceeding by numerous engineers and other expert witnesses called by counsel supporting the complaint who have expressed opinions to the effect that respondents' product does not indicate values which can be directly interpreted in terms of mutual conductance, and that inasmuch as its reading is limited to the average

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value of plate current flowing through the complete cycle of power impressed upon the plate, such device does not in any way indicate the effect of any modification that might be made by a signal impressed upon the control grid itself. Weighed and appraised also in this connection is the testimony of other witnesses whose examinations related to the understanding of members of the radio repair and service trade of the term "Mutual Conductance" when used to designate a tube testing instrument.

Apart from such value as it possesses in checking emission, respondents' instrument is limited to a comparison on the averages of total plate currents occurring in a known good tube and a tube under check, each of which plate currents results from two voltages in phase with each other, one voltage being applied to the grid and the other on the plate. Respondents' instrument does not compare a tube of known merit and a suspected tube under check by comparing those variations or changes occurring in their respective plate currents which stem from a similar change or variation in voltage applied to the grids of such tubes. No instrument can be accurately designated and described as a mutual conductance type checking instrument unless it either qualitatively or quantitatively appraises or evaluates such change in plate current as solely results from a change or variation in grid voltage. Because the instrument here under consideration lacks an input circuit by means of which a signal can be impressed upon the control grid and does not contain an output circuit by means of which such signal could be interpreted if present, no test or appraisal of mutual conductance, comparative or otherwise, is provided by respondents' checker. Upon the basis of the greater weight of the testimony and other evidence which has been adduced in this proceeding, including that testimony adduced by those witnesses whose examinations related to the understanding of members of the radio repair and service trade of the term "mutual conductance" when used to designate an instrument offered for the testing of tubes, the Commission finds that respondents' instrument is neither a mutual conductance tube tester nor a type thereof, and concludes that the advertising representations stemming from respondents' use of the term "mutual conductance" in the various product or trade names by which their scientific equipment has been designated, and otherwise in the advertising therefor, as found in Paragraph Six hereof, are false, deceptive and misleading.

PAR. 8. The use by respondents of the aforesaid false and misleading statements and representations has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public

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with respect to the character, quality and performance ability of said instruments and to induce the purchase of a substantial quantity of respondents' instruments as a result of the erroneous and mistaken belief so engendered.

## CONCLUSION

The aforesaid acts and practices of respondent Solomon W. Weingast, as herein found, have been 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 upon the complaint of the Commission, as amended, the answer of respondents, as amended, testimony and other evidence introduced before a trial examiner of the Commission prior to and subsequent to the date upon which the order amending the complaint was issued, recommended decision of the trial examiner and the exceptions thereto, and briefs in support of and in opposition to the complaint, as amended (counsel for respondents not having appeared for oral argument), and the Commission having made its findings as to the facts and its conclusion that the respondent Solomon W. Weingast has violated the provisions of the Federal Trade Commission Act:

*It is ordered,* That respondent Solomon W. Weingast, individually and doing business as a copartner under the name of Precision Apparatus Company, or trading under any other name, and said respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of instruments heretofore designated variously as "Precision Dynamic Mutual Conductance Tube Testers" and "Precision Dynamic Mutual Conductance Type Tube Testers," or any substantially similar device whether sold under the same name or any other name, do forthwith cease and desist from:

(1) Using the term "Mutual Conductance" or any other word or term of similar import or meaning in any trade or product name for respondent's instrument;

(2) Representing that respondent's instrument is a mutual conductance testing instrument or a mutual conductance type testing instrument, or representing in any manner, through use of the term "Mutual Conductance" or any other word or term of similar import or

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meaning, that respondent's instrument determines mutual conductance or indicates the quality or merit of the mutual conductance of a vacuum tube by appraising, comparatively or otherwise, such change in plate current as results from a change or variation in voltage placed by respondent's device upon the grid of a radio tube.

*It is further ordered,* That the complaint herein be, and it hereby is, dismissed as to respondent Murray Mentzer, deceased.

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

## Complaint

## IN THE MATTER OF

NATHAN AND BURTON SAMORS DOING BUSINESS AS  
QUALITY PATCH COMPANY AND TEXTILE BY-PROD-  
UCTS COMPANY

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

*Docket 5915. Complaint, Aug. 16, 1951—Decision, Nov. 24, 1951*

Where two partners engaged in conducting a mail order business in the sale of patches and remnants of cloth to the general public—

- (a) Represented through advertisements in various magazines that the assortments offered by them consisted chiefly of pieces of cloth of full width with which the purchaser could make dozens of such things as aprons, curtains, table cloths, quilts, rompers, and pillows;

The facts being that there were ordinarily included in said assortments only a small number of pieces of sufficient size to make any of the articles above enumerated, and the balance consisted of scraps, trimmings, and small irregular pieces; and

- (b) Falsely represented that patterns and new trimming ideas were furnished free to the purchasers; the fact being it was necessary to purchase an "assortment" before said articles were furnished, and their cost was included in the assortment's price;

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 into the purchase of substantial quantities of their said products in reliance thereon:

*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. John C. Williams* for the Commission.

*Horvitz & Horvitz*, of Fall River, Mass., 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 Nathan Samors and Burton Samors, co-partners, doing business as Quality Patch Company and Textile By-Products Company, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would



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

PARAGRAPH 1. Respondents Nathan Samors and Burton Samors are co-partners doing business as Quality Patch Company and Textile By-Products Company, with their office and principal place of business located at 56 11th Street, Fall River, Massachusetts. Said respondents are now and for several years last past have been engaged in conducting a mail order business in the sale of patches and remnants of cloth to the general public.

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

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

NINETEEN YARDS!

All Print

R E M N A N T S

and Assorted BIG Patches

4 POUNDS \$1.95

(Picturization of bolt of cloth)

Makes scores of

USEFUL

ARTICLES

Never before such a USEFUL assortment!  
 Make APRONS, CURTAINS, TABLECLOTHS,  
 QUILTS, ROMPERS, PILLOWS—just DOZENS  
 of things from the LARGE PIECES, and  
 FULL WIDTH goods included. Pastel  
 BROADCLOTHS and PERCALES. All sizes  
 usable. FREE patterns and NEW trimming  
 ideas. 4 lbs. in sturdy box—now only  
 \$1.95. Money back if not delighted!  
 Sent C. O. D. Order by mail NOW.

QUALITY PATCH COMPANY

Box 747

Dept. K. Fall River, Mass.

PAR. 4. By and through the use of the aforesaid statements, respondents represented that their assortments consisted chiefly of pieces of cloth of full widths with which the purchaser could make dozens of such things as aprons, curtains, tablecloths, quilts, rompers and pillows and that patterns and new trimming ideas were furnished free to the purchaser of their assortment.

PAR. 5. The said representations were false, misleading and deceptive. In truth and in fact, there were ordinarily included in said assortments only a small number of pieces of cloth of sufficient size from which any one of the articles enumerated in Paragraph Four could be made. The balance of said assortments consisted of scraps, trimmings and small irregular pieces of cloth. Patterns and new trimming ideas were not given "free." On the contrary, it was necessary to purchase an "assortment" before said articles were furnished and the cost thereof was included in the price charged for the assortment.

PAR. 6. The use by the respondents of the aforesaid false, misleading and deceptive statements and representations has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true and into the purchase of substantial quantities of respondents' said products in reliance on such erroneous belief.

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

#### 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 November 24, 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 August 16, 1951, issued and subsequently served its complaint in this proceeding upon respondents Nathan Samors and Burton Samors, co-partners doing business as Quality Patch Company and Textile By-Products Company, charg-

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ing them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. On August 30, 1951, respondents' counsel wrote the Federal Trade Commission a letter denying therein any intent to misrepresent and stating that they had no objection to the entry against them of the tentative and proposed order to cease and desist, set out in the notice at the end of the formal complaint. Thereafter, on September 17, 1951, respondents by counsel filed an answer admitting all the material allegations of fact set forth in said complaint, waiving hearing as to the facts and all intervening procedure and again denying any intention to misrepresent. Thereafter, the proceeding regularly came on for final consideration by the above-named trial examiner, theretofore duly designated by the Commission upon said complaint and answer, all intervening procedure having been waived, and said trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

## FINDING AS TO THE FACTS

PARAGRAPH 1. Respondents Nathan Samors and Burton Samors are co-partners doing business as Quality Patch Company and Textile By-Products Company, with their office and principal place of business located at 56 11th Street, Fall River, Massachusetts. Said respondents are now and for several years last past have been engaged in conducting a mail order business in the sale of patches and remnants of cloth to the general public.

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

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

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NINETEEN YARDS!  
All Print  
REMNANTS  
and Assorted BIG Patches  
4 POUNDS \$1.95

(Picturization of bolt of cloth)

Makes scores of  
USEFUL  
ARTICLES

Never before such a USEFUL assortment!  
Make APRONS, CURTAINS, TABLECLOTHS,  
QUILTS, ROMPERS, PILLOWS—just DOZENS  
of things from the LARGE PIECES, and  
FULL WIDTH goods included. Pastel  
BROADCLOTHS and PERCALES. All sizes  
usable. FREE patterns and NEW trimming  
ideas. 4 lbs. in sturdy box—now only  
\$1.95. Money back if not delighted!  
Sent C. O. D. Order by mail NOW  
QUALITY PATCH COMPANY

Box 747

Dept. K. Fall River, Mass.

PAR. 4. By and through the use of the aforesaid statements, respondents represented that their assortments consisted chiefly of pieces of cloth of full widths with which their purchaser could make dozens of such things as aprons, curtains, tablecloths, quilts, rompers and pillows and that patterns and new trimming ideas were furnished free to the purchaser of their assortment.

PAR. 5. The said representations were false, misleading and deceptive. In truth and in fact, there were ordinarily included in said assortments only a small number of pieces of cloth of sufficient size from which any one of the articles enumerated in Paragraph Four could be made. The balance of said assortments consisted of scraps, trimmings and small irregular pieces of cloth. Patterns and new trimming ideas were not given "free." On the contrary, it was necessary to purchase an "assortment" before said articles were furnished and the cost thereof was included in the price charged for the assortment.

PAR. 6. The use by the respondents of the aforesaid false, misleading and deceptive statements and representations has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true and into the purchase of substantial quantities of respondents' said products in reliance on such erroneous belief.

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## CONCLUSION

The aforesaid 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

*It is ordered,* That the respondents Nathan Samors and Burton Samors, individually and as co-partners trading as Quality Patch Company and Textile By-Products Company, or trading under any other name, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution or remnants or patches of cloth in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that assortments of remnants or patches include pieces of cloth sufficiently large to be made into aprons, curtains, tablecloths, quilts, rompers, or pillows, or like articles, unless such assortments do in fact consist in substantial part of pieces of cloth which are of sufficient size for such purposes.

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

## ORDER TO FILE REPORT OF COMPLIANCE

*It is ordered,* That the respondents herein shall, within 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 November 24, 1951).

## Complaint

IN THE MATTER OF  
SNAPPY FASHIONS, 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, AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

*Docket 5918. Complaint, Aug. 20, 1951—Decision, Nov. 24, 1951*

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

Misbranded certain ladies' coats with interlinings within the intent and meaning of said Act and rules and regulations relating thereto in that (1) they were falsely and deceptively labeled with respect to the character and amount of the constituent fibers; (2) they did not have affixed to the interlinings a separate stamp, tag or label setting forth similar information as required; and (3) falsely labeled as "100% wool", they contained no separate disclosure as to interlining content:

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

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

*Mr. Jesse D. Kash* and *Mr. C. J. Aimone* for the Commission.

*Mr. Manuel S. Gottdenker*, 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 Snappy Fashions, Inc., a corporation, and Jules Levy, individually and as an officer of said corporation have violated the provisions of said Acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939 and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Snappy Fashions, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal place of business located at 222 West 37th Street, New York, N. Y. Respondent Jules Levy is located at the same address. He is president of corporate re-

spondent and in such capacity formulates and executes its policies and practices.

PAR. 2. Subsequent to the effective date of the Act and more especially since January 1950, respondents manufactured for introduction into commerce and offered for sale, sold and distributed into commerce as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products, as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded in that they were not stamped, tagged or labeled as required under the provisions of section 4 (a) (2) of the Wool Products Labeling Act of 1939 and in the manner and form prescribed by the Rules and Regulations relating thereto.

PAR. 4. Certain of said wool products were misbranded within the intent and meaning of the said Act and Rules and Regulations in that they were falsely and deceptively labeled with respect to the character and amount of the constituent fibers appearing therein. Such products were further misbranded in that the character and amount of the constituent fibers appearing in the interlinings thereof were not separately set forth on the stamp, tag or label as required by the said Act and Rule 24 (a) and (c) of the Regulations. Among the misbranded products aforementioned were ladies' coats containing interlinings. Such coats were labeled by the respondents as "100% wool." In truth and in fact, the coats were not 100% wool as labeled but contained substantial quantities of fibers other than wool. The label contained no separate disclosure as to interlining content.

PAR. 5. The 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 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 November 24, 1951, the initial decision in the instant matter of Trial Examiner Earl J. Kolb, as set out as follows, became on that date the decision of the Commission.

## INITIAL DECISION BY EARL J. KOLB, 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 August 20, 1951, issued and subsequently served its complaint in this proceeding upon the respondents, Snappy Fashions, Inc., a corporation, and Jules Levy, individually and as officer of said corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of those Acts. On October 8, 1951, respondents filed their answer, in which answer they admitted all the material allegations of facts set forth in said complaint and waived all intervening procedure and further hearings as to the said facts. Thereafter, the proceeding regularly came on for final consideration by the above-named trial examiner theretofore duly designated by the Commission upon said complaint and answer thereto, all intervening procedure having been waived, and said trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Snappy Fashions, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its principal place of business located at 222 West 37th Street, New York, New York. Respondent Jules Levy is located at the same address. He is president of corporate respondent and in such capacity formulates and executes its policies and practices.

PAR. 2. Subsequent to the effective date of the Act and more especially since January 1950, respondents manufactured for introduction into commerce and offered for sale, sold and distributed in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products, as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded in that they were not stamped, tagged or labeled as required under the provisions of section 4 (a) (2) of the Wool Products Labeling Act of 1939 and in the manner and form prescribed by the Rules and Regulations relating thereto.

PAR. 4. Certain of said wool products were misbranded within the intent and meaning of the said Act and Rules and Regulations in that they were falsely and deceptively labeled with respect to the character



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and amount of the constituent fibers appearing therein. Such products were further misbranded in that the character and amount of the constituent fibers appearing in the interlinings thereof were not separately set forth on the stamp, tag or label as required by the said Act and Rule 24 (a) and (c) of the Regulations. Among the misbranded products aforementioned were ladies' coats containing interlinings. Such coats were labeled by the respondents as "100% wool." In truth and in fact, the coats were not 100% wool as labeled but contained substantial quantities of fibers other than wool. The label contained no separate disclosure as to interlining content.

## CONCLUSION

The acts and practices of the respondents in the manufacture for introduction into commerce and in the sale, transportation and distribution in commerce of wool products which were misbranded, as herein found, were in violation of the provisions of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder and were to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

## ORDER

*It is ordered*, That the respondent, Snappy Fashions, Inc., a corporation, and its officers, and the respondent, Jules Levy, individually and as an officer of said respondent corporation, and said respondents' respective representatives, agents and employees, directly or through corporate or other devices, 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' coats 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 by:

(1) Falsely or deceptively representing on any stamp, tag, label or other means of identification affixed to any such product the character or amount of the constituent fibers thereof.

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

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(a) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding 5% of said total fiber weight, of:

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

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

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

(3) Failing to separately set forth on the required stamp, tag or label or other means of identification the character and amount of the constituent fibers of the interlinings of any such wool product.

Provided, that the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by Paragraphs (a) and (b) of section 3 of the Wool Products Labeling Act of 1939, and provided further, that nothing contained in this order shall be construed as limiting any applicable provisions of said Act or the Rules and Regulations promulgated thereunder.

## ORDER TO FILE REPORT OF COMPLIANCE

*It is ordered,* That the respondents herein shall, within 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 November 24, 1951].

IN THE MATTER OF  
RAYCREST MILLS, INC.

COMPLAINT, FINDINGS, AND ORDER 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 5834. Complaint, Dec. 19, 1950—Decision, Nov. 28, 1951*

Where a corporation engaged in the manufacture of men's suiting materials, ladies' dress goods and similar fabrics which were sold and distributed in commerce and were wool products as defined in the Wool Products Labeling Act—

Misbranded fabrics composed of 80 percent rayon and 20 percent wool within the intent and meaning of said Act and the rules and regulations promulgated thereunder, in that they did not have on or affixed thereto a stamp, tag, label or other means of identification showing their constituent fibers and the percentages thereof and other information required:

*Held*, That such acts and practices, under the circumstances set forth, were in violation of the provisions of said Act and rules and regulations, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Webster Ballinger*, hearing examiner.

*Mr. Henry D. Stringer* for the Commission.

*Conrad & Smith*, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Raycrest Mills, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts and Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Raycrest Mills, Inc., is a corporation organized under and by virtue of the laws of Rhode Island, with its office and place of business located at 560 Mineral Spring Avenue, Pawtucket, Rhode Island.

PAR. 2. Subsequent to July 15, 1941, respondent has violated the provisions of the Wool Products Labeling Act of 1939, and the Rules and Regulations promulgated thereunder, by manufacturing for introduction into commerce, introducing into commerce, offering for

sale in commerce, and selling and distributing in commerce, as "commerce" is defined in said Act, wool products, as "wool products" are defined therein, which were "misbranded," within the meaning of said Act in that there were not on or affixed thereto any stamps, tags, labels, or other means of identification, containing the information required by said Act, and in the manner and form required by the Rules and Regulations promulgated thereunder. Among said wool products were included approximately 200,000 yards of piece goods of which approximately 38,000 yards were sold to Roseline Fabrics, Inc., in October, 1948.

PAR. 3. 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 constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

**DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE**

Pursuant to the provisions of the Federal Trade Commission Act 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 December 19, 1950, issued and subsequently served its complaint in this proceeding upon the respondent, Raycrest Mills, Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of those Acts. After the filing of respondent's answer, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a hearing examiner of the Commission theretofore designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. On April 2, 1951, the hearing examiner filed his initial decision dismissing the complaint herein without prejudice.

Within the time permitted by the Commission's Rules of Practice, counsel supporting the complaint filed with the Commission an appeal from said initial decision, and thereafter this proceeding regularly came on for final consideration by the Commission upon the record herein, including the briefs in support of and in opposition to the appeal and oral argument of counsel; and the Commission, having issued its order granting said appeal, 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, the same to be in lieu of the initial decision of the hearing examiner.

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## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Raycrest Mills, Inc., is a corporation organized under and by virtue of the laws of the State of Rhode Island, with its office and place of business located at 560 Mineral Spring Avenue, Pawtucket, R. I.

PAR. 2. Respondent is now and since prior to 1947 has been engaged in the manufacture and sale of men's suiting materials, ladies' dress goods and similar fabrics. During the years 1947 and 1948, respondent manufactured 200,000 yards of fabrics composed of 80 percent rayon and 20 percent wool, as the term "wool" is defined in the Wool Products Labeling Act of 1939, which fabrics were manufactured for introduction and sale in commerce and which were in fact introduced, sold and distributed in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939 and in the Federal Trade Commission Act. Said fabrics were wool products as that term is defined in the Wool Products Labeling Act of 1939, and were therefore subject to the provisions of said Act and the Rules and Regulations promulgated thereunder.

PAR. 3. The above-described wool products when introduced into commerce and sold and distributed in commerce, as aforesaid, were misbranded within the intent and meaning of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder in that they did not have on or affixed to them a stamp, tag, label or other means or identification showing the constituent fibers and the percentages thereof, of such products, and other information required by said Act and the Rules and Regulations promulgated thereunder.

## CONCLUSION

Th acts and practices of the respondent, as hereinabove found, were in violation of the provisions of the Wool Products Labeling Act of 1939 and the Rules and Regulations thereunder, and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

## ORDER

*It is ordered*, That the respondent, Raycrest Mills, Inc., a corporation, and its officers, 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 offering for sale, sale, transportation, or distribution in commerce, as "com-

merce" is defined in the aforesaid Acts, of fabrics 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 by failing to affix securely to or place on such products a stamp, tag, label or other means of identification showing in a clear and conspicuous manner:

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

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

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

*Provided*, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of Section 3 of the Wool Products Labeling Act of 1939; *and provided further*, that nothing contained in this order shall be construed as limiting any applicable provisions of said Act or the Rules and Regulations promulgated thereunder.

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

IN THE MATTER OF  
ESTHER ZITSERMAN TRADING AS J. M. HOWARD CO.

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

*Docket 5737. Complaint, Jan. 25, 1950—Decision, Nov. 29, 1951*

The Commission is of the opinion that the distribution in commerce of devices which aid and encourage merchandising by gambling is contrary to the interest of the public.

Merchandising by gambling should not be divided into isolated acts, which, when examined separately, might appear innocent, and in said connection both the gamblers and those who furnish them with the instrumentalities by means of which merchandising by gambling is conducted, are engaged in practices contrary to public policy.

Where an individual engaged in the manufacture and interstate sale and distribution of push cards and punchboards which, bearing appropriate explanatory legends and depictions (or space therefor), were designed for use by retailers in the sale and distribution of merchandise to the public by means of a game of chance, under plans whereby the purchasers of a punch or push who by chance selected concealed winning numbers became entitled to designated articles of merchandise without additional cost, at prices which were much less than their normal retail prices, others receiving nothing for their money other than the privilege of a push or punch—

Sold and distributed such devices to dealers in candy, cigarettes, pipes, clocks, razors, cosmetics and other articles, assortments of which, along with said devices, were made up by said dealers and exposed and sold by the retailer purchasers to the purchasing public wholly by lot or chance in accordance with the aforesaid plan; and thereby supplied to and placed in the hands of retailers the means of conducting lotteries or games of chance in the sale and distribution of merchandise to the general public, and knowingly and purposely assisted and participated in the violation of an established public policy of the United States Government;

With the result that gambling among members of the public was taught and encouraged, to its injury, and said individual thus polluted the stream of interstate commerce by supplying to and placing in the hands of others instrumentalities for engaging in unfair acts and practices within the intent and meaning of the Federal Trade Commission Act:

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

As respects respondent's appeal from the hearing examiner's initial decision in the instant matter on the ground that the proceeding was not in the interest of the public, since prohibiting respondent from selling lottery devices in commerce would not eliminate the unfair practice, which was the distribu-

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tion of merchandise by lottery: the hearing examiner correctly concluded that respondent's acts and practices were to the injury of the public.

With regard to said appeal and the second ground relied upon in support thereof, namely, that respondent did not receive a fair hearing as the hearing examiner arbitrarily refused to consider evidence to the effect that competition was not affected by the sale of punchboards in commerce, that use thereof in the sale of merchandise did not divert trade, and that consequently their use did not constitute an unfair method of competition:

The hearing examiner ruled correctly in rejecting such evidence as immaterial to the issues in the matter, in view of the fact that the complaint did not allege that respondent's practices constituted an unfair method of competition, but alleged that her practice of supplying to others the means of conducting lotteries in the sale or distribution of merchandise was in and of itself an unfair act and practice, so that the effect thereof upon competing sellers of merchandise was immaterial.

Before *Mr. Frank Hier*, trial examiner.

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

*Mr. J. R. Mulliner*, of Salt Lake City, Utah, and *Mr. F. W. James*, of Evanston, Ill., for respondent.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Esther Zitserman, individually and trading as J. M. Howard Co., hereinafter referred to as the respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in regard thereto would be in the public interest, hereby issues this complaint by stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Esther Zitserman, is an individual trading and doing business as J. M. Howard Co. with her office and principal place of business located at 117 Sylvan Avenue in the city of Newark, New Jersey.

Respondent is now and has been for more than three years last past engaged in the sale and distribution of devices commonly known as push cards and punchboards and in the sale and distribution of said devices to dealers in various articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia and to dealers in various articles of merchandise in the various States of the United States and in the District of Columbia.

Respondent causes and has caused said devices when sold to be transported from her place of business in the State of New Jersey to pur-



chasers thereof at their points of location in the various States of the United States, and in the District of Columbia. There is now and has been for more than three years last past a course of trade in such devices by said respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of her said business as described in Paragraph One hereof, respondent sells and distributes, and has sold and distributed, to said dealers in merchandise, push cards and punchboards so prepared and arranged as to involve games of chance, gift enterprises or lottery schemes when used in making sales of merchandise to the consuming public. Respondent sells and distributes, and has sold and distributed many kinds of push cards and punchboards, but all of said devices involve the same chance or lottery features when used in connection with the sale or distribution of merchandise and vary only in detail.

Many of said push cards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said push cards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one push or punch from the push card or punchboard, and when a push or punch is made, a disc or printed slip is separated from the push card or punchboard and a number is disclosed. The numbers are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to designated articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Persons who do not secure such lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said push card and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those push cards and punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by the respondent on said push card and punchboard devices first hereinabove described. The only use to be made of said push card and punchboard devices, and the only

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

PAR. 3. Many persons, firms and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, purchase and have purchased respondent's said push card and punchboard devices, and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise together with said push cards and punchboard devices. Retail dealers who have purchased said assortments either directly or indirectly have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said push cards and punchboards in accordance with the sales plan as described in Paragraph Two hereof. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said push cards and punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof, many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers and jobbers who sell and distribute said merchandise together with said devices.

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

The sale or distribution of said push cards and punchboard devices by respondent as hereinabove alleged supplies to and places in the hands of others the means of conducting lotteries, games of chance or gift enterprise in the sale or distribution of their merchandise. The respondent thus supplies to, and places in the hands of, said persons, firms and corporations the means of, and instrumentalities for, en-

gaging in unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

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

#### ORDERS AND DECISION OF THE COMMISSION

Order denying respondent's appeal from initial decision of the hearing examiner and decision of the Commission and order to file report of compliance, Docket 5737, November 29, 1951, follows:

This matter came on to be heard by the Commission upon the respondent's appeal from the hearing examiner's initial decision herein and the brief in opposition thereto filed by counsel in support of the complaint.

The grounds relied upon in support of said appeal are (1) that this proceeding is not in the interest of the public, as prohibiting respondent from selling lottery devices in commerce will not eliminate the unfair practice which is the distributing of merchandise by lottery, and (2) that respondent did not receive a fair hearing as the hearing examiner arbitrarily refused to consider certain evidence.

The Commission is of the opinion that the distribution in commerce of devices which aid and encourage merchandising by gambling is contrary to the interest of the public. Merchandising by gambling should not be divided into isolated acts, which when examined separately may appear innocent. The gamblers and those who furnish them with the instrumentalities by means of which merchandising by gambling is conducted are both engaged in practices contrary to public policy. The hearing examiner, therefore, correctly concluded that respondent's acts and practices were to the injury of the public.

Respondent's contention that she did not receive a fair hearing relates to the ruling of the hearing examiner striking from the record the testimony of witness W. J. Jennings and his refusal to receive the testimony of certain other witnesses, all of which testimony being to the effect that competition is not affected by the sale of punchboards in commerce, that the use of punchboards in the sale of merchandise does not divert trade and that consequently their use does not constitute an unfair method of competition. Inasmuch as the complaint herein does not allege that respondent's practice constitutes an unfair method of competition but alleges that respondent's practice of supplying to others the means of conducting lotteries in the sale or dis-

tribution of merchandise is in and of itself an unfair act and practice, the effect of the said practice upon competing sellers of merchandise is immaterial. The hearing examiner, therefore, ruled correctly in rejecting this evidence as being immaterial to the issues in this matter.

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

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

*It is further ordered*, That the initial decision of the hearing examiner shall on the 29th day of November 1951, become the decision of the Commission.

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

Commissioner Mason concurring in this decision insofar as it relates to the findings as to the facts and conclusion, but not concurring in this decision insofar as it relates to the form of order to cease and desist, for the reasons stated in his opinion concurring in part and dissenting in part in Docket No. 5203, Worthmore Sales Company.

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 January 25, 1950, issued and subsequently served its complaint in this proceeding upon respondent Esther Zitserman, charging her with the use of unfair acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondent's answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before the above-named trial examiner theretofore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said trial examiner on the complaint, the answer thereto, testimony and other evidence, proposed findings as to the facts and conclusions presented by counsel; 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 Esther Zitserman is an individual trading and doing business as J. M. Howard Co., with her office and principal place of business located, since 1940, at 117 Sylvan Avenue, Newark, New Jersey. Prior to 1940, she was located in Philadelphia, Pennsylvania.

Respondent is now and has been for many years engaged in the manufacture, sale and distribution of devices commonly known as push cards and punchboards to dealers in various articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia and to dealers in various articles of merchandise in the various States of the United States and in the District of Columbia.

PAR. 2. Respondent causes and has caused said devices, when sold, to be transported from her place of business in the State of New Jersey to purchasers thereof at their places of business located in the various States of the United States and in the District of Columbia. There is and has been for many years a constant course of trade in such devices by said respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of her business, as hereinabove described, respondent sells and distributes and has sold and distributed to said dealers in various merchandise, push cards and punchboards designed, prepared and arranged for use by retailers in the sale and distribution of merchandise to the public by means of a game of chance, gift enterprise or lottery scheme. Respondent sells and distributes and has sold and distributed many kinds of push cards and punchboards, which vary in detail but all involve the same principle of merchandise distribution by chance or lottery.

Some of said push cards and punchboards have printed on the faces thereof, legends or instructions which explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on these push cards and punchboards vary with the individual device. Each purchaser is entitled to one punch or push from the push card or punchboard, and when a push or punch is made, a disc or printed slip is separated from the push card or punchboard and a number is disclosed. The number is effectively concealed from the purchaser or

prospective purchaser until a selection has been made, the price of the punch paid and the push or punch completed. Certain specified numbers entitle purchasers to designated articles of merchandise. Purchasers securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Purchasers who do not secure such lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the public wholly by lot or chance.

Some of these push cards and punchboards bear picturizations of various articles of merchandise, such as candy, cigarettes, pipes, etc. Others have no pictures, legends or instructions but have blank spaces provided for the insertion thereon by the purchaser of the device of his own instructions and a statement of the merchandise to be awarded by chance as prizes. The only use to be made of any of these push card and punchboard devices and the only manner in which they are used, by the ultimate purchasers thereof, is for the distribution of merchandise, such as candy, cigarettes, pipes, etc., by means of lot or chance, as hereinabove described.

PAR. 4. Persons, firms and corporations who sell and distribute and have sold and distributed candy, cigarettes, pipes, clocks, razors, cosmetics and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia purchase and have purchased respondent's push card and punchboard devices, and pack and assemble and have packed and assembled assortments composed of various articles of merchandise, together with said push card and punchboard devices and have sold such combinations in commerce to retailers. Retail dealers who have purchased said assortments or combinations, either directly or indirectly, have exposed the same to the purchasing public and have sold or distributed the merchandise so assembled and combined as outlined hereinabove in Paragraph Three.

PAR. 5. Respondent thus supplies to and places in the hands of retail dealers, through the channels of interstate commerce, either directly or indirectly, the means of conducting lotteries or games of chance in the sale and distribution of merchandise to the general public and teaches and encourages gambling among members of the public to its injury. The sale of merchandise by and through such means and methods is a practice which is in contravention of an established public policy of the Government of the United States and respondent, through the supplying of such means, knowingly and pur-

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posely assists and participates in the violation of such policy. Respondent thus pollutes the stream of interstate commerce by supplying to and placing in the hands of other persons, firms and corporations the means of and the instrumentalities for engaging in unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

## CONCLUSION

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

## ORDER

*It is ordered*, That the respondent, Esther Zitserman, individually, and trading as J. M. Howard Co., or under any other name, her agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, punchboards, push cards, or other lottery devices which are to be used, or which may be used, in the sale and distribution of merchandise to the public by means of a game of chance, gift enterprise or lottery scheme.

## ORDER TO FILE REPORT OF COMPLIANCE

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

## Syllabus

IN THE MATTER OF  
NEO-MINERAL COMPANY, INC. ET AL.

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

*Docket 5711. Complaint, Nov. 17, 1949—Decision, Dec. 1, 1951*

Where a corporation and three officers thereof, engaged in the interstate sale and distribution of their "Neo-Mineral" preparation; through statements in advertisements disseminated through the mails—

- (a) Falsely represented that their said product was a competent and effective treatment for and would cure stomach and kidney ailments, bloating, constipation, and bowel adhesions, rheumatism, arthritis, and other conditions; would relieve the pain of rheumatism or arthritis; would cure headaches, nervousness and dizzy spells; restore vitality, energy and weakened sexual powers; improve the appetite and increase the weight of the user; enrich the blood, and correct tiredness, poor appetite and lack of ambition to work or play; and restore sparkle in the eye and mental brilliance, and correct and cure similar symptoms and conditions;
- (b) Falsely represented that it contained no drugs and restored health without use thereof, that it contained the same minerals in therapeutic amounts as were found in the mineral waters of the best mineral springs, and that its use would produce the benefits ordinarily ascribed to the use of such mineral waters;
- (c) Falsely represented that it kept the colon free from waste matter, and that the black stools and evidence of impurities in the urine following its use demonstrated these results;

The facts being that such stools and impurities in the urine were due to chemical reaction of the iron compounds in the preparation with sulphur compounds in the fecal matter and had no therapeutic significance; and

- (d) Represented that 68% of all persons over 35 suffered from nutritional mineral-iron anemia, and that when a person was nervous, dull, tired, lazy, had headaches and dizzy spells, had a poor appetite and was underweight, where the eyes lacked sparkle and the mind brilliance, such or similar conditions indicated a lack of minerals in the blood, and the use of said preparation would correct them and restore health;

The facts being there are no reliable medical statistics showing that 68% or any other percent of persons over 35 suffer from nutritional mineral-iron anemia, and the preparation would not accomplish the results claimed;

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

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

As regards the corporation laws of the state of Michigan, under which the corporate respondent was brought into being, the examiner in the proceeding took official notice of certain provisions in connection with the filing of a



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certificate of dissolution in its behalf, and the question as to whether or not the cease and desist order should be entered against the corporate respondent as well as against the individual respondents in their capacities as officers and directors.

In said matter which involved the sale of drugs, while no charge was made in the complaint of any harmful propensities thereof, it was concluded that although a certificate of dissolution had been filed, the corporate respondent as well as the individual respondents in their representative capacities as officers and directors should be included in the order to cease and desist, notwithstanding the fact that the former was dissolved on January 20, 1950, "by expiration of term," since the applicable corporation laws of Michigan provide that the corporate body continue for three years after dissolution for the purpose, among other things, of disposing of its assets; and, since the stock in trade of the product "Neo-Mineral" is an asset to be liquidated, under the circumstances of the false and fraudulent advertising found to exist in connection with sale of its said product, preventive measures should be taken effectively to prohibit and prevent such a disposition thereof.

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

*Mr. Morton Nesmith* and *Mr. John M. Doukas* for the Commission.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of authority vested in it by said Act, the Federal Trade Commission having reason to believe that Neo-Mineral Company, Inc., a corporation, and Charles Manteris, Peter J. Hioureas, and Peter Lucas, 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 Neo-Mineral Company, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Michigan with its principal offices located at 2280 14th Street, Detroit, Michigan.

Respondents Charles Manteris, Peter J. Hioureas and Peter Lucas are President, Vice-President and Secretary-Treasurer, respectively of said corporation, and as such officers, they formulate, direct and control the policy and practices of said corporation. The address of said individual respondents is the same as that of the corporate respondent.

PAR. 2. Said respondents are now and for the past year have been engaged in the business of selling and distributing a preparation containing drugs as "drug" is defined in the Federal Trade Commission

Act. The designation used by the respondents for their "preparation" and the formula and directions for its use are as follows:

Designation: Neo-Mineral

Formula: An aqueous solution containing:

Ferric sulfate.....	4.22 g. per 100 cc
Ferrous sulfate.....	.04 g. per 100 cc
Aluminum sulfate.....	.93 g. per 100 cc
Calcium sulfate.....	.19 g. per 100 cc
Magnesium sulfate.....	.33 g. per 100 cc
Phosphoric acid.....	.020 g. per 100 cc
Manganese.....	.0065 g. per 100 cc
Copper.....	less than .001 g. per 100 cc

Directions for use:

**IMPORTANT: NEVER TAKE NEO-MINERAL UNDILUTED** Take one teaspoonful twice daily, in a full glass of water, or fruit juice if preferred. Take Neo-Mineral after meals.

Respondents cause said drug preparation when sold to be shipped from their place of business in the State of Michigan to dealers and individuals located in the various other States of the United States and the District of Columbia. Said dealers in turn sell such drug preparation to the general public. Respondents maintain and at all times mentioned herein have maintained a course of trade in said preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, respondents since March 21, 1938, have disseminated and caused the dissemination of certain advertisements concerning said preparation by the United States mails and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements inserted in the Kalamazoo Gazette, Kalamazoo, Michigan, February 8, 1949, and March 24, 1949; The Sturgis Daily Journal, Sturgis, Michigan, January 21, 1949; The Huntington Advertiser, Huntington, West Virginia, May 6, 1949, May 12, 1949, and May 13, 1949; The Cincinnati Inquirer, Cincinnati, Ohio, March 16, 1949, and March 23, 1949; The Courier Journal, Louisville, Kentucky April 20, 1949, and Detroit News, Detroit, Michigan, April 6, 1949; and respondents have disseminated and caused the dissemination of advertisements concerning their preparation by various means 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 preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among the statements and representations contained in said advertisements disseminated as aforesaid are the following:

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AMAZING

DISCOVERY

FOR SICK PEOPLE

Stomach Ailments, Weak Kidneys, Rheumatic Pains, Arthritis, Neuritis—  
Drugless Health

If you are a sufferer of these ailments try NEO-MINERAL. You may be astounded at the results. You need not guess—you will see facts. \* \* \*

Rich Red Blood

MEDICAL records show 68% of men and women over 35 suffer from nutritional iron anemia. When you feel nervous, dull, lazy and have dizzy spells, no ambition to work or play, a poor appetite, feel blue, when your eyes lack sparkle, and your mind brilliance, when headaches get the best of you, and you feel old before your time, when the sexual powers weaken, and life seems not worth living, with worry wearing you down—it may be simply lack of minerals in your blood. NEO-MINERAL is then what you need. Wonder Minerals. Rheumatism and Arthritis are dreadful diseases. Acid condition in the blood is often their cause. What could be the remedy? For thousands of inquirers, minerals have been used to relieve pain and suffering of these ills. People on advice of doctors go to mineral springs to find cure or relief. The late President Roosevelt used to go to Warm Springs in Georgia. He was helped or would not have gone there regularly twice a year.

YEAR after year, people rush to mineral springs and spas, to drink and bathe in their miraculous water. We have all heard of the wondrous springs of Lourdes, France, the famous Thronion in Ancient Greece, where according to legend, Hercules, the god of eternal strength and youth, drank its waters and bathed to be forever young.

## AMAZING RESULTS

NEO-MINERAL contains minerals you get at the world's best springs. Watch your elimination from your bowels a day or two after using it. The waste, black as the color of your shoes, will start to break away, and you will SEE it. Also examine your urine. You will see impurities—poisonous waste coming out of your kidneys, relieving you, and then realize the priceless value of NEO-MINERAL.

NEO-MINERAL is not a physic and does not interfere with the food in the stomach. It cleans and purifies the intestines, thoroughly relieving gas, toxins, acids, and bloating. After these poisons are out of the system and the kidneys purified, we begin to feel the arthritis and rheumatism leaving and Nature starting to complete the recovery. \* \* \* REGARDLESS of how long you have been suffering and how many medicines you have tried before, NEO-MINERAL may be the remedy you need.

SICK!

SUFFERERS OF STOMACH AILMENTS,

WEAK KIDNEYS, RHEUMATIC PAINS,

ARTHRITIS, NEURITIS

and other disorders, such as Headaches, Indigestion, Acids, Toxins, Bloating, Weak Back, Frequent Rising at Night, Lumbago, Leg Pains, Lack of Vitality and

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## Complaint

Energy, Poor Appetite, may be greatly relieved by the help of a natural remedy—  
NEO-MINERAL \* \* \*

Spastic Constipation \* \* \* Our Guarantee. We urge EVERYONE TO  
TRY NEO-MINERAL \* \* \*.

Constipation is the cause of this atonic abnormal colon. Keep colon free from  
poisonous waste matter.

Bowel Adhesions—Proper diet, keeping colon clean, always helps to avoid the  
condition of this colon.

## DRUGLESS HEALTH

PAR. 5. Through the use of the statements in the advertisements hereinabove set forth and others of the same import, not specifically set out herein, respondents represented that their preparation Neo-Mineral, taken as directed, is a competent and effective treatment for and will cure stomach ailments, kidney ailments, bloating, constipation, bowel adhesions, rheumatism, arthritis, neuritis, lumbago, headaches, nervousness, dizzy spells, weak back, night risings, and leg pains, will restore vitality, energy, and weakened sexual powers; will improve the appetite and increase the weight of the user; that its use will relieve the pains of rheumatism and arthritis; that said preparation does not contain drugs and restores health without the use of drugs; that it contains the same minerals in therapeutic amounts as are found in the mineral waters of the best mineral springs and that the use of the preparation will produce the benefits ordinarily ascribed to the use of such mineral waters; that its use will enrich the blood and build rich, red blood; that said preparation keeps the colon free from waste matter, and that the black stools and evidences of impurities in the urine following its use demonstrate these results; that 68% of all persons over 35 years of age suffer from nutritional mineral-iron anemia; that when a person is nervous, dull, tired, lazy, has headaches and dizzy spells, lacks ambition to work or play, has a poor appetite and is underweight, when eyes lack sparkle and the mind brilliance or when other similar conditions exist, such conditions indicate a lack of minerals in the blood and that the use of the said preparation, as directed, will correct them and that its use will restore health to all persons who may suffer ill health.

PAR. 6. 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, respondents' preparation Neo-Mineral has no value in the treatment of stomach ailments, kidney ailments, bloating, constipation, bowel adhesions, rheumatism, arthritis and neuritis and the pains thereof, weak back, night risings and leg pains, and, except to the extent hereinafter set forth, has no value in the treatment of headaches, nervousness and dizzy spells, lack of vitality, energy, ambition, sparkle in the eyes and

brilliance of the mind, poor appetite, underweight, weakened sexual powers and similar conditions, in building rich, red blood and in restoring or benefiting the health of the user. Practically all of the ingredients contained in said preparation are drugs and any results obtained through its use are by reason of a drug contained therein. It does not contain the same minerals as exist in water from the best mineral springs and the benefits obtained through its use are not comparable to those following the use of such waters. Said preparation will not keep the colon free from waste matter. Black stools and evidences of impurities in the urine are not indicative of any such result. Any black color of the stools following the taking of the preparation is due to the chemical reaction of the iron compounds in the preparation with sulphur compounds in the fecal matter and has no therapeutic significance. The use of the preparation will not cause impurities to appear in the urine. There are no reliable medical statistics showing that 68% or any other percent of persons over 35 suffer from nutritional mineral-iron anemia.

PAR. 7. There are a considerable number of disease conditions embraced under the generic term "anemia"; some of these anemias result from a deficiency of iron in the body, while the remainder result from a variety of other causes. Only that type of anemia involving a deficiency of iron in the body which has resulted from an inadequate intake of iron in the diet may be benefited by Neo-Mineral taken as directed; the preparation is not of value in the treatment of iron deficiency anemia resulting from an inadequate absorption of iron by the intestine or an increased loss of iron as in chronic bleeding; the preparation would also be without value in the treatment of pernicious anemia and other macrocytic anemias, or the anemias caused by derangements of the blood-forming organs of the body or conditions resulting in increased destruction of red blood cells; it is also without value in the treatment of anemia secondary to severe or chronic diseases such as cancer, kidney disease, infections, etc. Of the cases of anemia encountered in medical practice, only a very small percentage is caused by an inadequate intake of iron in the diet, and it is only in this very small percentage of cases that Neo-Mineral may have any therapeutic value; also, it is only in this very small percentage of cases of anemia that the preparation would be effective in enriching the blood or in tending to produce rich, red blood.

Such symptoms or conditions as headaches, nervousness and dizzy spells, tiredness, dullness, laziness, lack of vitality, energy, ambition, sparkle in the eyes and brilliance of the mind, poor appetite, underweight, weakened sexual powers and similar conditions may be due to anemia resulting from an inadequate intake of iron in the diet;

these symptoms may also be due to any of the numerous other types of anemia and they may also be due to a wide variety of disease conditions which are in no wise related to anemia. In only an extremely small percentage of persons having the aforementioned symptoms are the symptoms the result of anemia due to a simple deficiency of iron in the diet, and it is only in this extremely small percentage of cases that Neo-Mineral will have any therapeutic value in the correction or relief of the aforementioned symptoms.

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

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

#### DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated December 1, 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, the Federal Trade Commission on November 17, 1949, issued and subsequently served its complaint in this proceeding upon Neo-Mineral Company, Inc., a corporation, Charles Manteris, Peter J. Hioureas, and Peter Lucas, charging respondents with the use of unfair and deceptive acts and practices, in commerce in violation of said Act. After the issuance of said complaint respondents filed their answer in which they admitted all of the material allegations of facts set forth in said complaint and waived all intervening procedure and further hearing as to the said facts. Thereafter, the proceeding regularly came on for final consideration by the above-named Trial Examiner theretofore duly designated by the Commission upon said complaint and answer thereto and proposed findings and conclusions

submitted by the attorneys in support of the complaint, none such having been submitted on behalf of the respondents.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Neo-Mineral Company, Inc., was a corporation organized and doing business under and by virtue of the laws of the State of Michigan with its principal offices located at 2280 14th Street, Detroit, Michigan. Said respondent corporation was dissolved on January 20, 1950.

Respondents Charles Manteris, Peter J. Hioureas and Peter Lucas were President, Vice-President and Secretary-Treasurer, respectively of said corporation, and as such officers, they formulated, directed and controlled the policy and practices of said corporation. The addresses of said individual respondents are the same as that of the corporate respondent.

PAR. 2. At the time of issuance of the complaint, and for at least one year prior thereto, respondents were engaged in the business of selling and distributing a preparation containing drugs, as the word "drug" is defined in the Federal Trade Commission Act. On January 20, 1950, the corporate respondent was dissolved "by expiration of term" and a certified copy of certificate to that effect appears of record herein, although, by their joint and several answer filed herein, all respondents admit that the sale and distribution of their product continued until sometime in the month of March 1950.

Respondents sold and designated their preparation as "Neo-Mineral," the formula of which, and directions for its use being, as follows:

Formula: An aqueous solution containing:

Ferric sulfate.....	4.22 g. per 100 cc
Ferrous sulfate.....	.04 g. per 100 cc
Aluminum sulfate.....	.93 g. per 100 cc
Calcium sulfate.....	.19 g. per 100 cc
Magnesium sulfate.....	.33 g. per 100 cc
Phosphoric acid.....	.020 g. per 100 cc
Manganese.....	.0065 g. per 100 cc
Copper, less than.....	.001 g. per 100 cc

Directions for Use:

IMPORTANT: NEVER TAKE NEO-MINERAL UNDILUTED. Take one teaspoonful twice daily, in a full glass of water, or fruit juice if preferred. Take Neo-Mineral after meals.

Respondents caused said drug preparation when sold to be shipped from their place of business in the State of Michigan to dealers and individuals located in the various other States of the United States and the District of Columbia. Said dealers in turn sell such drug preparation to the general public. Respondents maintained and at all times mentioned herein have maintained a course of trade in said preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, respondents, since March 21, 1938, have disseminated 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, the purpose whereof being to induce, directly or indirectly, the purchase of said preparation by the public.

PAR. 4. Among and typical of the statements and representations contained in said advertisements disseminated as aforesaid appeared the following:

AMAZING  
DISCOVERY  
FOR SICK PEOPLE

Stomach Ailments, Weak Kidneys, Rheumatic Pains, Arthritis, Neuritis  
Drugless Health

If you are a sufferer of these ailments try NEO-MINERAL. You may be astounded at the results. You need not guess—you will see facts. \* \* \*

Rich Red Blood

MEDICAL records show 68% of men and women over 35 suffer from nutritional iron anemia. When you feel nervous, dull, lazy and have dizzy spells, no ambition to work or play, a poor appetite, feel blue, when you eyes lack sparkle, and your mind brilliance, when headaches get the best of you, and you feel old before your time, when the sexual powers weaken, and life seems not worth living, with worry wearing you down—it may be simply lack of minerals in your blood. NEO-MINERAL is then what you need. Wonder Minerals. Rheumatism and Arthritis are dreadful diseases. Acid condition in the blood is often their cause. What could be the remedy? For thousands of inquirers, minerals have been used to relieve pain and suffering of these ills. People on advice of doctors go to mineral springs to find cure or relief. The late President Roosevelt used to go to Warm Springs in Georgia. He was helped or would not have gone there regularly twice a year.

YEAR after year, people rush to mineral springs and spas, to drink and bathe in their miraculous water. We have all heard of the wonderous springs of Lourdes, France, the famous Thronion in Ancient Greece, where according to legend, Hercules, the god of eternal strength and youth, drank its waters and bathed to be forever young.



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## AMAZING RESULTS

NEO-MINERAL contains minerals you get at the world's best springs. Watch your elimination from your bowels a day or two after using it. The waste, black as the color of your shoes, will start to break away, and you will SEE it. Also examine your urine. You will see impurities—poisonous waste coming out of your kidneys, relieving you and then realize the priceless value of NEO-MINERAL.

NEO-MINERAL is not a physic and does not interfere with the food in the stomach. It cleans and purifies the intestines, thoroughly relieving gas, toxins, acids and bloating. After these poisons are out of the system and the kidneys purified, we begin to feel the arthritis and rheumatism leaving and Nature starting to complete the recovery. \* \* \* REGARDLESS of how long you have been suffering and how many medicines you have tried before, NEO-MINERAL may be the remedy you need.

SICK!

SUFFERERS OF STOMACH AILMENTS,

WEAK KIDNEYS, RHEUMATIC PAINS,

ARTHRITIS, NEURITIS

and other disorders, such as Headaches, Indigestion, Acids, Toxins, Bloating, Weak Back, Frequent Rising at Night, Lumbago, Leg Pains, Lack of Vitality and Energy, Poor Appetite, may be greatly relieved by the help of a natural remedy—NEO-MINERAL \* \* \*

Spastic Constipation \* \* \* Our Guarantee. We urge EVERYONE TO TRY NEO-MINERAL \* \* \*.

Constipation is the cause of this atonic abnormal colon. Keep colon free from poisonous waste matter.

Bowel Adhesions—Proper diet, keeping colon clean, always helps to avoid the condition of this colon.

## DRUGLESS HEALTH

PAR. 5. Through use of the statements in the foregoing advertisements and others of similar import not specifically set out herein, respondents represented that their preparation, Neo-Mineral, taken as directed, is a competent and effective treatment for and will cure stomach ailments, kidney ailments, bloating, constipation, bowel adhesions, rheumatism, arthritis, neuritis, lumbago, headaches, nervousness, dizzy spells; weak back, night risings and leg pains; will restore vitality, energy and weakened sexual powers; will improve the appetite and increase the weight of the user; that its use will relieve the pains of rheumatism and arthritis; that said preparation does not contain drugs and restores health without the use of drugs; that it contains the same minerals in therapeutic amounts as are found in the mineral waters of the best mineral springs and that the use of the preparation will produce the benefits ordinarily ascribed to the use of such mineral waters; that its use will enrich the blood and build rich, red blood; that

said preparation keeps the colon free from waste matter, and that the black stools and evidences of impurities in the urine following its use demonstrate these results; that 68% of all persons over 35 years of age suffer from nutritional mineral-iron anemia; that when a person is nervous, dull, tired, lazy, has headaches and dizzy spells, lacks ambition to work or play, has a poor appetite and is underweight, when eyes lack sparkle and the mind brilliance or when other similar conditions exist, such conditions indicate a lack of minerals in the blood and that the use of the said preparation, as directed, will correct them and that its use will restore health to all persons who may suffer ill health.

PAR. 6. 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, respondents' preparation Neo-Mineral has no value in the treatment of stomach ailments, kidney ailments, bloating, constipation, bowel adhesions, rheumatism, arthritis and neuritis and the pains thereof; weak back, night risings and leg pains; has no value in the treatment of headaches, nervousness and dizzy spells, lack of vitality, energy, ambition, sparkle in the eyes and brilliance of the mind, poor appetite, underweight, weakened sexual powers and similar conditions; in building rich, red blood and in restoring or benefiting the health of the user. Practically all of the ingredients contained in said preparation are drugs and any results obtained through its use are by reason of a drug contained therein. It does not contain the same minerals as exist in water from the best mineral springs and the benefits obtained through its use are not comparable to those following the use of such waters. Said preparation will not keep the colon free from waste matter. Black stools and evidences of impurities in the urine are not indicative of any such result but are due to chemical reaction of the iron compounds in the preparation with sulphur compounds in the fecal matter, and have no therapeutic significance. The use of the preparation will not cause impurities to appear in the urine. There are no reliable medical statistics showing that 68% or any other percent of persons over 35 suffer from nutritional mineral-iron anemia.

#### CONCLUSIONS

Notwithstanding the certificate of dissolution of the corporate respondent, hereinabove referred to, the Trial Examiner concludes that an order should be entered against the corporate respondent, as well also against the individual respondents in their representative capacities as officers and directors of the corporation for the following

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reasons: (1) This matter involves the sale of drugs and, while no charge is made in the complaint of any harmful propensities thereof, nevertheless all precautions should be availed of in the present proceeding to leave no avenue open for possible evasion of an order; (2) the Corporation Laws of the State of Michigan under which Neo-Mineral Company, Inc., was brought into being, and of which laws the Examiner takes official notice, provide for a number of steps to be taken subsequent to the filing of a certificate of dissolution, in order to effectively accomplish that purpose, the most important of which provides that after dissolution the corporate body shall continue for a period of three years for the purpose, *inter-alia*, of disposing of its assets. Obviously, the stock in trade, if any, of the product, "Neo-Mineral," is an asset to be liquidated and, while the record does not disclose the present inventory, preventive measures should be availed of to effectively prohibit and prevent a disposition thereof under the circumstances and conditions of the false and fraudulent advertising herein found to exist. These reasons are given because of the oft-repeated statement that "it is a futile thing to place an order against a dead horse." The "horse" in this instance may be *in extremis* but will not be officially dead for all purposes until January 20, 1953, and even then may be legally revived. Pertinent passages of the applicable provision of the Michigan laws are footnoted.<sup>1</sup>

The use by the respondents of the aforesaid statements and representations disseminated as aforesaid, has had and now has the tend-

<sup>1</sup> Concerning the dissolution of the corporation, aside from the certificate of dissolution, there is nothing of record herein to show that all of the provisions of the Michigan laws have been complied with in order to make such dissolution absolute, i. e., compliance with section 48 of Act No. 327, P. A. 1931, providing that:

"Within 30 days after any such dissolution a certificate signed by the holders of at least three-fourths of each class of outstanding stock shall be filed with the Michigan Corporation and Securities Commission and a duplicate original thereof with the County Clerk where its registered office is located in the manner provided in section five for original articles, \* \* \* showing that all the debts and liabilities have been paid or provision for the payment thereof made and the assets have been distributed pro rata among the shareholders or provisions for such distribution made." (Paragraph 73, as amended by L. 949, Act No. 29.)

The same section of the act provides, with great detail for the preservation and safe-keeping of the corporate records for a period of ten years, concerning which provision there is likewise no evidence of compliance. Said section further provides, *inter-alia*:

"All corporations whose charters shall have expired by limitation \* \* \* shall nevertheless continue to be bodies corporate for the further term of three years from such expiration \* \* \* for the purpose of prosecuting and defending suits for or against them and of enabling them gradually to settle and close their affairs and to dispose of and convey their property and divide their assets but not for the purpose of continuing the business for which such corporations were organized."

Respondents, by their admission answer, assert that they continued conduct of the business until March of 1950, despite dissolution on January 20, 1950. What assurance can there be, short of an order against all named respondents, that such practices will not be resumed in the future?

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ency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of such statements are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' said preparation.

Such 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 the respondent Neo-Mineral Company, Inc., a corporation, and its officers, and the respondents Charles Manteris, Peter J. Hioureas, and Peter Lucas, individually and as officers of said respondent corporation, and said respondents' respective representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of the preparation designated "Neo-Mineral," or any other preparation 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 said preparation, when used as directed, is a competent or effective treatment for, or will cure, stomach ailments; kidney ailments; bloating; constipation; bowel adhesions; rheumatism; arthritis; neuritis; lumbago; weak back; night risings and leg pains; or will relieve the pains of rheumatism or arthritis; or that said preparation has any therapeutic value in the treatment of such conditions.

(b) That said preparation is a competent or effective treatment for, or will cure, headaches; nervousness; dizzy spells; or will restore vitality, energy and weakened sexual powers; will improve appetite and increase the weight of the user; or will enrich the blood and build rich, new red blood; or will correct dullness; tiredness; laziness; poor appetite, or a lack of ambition to work or play; or will restore sparkle in the eye; mental brilliance, or correct and cure similar symptoms and conditions, unless such representations be expressly limited to those instances in which the symptoms and conditions to be treated are due solely to iron deficiency anemia resulting from an inadequate intake of iron in the diet.

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(c) That said preparation does not contain drugs, or restores health without the use of drugs.

(d) That said preparation contains the same minerals in therapeutic amounts as are found in the mineral waters of the best known mineral springs, or that its use will produce the benefits ordinarily ascribed to the use of such mineral waters.

(e) That said preparation keeps the colon free from waste matter, and that black stools and evidences of impurities in the urine demonstrate the therapeutic value of respondents' product in eliminating waste.

(f) That 68 percent or any other percentage or number of men and women over 35 years of age, or in any other age bracket, suffer from nutritional mineral-iron anemia.

(g) That said preparation will restore health to all persons who may suffer ill health.

(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 its product, Neo-Mineral, any advertisement which contains any of the representations prohibited in Paragraph (1) of this order.

## ORDER TO FILE REPORT OF COMPLIANCE

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

## Syllabus

IN THE MATTER OF  
RADIO TRAINING ASSOCIATION OF AMERICA 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 5536. Complaint, Apr. 20, 1948—Decision, Dec. 5, 1951*

Where a corporation and its president who were engaged in the interstate sale and distribution of a course of home study instruction in the fields of radio and television; in advertising in newspapers and magazines of general circulation and through form letters, directly and by implication—

- (a) Represented that a person who completed their course was assured of proper preparation and ample training for a successful career as a technician in said fields of science;
- (b) Represented that the course embraced all the practical training necessary for success in said fields, and that its satisfactory completion properly equipped one with the necessary qualifications to obtain and hold high salaried positions in the radio and television industries and supplied him with adequate radio shop knowledge for a lucrative future in radio; and
- (c) Represented that they had a modernly equipped radio and television laboratory in Hollywood in which those students who satisfactorily completed their home study course could obtain at least two weeks or eighty hours of practical training and experience in television work, the expenses of which, including round-trip transportation from the student's home, and lodging while receiving said training in their laboratory, were all included in the original tuition fee;

The facts being that their course consisted entirely of instruction in the theory of radio and television; the techniques referred to cannot be acquired except by actual experience in working with radio and television sets in a shop or laboratory, preferably under the supervision of a trained instructor, and without such practical training a person is not qualified for any technical position in the radio field; the best that a person could reasonably expect of such a course was that by its successful completion he would be somewhat better qualified to enter the trade as an apprentice than one who had had no practical training or experience in techniques and had not studied the theory of radio or television; and they had no laboratory nor any means of providing purchasers of their course with practical training or laboratory experience; and they bore no transportation and lodging expense and furnished their purchasers with nothing of value other than a home study course in theory;

- (d) Represented through the use of the word "Association" in their corporate name that their enterprise was an organization composed of persons primarily interested in its activities from an educational standpoint; and
- (e) Represented that they had the endorsement of or some connection with the radio and television manufacturing and distributing industry and acted as a medium through which its experts were trained, through use of their corporate name, "Radio Training Association of America," together with such statements as "training men for the radio industry for over 25 years," "We are seeking ambitious, mechanically inclined men—to learn Radio and

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Television, and prepare them for successful future careers as Certified Technicians," and, "Without obligating me advise how I can qualify for a Big Pay Job in the RADIO ELECTRONIC AND TELEVISION INDUSTRY," in form letters, cards and printed contracts distributed to prospective purchasers;

When in fact said enterprise was conducted solely as a commercial business venture for profit; and at no time had they had the endorsement of or any connection with the radio or television industry or had they acted as a medium through which its experts were trained;

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 their said course of instruction:

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

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

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

*Mr. Murray A. Nadler*, of Youngstown, Ohio, *Posner, Berge, Foa & Arent*, of Washington, D. C., and *Wolfson & Essey*, of Los Angeles, Calif., for respondents.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Radio Training Association of America, a corporation, and Benjamin M. Klekner, Earl L. Kemp, Paul H. Thomsen and I. O'Conner, individually and as officers of the Radio Training Association of America, 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, Radio Training Association of America, is a California corporation, with its office and principal place of business located at 5620 Hollywood Boulevard, Hollywood, California. Respondents, Benjamin M. Klekner, Earl L. Kemp, Paul H. Thomsen, and I. O'Connor, are individuals and officers of the corporate respondent, Radio Training Association of America, and as such officers they are responsible for and control and formulate and have controlled and formulated the advertising policies of said corporate respondent, including the acts and practices hereinafter described. The business address of each of the said individual respondents is the same as that shown above for the corporate respondent.

Respondents are now, and for several years last past have been engaged in conducting a correspondence school, and in selling and distributing in commerce between and among the various States of the United States and in the District of Columbia courses of instruction for home study in the practice and theory of radio and television. They have caused and are causing printed courses of instruction in said subjects, when sold, to be transported from their place of business in the State of California to student enrollees, who are the purchasers thereof, at their respective addresses in other States of the United States and in the District of Columbia.

Respondents maintain and at all times mentioned herein have maintained a course of trade in said courses of instruction in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business in commerce as aforesaid, and for the purpose of enrolling prospective students and thereby promoting the sale of their said courses of instruction, respondents, through field agents, who personally approach their prospects, and also by means of advertisements inserted and caused by respondents to be inserted in newspapers and magazines having general circulations throughout the United States, and in pamphlets, leaflets, circulars, form letters and cards, printed contracts and other mediums, distributed through the United States mails, have made and are making numerous false, deceptive and misleading statements and representations with respect to the advantages and benefits which the purchasers of their said courses of instruction could expect to receive. Among and typical of such false and misleading statements and representations so used by the respondents are the following:

We are seeking ambitious, mechanically inclined men—to learn Radio and Television, and prepare them for successful future careers as Certified Technicians.

During the next few years the growth of Radio and Television will be tremendous, and along with this growth there will be vast new job opportunities for trained men.

. . . R. T. A. brings you the practical training necessary for success right into your own home.

Printed on cards to be returned to respondents:

Without obligating me advise how I can qualify for a Big Pay Job in the Radio Electronic and Television Industry.

URGENT NEED for alert men and women to train for NEW BIG-PAY developments in RADIO-TELEVISION.

You get Practical Radio Shop "Know How."

Upon the student's completion of the Home Study portion of this training with a passing grade of seventy percent, the student is given the privilege



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of securing a Postgraduate Course of two weeks, (not less than eighty shop hours) of intensive and practical Shop and Laboratory training in the R. T. A. modern equipped laboratory.

The tuition fee charged by the R. T. A. includes round-trip bus transportation (within the continental limits of the U. S. A.), from the bus station nearest the student's residence. It also includes the cost of the student's room, at a place designated by the R. T. A., during the student's attendance while taking the Shop and Laboratory training.

The RADIO TRAINING ASSOCIATION OF AMERICA Plan enables you to become a CERTIFIED RADIO AND TELEVISION TECHNICIAN. . . . If you want us to, we can so arrange your RADIO TRAINING ASSOCIATION OF AMERICA training so that you will be brought to our shop and laboratory in Hollywood, California, . . . where you will be given the opportunity to work with the modern radio and television equipment and your expenses, such as your round-trip transportation from your home and your lodging while attending the training in the laboratory are all a part of our plan.

PAR. 3. Through the use of the statements and representations hereinabove set forth, and many others of similar import and effect, respondents represent, directly and by implication, that one completing their courses in radio and television is assured of proper preparation and ample training for a successful future career as a technician in said fields of science; that respondents' said courses for home study embrace all the practical training necessary for success in said fields of science, and the satisfactory completion thereof properly equips one with the necessary qualifications to obtain and hold high salaried positions in the radio and television industry, and supplies him with adequate radio shop knowledge for a lucrative future in radio; that respondents have a modernly equipped radio and television laboratory in Hollywood, in which those students who satisfactorily complete their home study courses can obtain at least two weeks or eighty hours of practical training and experience in radio and television work, the expenses of which, including round-trip transportation from the student's home to Hollywood and lodging while receiving said practical training in respondents' laboratory, are all included in the original tuition fee agreed upon.

PAR. 4. The aforesaid statements and representations are grossly exaggerated, false, and misleading. In truth and in fact, respondents' courses in radio and television are not sufficient to properly prepare and train one as a technician in said trades, and respondents' home study courses do not qualify a person to take a job as a technician, and the best that a student of such courses can reasonably expect is to be somewhat better qualified to enter the trade as an apprentice than one who has not received any practical training or experience or who has not studied the theory of such sciences; respondents' courses for home study not only do not embrace all the practical training neces-

sary for success in the radio and television trades, but do not include any practical training whatever in said fields, and merely instruct the student in the theory of said subjects, and the completion of said courses does not properly equip one with the necessary qualifications to obtain and hold a high-salaried position in the radio and television industry, nor does it equip him with adequate radio shop knowledge, nor with any practical experience to assure a lucrative future career in the radio field; at the time said representations were made respondents did not have, and do not now have, a radio and television laboratory in Hollywood or elsewhere, and respondents have no means of securing to students practical training or laboratory experience for any period of time in radio and television work, and respondents do not bear any expense in the transportation of students to or from Hollywood, nor for lodging in Hollywood, and the student never sees Hollywood unless he does so at his own expense.

PAR. 5. Respondents' use of the word "Association" in the corporate name of their business is deceptive and misleading, in that such usage implies that said enterprise is an organization composed of persons engaged, from an educational standpoint, in giving training in the mechanics and science of radio and television engineering, and as such has the endorsement of or some connection with the radio manufacturing and distributing industry, and that respondents' said enterprise is the medium through which the industry's radio and television experts are trained and secured. Such usage of the word "Association" is made particularly deceptive and misleading in said respects when coupled with displays by respondents' field representatives to prospective students of letters and certain printed matter furnished by respondents, some of the letters bearing the letterheads of various electrical instrument and equipment manufacturers and radio distributors, some of the other literature carrying the heading, "Chart Showing Progress and Possibilities for a Member of the Radio Training Association of America," and such statements as "Join the Association," and "Hook up with a Great Industry."

PAR. 6. In truth and in fact respondents' said enterprise is not an organization composed of persons engaged in or interested, from an educational standpoint, in imparting scientific training, but respondents' organization is conducted solely as a commercial business venture for profit; it neither has the endorsement of nor any connection with the radio manufacturing and distributing industry, and is not a medium through which the industry's radio and television experts are trained and secured.

PAR. 7. The statements, representations and implications made and caused to be made by respondents, including the usage of the word

"Association" in the corporate name, as set forth herein have had and now have the tendency and capacity to, and do, mislead and deceive many members of the purchasing public into the erroneous and mistaken belief that such statements, representations and implications are true, and because of such erroneous and mistaken belief cause a substantial portion of the public to purchase respondents' said courses of instruction.

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.

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

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 20, 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 that Act. After the filing of respondents' answer, testimony and other evidence in support of the allegations of the complaint and a stipulation as to certain facts entered into between counsel were introduced before a hearing examiner of the Commission, theretofore duly designated by it (no testimony or other evidence having been presented in opposition to the allegations of the complaint), and such testimony, stipulation and other evidence were duly filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission upon the aforesaid complaint, the respondents' answer thereto, the testimony, stipulation and other evidence, the recommended decision of the hearing examiner and brief in support of the complaint (no brief having been filed on behalf of the respondents and oral argument not having been 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 Radio-Television Training School (formerly named Radio Training Association of America prior to the amendment of its corporate charter in 1949) is a California corporation, with its office and principal place of business at 5100 South Vermont, Los Angeles 37, California. Respondent Benjamin M. Klek-

ner, whose present address is unknown, was president of respondent corporation and directed and controlled its advertising policies for several years immediately prior to April of 1949, at which time he severed all connection with the respondent corporation. Respondents Earl L. Kemp, Paul H. Thomsen and I. O'Connor are employees of the respondent corporation and have had no control or direction over the policies of the respondent corporation. The Commission is of the opinion, therefore, that the allegations of the complaint have not been sustained as to respondents Earl L. Kemp, Paul H. Thomsen and I. O'Connor and that the complaint should be dismissed as to them as individuals, and the term "respondents" as used hereinafter does not include these individuals.

PAR. 2. Respondent corporation is now and during the six years last past has been, and respondent Benjamin M. Klekner for several years immediately preceeding April 1949, was, engaged in the sale and distribution of a course of instruction for home study in the fields of radio and television. During the periods of time they were so engaged, each of the said respondents caused, and the respondent corporation now causes, the said course of instruction, when sold, to be transported from their place of business in the State of California to the purchasers thereof in the other States of the United States. Respondent corporation maintains, and at all times mentioned herein has maintained, and respondent Benjamin M. Klekner at all times mentioned herein prior to April 1949 did maintain, a course of trade in said course of instruction, in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of their said business in commerce and for the purpose of enrolling prospective students and promoting the sale of their said course of instruction, respondents, by means of advertisements inserted in newspapers and magazines having general circulation in the United States and through the use of form letters distributed throughout the United States by means of the United States mails, have represented, directly and by implication, that one completing their course in radio and television is assured of proper preparation and ample training for a successful future career as a technician in said fields of science; that respondents, said course for home study embraces all the practical training necessary for success in said fields of science, and the satisfactory completion thereof properly equips one with the necessary qualifications to obtain and hold high-salaried positions in the radio and television industry and supplies him with adequate radio shop knowledge for a lucrative future in radio; that respondents have a modernly equipped radio and television laboratory in Hollywood, in which those students who satisfactorily

complete respondents' home study course can obtain at least two weeks or eighty hours of practical training and experience in radio and television work, the expenses of which, including round-trip transportation from the student's home to Hollywood and lodging while receiving said practical training in respondents' laboratory, are all included in the original tuition fee agreed upon.

PAR. 4. The aforesaid representations are false and misleading. In fact, respondents' course does not include any practical training in the techniques of radio or television repair or construction, but consists entirely of instruction in the theory of radio and television. Such techniques cannot be acquired except by actual experience of working with radio and television sets in a shop or laboratory, preferably under the supervision of a trained instructor. Without such practical training in shop techniques a person is not qualified for any technical position in the radio field. Respondents' course of instruction, therefore, does not qualify a person for a position as a radio or television technician or repairman, nor does it equip a person with the necessary qualifications to obtain or hold any high-salaried position in the radio or television industry. The best that a purchaser can reasonably expect of such a course is that by successfully completing it he will be somewhat better qualified to enter the trade as an apprentice than one who has had no practical training or experience in radio or television techniques and has not studied radio and television theory.

Respondents do not have a radio or television laboratory in Hollywood or elsewhere, nor do they have any means of providing to the purchasers of their course of instruction practical training or laboratory experience in radio or television work. Respondents do not bear any expense in the transportation of purchasers of their course of instruction to Hollywood, nor do they furnish to the said purchasers anything of value other than a home study course of instruction in the theory of radio and television.

PAR. 5. For several years prior to 1949, respondents, by the use of the word "Association" in the corporate name of their business, implied that said enterprise was an organization composed of persons primarily interested in its activities from an educational standpoint.

During this same period of time, by the use of the corporate name "Radio Training Association of America," together with such statements as "Training Men for the Radio Industry for Over Twenty-five Years," "We are seeking ambitious, mechanically inclined men—to learn Radio and Television, and prepare them for successful future careers as Certified Technicians," and "Without obligating me advise how I can qualify for a Big Pay Job in the RADIO, ELECTRONIC, AND TELEVISION INDUSTRY" contained in form letters, cards,

and printed contracts distributed to prospective purchasers of their said courses, respondents implied that they had the endorsement of or some connection with the radio and television manufacturing and distributing industry and that they acted as a medium through which the industry's radio and television experts were trained.

PAR. 6. In fact respondents' said enterprise is now and at all times mentioned herein has been conducted solely as a commercial business venture for profit; at no time has it had the endorsement of or any connection with the radio or television industry, and at no time has it acted as a medium through which the industry's radio and television experts are trained.

PAR. 7. The use by respondents of the false and misleading representations as hereinbefore set forth, including the use of the word "Association" in the corporate name, has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations are true, and has had the tendency and capacity to cause such portion of the public to purchase respondent's said course of instruction because of such erroneous and mistaken belief.

#### 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, respondents' answer thereto, testimony and other evidence, including a stipulation of facts entered into by and between counsel for respondents and counsel in support of the complaint, introduced before a hearing examiner of the Commission theretofore duly designated by it, recommended decision of the hearing examiner, and brief in support of the complaint (no brief having been filed by respondents and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that the respondents Radio-Television Training School, a corporation, and Benjamin M. Klekner, individually, have violated the provisions of the Federal Trade Commission Act:

*It is ordered,* That the respondents Radio-Television Training School, a corporation, and its officers, agents, representatives, and em-

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ployees, and Benjamin M. Klekner, an individual, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of a course of instruction for home study in the fields of radio or television, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) That said course is capable of training radio or television technicians or repairmen.

(b) That any practical training is provided to purchasers of said course.

(c) That persons who complete said course are qualified thereby to hold high-salaried positions in the radio or television industry.

(d) That laboratory or shop equipment is available for the use of purchasers of said course.

(e) That any purchaser of said course will receive anything of value other than a home study course of instruction.

(f) That said course is endorsed by or that respondents' business has any connection with any of the members of the radio or television industry.

2. Using the word "Association," or any other word or words of similar meaning, as a part of the trade or corporate name under which the respondents conduct their business; or otherwise representing, directly or by implication, that respondents' business is anything other than a commercial business venture operated for profit.

*It is further ordered*, That the complaint herein be, and it hereby is, dismissed as to respondents Earl L. Kemp, Paul H. Thomsen, and I. O'Connor, without prejudice, however, to the right of the Commission to issue a new complaint or take such further or other action against such respondents at any time in the future as may be warranted by the then existing circumstances.

*It is further ordered*, That the respondents Radio-Television Training School, a corporation, and Benjamin M. Klekner, an individual, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

## Syllabus

IN THE MATTER OF  
MIDDLE ATLANTIC DISTRIBUTORS, INC., ET AL.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF  
SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5634. Complaint, Jan. 18, 1949—Decision, Dec. 7, 1951*

Where a corporation and its president, who owned all its capital stock, engaged in selling at wholesale to retailers in the District of Columbia certain brands of whiskies and other alcoholic beverages and exclusive distributor in said District for products made by Hiram Walker, Inc.;

Following the adoption of a policy of establishing, maintaining and enforcing uniform minimum resale prices at which said products were to be advertised and sold by its many retail customers, as communicated to them in letters and price lists; and in pursuance of said policy which included the declared intention of terminating all business relationships with any dealer, who sold below said listed prices—

(a) Solicited and, with few exceptions, secured the agreement and cooperation of its said customers in maintaining the uniform minimum resale prices specified by it; and

Where said corporation, in taking such further steps as necessary to full effectiveness, and acting through its representatives—

(b) Maintained a constant check on the prices at which its said products were offered by its customers, told them that they had been and would be “shopped,” and requested at least one of them to report any instances of competitor retailers selling said products at less than its minimum resale prices;

(c) Visited retailer customers discovered, in a few instances, selling or offering its products at less than its said minimum prices and urged them to cease so doing, with the result that three did change their prices and continued to maintain the prices established;

(d) Cut off the source of supply of the few dealers who declined or failed to cooperate in maintaining the desired prices;

(e) Informed a retailer price cutter, prior to the announcement of its said policy, that if he did not maintain resale prices he would not be permitted to purchase further any of said products thereafter, discontinued filling his orders, and in the subsequent month and following a further visit and assurance “that if he would maintain” said prices it would resume selling to him, did so resume following his agreement to do so; and following its later discovery that said dealer was again selling at less than its said fixed prices, again cut off its supply;

With the result that its many retailer customers advertised and sold its said products in accordance with the minimum resale prices thus announced and established by it;

Effect of which acts and practices was to suppress competition among retailers in said District in the sale of said products; to cause them to sell at the prices fixed by it and to prevent them from selling at such lower prices as they might deem adequate and warranted by their respective selling costs



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and trade conditions generally; and to deprive purchasers of the advantage in price which they would otherwise obtain from free and uncontrolled competition among retailers in the sale of said products and from a natural and unobstructed flow of commerce therein:

*Held*, That such acts and practices of said corporation and individual, under the circumstances set forth, were all to the prejudice and injury of the public; had a dangerous tendency to hinder and suppress and did hinder and suppress competition between and among retailers selling said products in said District; and constituted unfair and deceptive acts and practices in commerce and unfair methods of competition therein.

In said proceeding it was the opinion of the Commission that the activities of said corporation exceeded what was lawfully permissible; that its conduct embraced considerably more than the mere exercise of its right to inform and make known to its dealer customers that it desired its fixed resale prices adhered to, and would discontinue selling to any dealer who disregarded its policy in this regard; and it was the conclusion of the Commission that the conduct of said corporation, particularly in connection with that of its salesmen in exerting pressure on dealers to abide by the specified prices, and reporting to it the names of dealers who did not do so, resulted in the securing of assurances and understandings from its retail customers that they would abide by its fixed resale prices and that, as a result, competition between retailers was suppressed and eliminated, and consumers in said District were deprived of the benefit of price competition based on cost, efficiency, and service.

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

*Mr. Paul R. Dixon* and *Mr. James S. Kelaher* for the Commission.

*Mr. William R. Lichtenberg*, of Washington, D. C., for respondents.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the respondents named in the caption hereof, and more particularly described hereinafter, have violated 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. Respondent Middle Atlantic Distributors, Inc., sometimes hereinafter in this complaint referred to as respondent corporation, is a Delaware corporation with its principal office and place of business located at 1125 Second Street NW., Washington, District of Columbia. It is now, and has been for more than one year last past, engaged in the wholesale business of selling to dealers, in the District of Columbia, certain brands of whiskies and alcoholic beverages sold to it by manufacturers and their agents located in various

States and shipped in commerce to it through various States of the United States.

Respondents Paul H. Coughlin, Murdoch J. Finlayson, and William R. Lichtenberg are individuals and the legal address of each of said respondents is 1125 Second Street NW., Washington, District of Columbia. Respondent Paul H. Coughlin owns all of the capital stock of respondent Middle Atlantic Distributors, Inc., and serves as president and director of this respondent corporation. Respondent Murdoch J. Finlayson serves as vice president and director of respondent corporation and respondent William R. Lichtenberg serves as secretary and director of this respondent corporation. Said individual respondents control, direct, and manage the business policies and operations of respondent Middle Atlantic Distributors, Inc.

PAR. 2. Respondent Middle Atlantic Distributors, Inc., in the course and conduct of its aforesaid business, in order to fix, stabilize, and make uniform the resale prices of its said whiskies and alcoholic beverages, adopted, established, and has maintained a system or policy of merchandising whereby it fixed specified, standard, and uniform resale prices at which said products should be resold by retail dealers, and solicited and secured the active support and cooperation of said retail dealers in the maintenance of said resale prices, and in order to carry out and make effective said system or policy, said respondent has entered into unlawful agreements and understandings with retail dealers purporting to bind said retail dealers to the maintenance of said retail prices, and solicited and obtained their cooperation in the maintenance of such prices. Pursuant to such understandings and agreements, this respondent has undertaken to prevent, and has prevented, retail dealers from selling said products at prices less than the said minimum resale prices fixed by respondent corporation as aforesaid.

In further carrying out and making effective said system or policy, respondent corporation instituted and does presently carry out the following acts:

1. Since February 24, 1948, advertising or sale of said products by its retail dealers is permitted only at the fixed resale prices;
2. Since February 24, 1948, respondent corporation has refused to sell said products to retail dealers who refused to agree to carry out its said system of advertising and selling of said products at its fixed resale prices;
3. Respondent corporation maintains a constant check on its retail dealers through its salesmen who are instructed to report any violation of its fixed resale prices;

4. Since February 24, 1948, respondent corporation has refused to sell said products to former customers who refused to sell at its fixed resale prices.

PAR. 3. The direct effect of the above alleged acts and practices done by respondent Middle Atlantic Distributors, Inc., has been to suppress competition among retail dealers in the sale of said products; to cause said retail dealers to sell said products at the prices fixed and established by said respondent; and to prevent them, and each of them, from selling said products sold by respondent corporation at such lower prices as they might deem adequate and warranted by their respective selling costs and by trade conditions generally, and to deprive the purchasers of said products of the advantages in price which they otherwise would obtain from a natural and unobstructed flow of commerce in said products, thus tending to unduly hinder and suppress competition in the resale of said products in the District of Columbia, and in violation of section 5 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 January 18, 1949, issued and thereafter served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with having violated Section 5 of said Act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of 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. No testimony was introduced in opposition to the allegations of the complaint. Thereafter this proceeding regularly came on for final consideration by the Commission upon the complaint, answer thereto, testimony and other evidence in support of the allegations of the complaint, recommended decision of the trial examiner and exceptions thereto filed by counsel supporting the complaint, and briefs and oral argument of counsel; and the Commission, having duly considered the matter and having entered its order disposing of the exceptions to the trial examiner's recommended decision, 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 Middle Atlantic Distributors, Inc., is a Delaware corporation, with its principal office and place of business located at 1125 Second Street, N. W., Washington, D. C.

Respondent Paul H. Coughlin is president and a director, and owns all of the capital stock of said corporate respondent. He controls, directs, and manages the business policies and operations of the corporate respondent and is responsible for the acts and practices of the corporate respondent hereinafter set forth.

Respondent Murdoch J. Finlayson, during the period covered by the complaint, was vice president and a director of said corporate respondent. Respondent Finlayson died on August 16, 1951, after the hearings in this matter were completed. The complaint will be dismissed as to him.

Respondent William R. Lichtenberg is secretary and a director of the corporate respondent. The record herein fails to establish that respondent Lichtenberg has participated actively in the control, direction, or management of the corporate respondent, or that he has any substantial connection with the business other than as its legal counsel. The Commission is therefore of the opinion that the complaint should be dismissed as to respondent Lichtenberg.

PAR. 2. Respondent Middle Atlantic Distributors, Inc., is now, and for more than one year last past has been, engaged in the wholesale business of selling to retail dealers in the District of Columbia certain brands of whiskies and other alcoholic beverages and is engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. Respondent Middle Atlantic Distributors, Inc., is the exclusive distributor in the District of Columbia for products manufactured by Hiram Walker, Inc. In the course and conduct of its business said corporate respondent, on June 17, 1947, sent the following letter to all of its 388 retail dealer customers in the District of Columbia:

No changes have taken place in the policies of Middle Atlantic Distributors, Inc. We still believe, strongly, that it is desirable and in the best interests of the retail trade to place the emphasis on sound merchandising principles rather than resorting to vicious and destructive competition based on price alone whereby the true values of brands may be destroyed along with the individuals who support such unsound practices.

Restating our policy we desire that the retail trade continue in the future to sell all brands distributed by us at our suggested resale prices which allows the trade the customary 33 $\frac{1}{3}$ %, less 10% on case sales.

Secondly: We are not opposed to retailers advertising Hiram Walker and Associated brands provided they are advertised at our suggested resale prices.

Our suggested resale prices for Hiram Walker's and associated lines represent honest and sound consumer values based on the high quality of the brands, in addition to a reasonable profit to those engaged in their distribution to the consumer.

A heavy schedule of advertising is to be released immediately in the Times-Herald, Post, and News, on Canadian Club, Hiram Walker's DeLuxe Bourbon, Hiram Walker's Imperial, and Hiram Walker's Gin. Therefore we do not wish to have the purpose and effect of this advertising campaign nullified by the inconsiderate treatment of any retailer who thinks that his interests may be served by advertising them for less.

The basis of a sound and secure relationship for the future consists of a proper degree of cooperation between us and we propose to extend our best efforts in the promotion of these principles.

As Steinmetz once said: "Cooperation is not a sentiment. It is an economic necessity."

On February 20, 1948, said corporate respondent sent the following letter to all of its 388 retail dealer customers in the District of Columbia:

You are hereby advised that effective Tuesday, February 24th, 1948 we will not sell our products to any retailer who sells them below the prices stated in the list attached. There is to be no reduction to the consumer on case purchases.

Advertising of the brands is permitted only at the prices stated.

The resale prices of these brands represent genuine values to the consumer—plus a fair margin of profit to you at the present market level.

Experience in this industry has clearly demonstrated that the best interests of the retailer are served when the emphasis is placed on sound merchandising principles rather than vicious and destructive price competition whereby the true values of brands are destroyed along with the individuals who engage in such practices.

*Therefore—if a retailer sells or advertises these brands in violation of the policy as outlined, we shall terminate all business relationships with him immediately.*

No employee of this company has authority to vary or alter this policy. All communications concerning it can be acted upon only by the undersigned.

Enclosed with the letter of February 20, 1948, was a price list setting forth the resale (consumer) prices of the various Hiram Walker products. Subsequently, on November 29, 1948, and December 8, 1948, the corporate respondent sent to all of its retail dealer customers in the District of Columbia notice of price changes on specified items of said products, each such notice containing the following statement:

... if a retailer sells or advertises this product in violation of our policy as outlined to you in our letter of Feb. 20, 1948, we shall terminate all business relationships with him immediately.

The corporate respondent did thus institute, inaugurate, and adopt a system or policy, in merchandising the aforesaid products, of establishing, maintaining, and enforcing uniform minimum resale prices

at which said products were to be advertised and sold by its retail dealer customers.

PAR. 4. The corporate respondent, in pursuance of the aforesaid system or policy, solicited the agreement and cooperation of its retail dealer customers in maintaining the uniform minimum resale prices specified by it on said products, and with few exceptions thus secured the agreement and cooperation sought. The corporate respondent was so successful in this respect that few additional actions on its part were necessary to make the resale prices specified fully effective. However, to the extent necessary to full effectiveness, the corporate respondent did take further and additional steps. In order to keep itself informed concerning continued adherence to the minimum resale prices specified, it maintained a constant check on the prices at which said products were offered by its retail dealer customers; such customers were told by representatives of the corporate respondent that they had been and would be "shopped"; and at least one such dealer was requested by a representative of the corporate respondent to report any instances of competitors of said dealer selling said products at less than the uniform minimum resale prices established. In the few instances where retail dealer customers were discovered selling or offering for sale said products at less than the uniform minimum resale prices fixed, they were visited by representatives of the corporate respondent and urged to cease selling or offering for sale said products at less than such prices. Three of such retail dealer customers who were visited by representatives of the corporate respondent soon after February 20, 1948, did change their prices on some of said products either in the presence of such representatives or shortly after their visit, and these dealers have continued to maintain the uniform minimum resale prices established. The few dealers who declined or failed to cooperate by maintaining the uniform minimum resale prices designated were cut off from their source of supply of said products in that the corporate respondent refused to sell to them, and such respondent was the exclusive distributor of such products in the District of Columbia. One of the corporate respondent's retail dealers who was so cut off was visited by representatives of the corporate respondent prior to the date of the issuance of the aforesaid letter of June 17, 1947, and informed that if he did not maintain the fixed uniform minimum resale prices, he would not be permitted to purchase any more of said products. Said retail dealer did not at that time agree to maintain such prices, and in July 1947 the corporate respondent stopped filling any of said dealer's orders. In August 1947 said dealer was again visited by representatives of the corporate respondent, at

which time he was told that if he would maintain the fixed uniform minimum resale prices, the corporate respondent would resume selling to him. Said dealer agreed to maintain such prices and the corporate respondent resumed selling to him. Later, however, the corporate respondent discovered that said dealer was selling said products at less than the fixed uniform minimum resale prices, and his source of supply for said products was again cut off by the corporate respondent.

As a result of the corporate respondent's system or policy instituted, adopted, and enforced as aforesaid, more than 380 retail dealer customers of the corporate respondent have, since receipt of the corporate respondent's letter of February 20, 1948, sold said products in accordance with the policy stated in said letter, and all advertisements of said products by such dealers have also been in accordance with such policy.

PAR. 5. The direct effect of the acts and practices of the corporate respondent as hereinabove found has been to suppress competition among retail dealers in the District of Columbia in the sale of said products; to cause said retail dealers to sell said products at the prices fixed by the corporate respondent and to prevent them from selling said products at such lower prices as they might deem adequate and warranted by their respective selling costs and by trade conditions generally; and to deprive purchasers of said products of the advantage in price which they would otherwise obtain from free and uncontrolled competition among retail dealers in the sale of said products and from a natural and unobstructed flow of commerce in said products. It is the opinion of the Commission that the activities of Middle Atlantic Distributors, Inc., exceeded what is lawfully permissible; that its conduct embraced considerably more than the mere exercise of its right to inform and make known to its dealer customers that it desired its fixed resale prices adhered to, and to inform and make known to said dealers that it would discontinue selling to any dealer who disregarded its policy in this regard. It is the conclusion of the Commission that the conduct of Middle Atlantic Distributors, Inc., and particularly its conduct in connection with the conduct of its salesmen in exerting pressure on dealers to abide by the specified prices and the practice of said salesmen in reporting to Middle Atlantic Distributors the names of dealers who did not adhere to its specified prices, resulted in the securing of assurances and understandings from its retail customers that they would abide by Middle Atlantic Distributors' fixed resale prices and that, as a result thereof, competition between dealers in said products was suppressed and eliminated, and consumers in the District of Columbia were deprived of the benefit of price competition based on cost, efficiency, and service.

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## CONCLUSION

The acts and practices of the corporate respondent, Middle Atlantic Distributors, Inc., and of the individual respondent Paul H. Coughlin acting by and through the corporate respondent, as hereinabove found, are all to the prejudice and injury of the public; have a dangerous tendency to hinder and suppress, and have actually hindered and suppressed, competition between and among the retail dealers in the District of Columbia selling said products; and constitute unfair and deceptive acts and practices in commerce and unfair methods of competition in commerce within the intent and meaning of Section 5 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 of the respondents, testimony and other evidence in support of the allegations of the complaint introduced before a trial examiner of the Commission theretofore duly designated by it (no testimony having been introduced in opposition to the allegations of the complaint), recommended decision of the trial examiner and exceptions thereto, and briefs and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that the respondents Middle Atlantic Distributors, Inc., and Paul H. Coughlin have violated the provisions of the Federal Trade Commission Act:

*It is ordered*, That the respondent Middle Atlantic Distributors, Inc., a corporation, its officers, and the respondent Paul H. Coughlin, individually and as an officer of said corporate respondent, and said respondents' respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of whiskies or other alcoholic beverages in the District of Columbia, do forthwith cease and desist from:

(1) Entering into or enforcing any agreement or understanding, verbal or written, with any retail dealer or other distributor concerning the price at which any said products are to be resold by such retail dealer or other distributor.

(2) Obtaining or attempting to obtain from any retail dealer or other distributor, as a condition precedent to the sale of said products to such retailer dealer or other distributor, any agreement, understanding, or promise concerning the price at which any of said products are to be resold by such retail dealer or other distributor.



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*It is further ordered,* That the complaint herein be, and it hereby is, dismissed as to respondents Murdoch J. Finlayson and William R. Lichtenberg.

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

## Complaint

## IN THE MATTER OF

## IOWA FIBRE PRODUCTS, 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, AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

*Docket 5845. Complaint, Feb. 2, 1951—Decision, Dec. 7, 1951*

Where a corporation engaged in the manufacture, sale and distribution of a carrying case in which there was incorporated a cushion containing a robe designated "Cush-N-Robe"; and the two officers who controlled and directed its operation; in advertising its said products prior to August, 1950, through circulars and other advertising media—

- (a) Represented directly and by implication, through use of the term "100% wool", that said cushion top coverings and robes were composed solely of "wool" as generally understood by the purchasing public, namely, unreclaimed woolen fibers; notwithstanding the fact that many of them contained a substantial portion of reclaimed woolen fibers;

With tendency and capacity to mislead and deceive a substantial number of retailers and members of the purchasing public into the erroneous belief that such representations were true, and of thereby causing their purchase of said product:

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

Where said corporation and individuals—

- (b) Misbranded many of said "Cush-N-Robes" in violation of the Wool Products Labeling Act in that there was set forth in many cases upon the labels affixed thereto the words "100% wool robe" and "the Cush-N-Robe has a top covering of the same material as the robe inside" when in fact said top coverings and robes were not composed entirely of "wool" but contained a substantial amount of "reused wool" as those terms are defined by said Act; and
- (c) Further misbranded said articles in that said labels did not show the percentage of the total fiber weight of "wool" and "reused wool", exclusive of ornamentation not exceeding five per cent:

*Held*, That such acts and practices, under the circumstances set forth, 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.

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

*Mr. Jesse D. Kash* for the Commission.

*Abramson & Myers*, of Des Moines, Ia., 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 Iowa Fibre Products, Inc., a corporation, Harold D. Rubinson and Inez R. Erbstein, individually and as officers of Iowa Fibre Products, Inc., 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. Harold D. Rubinson and Inez R. Erbstein are individuals and Iowa Fibre Products, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Iowa with its office and principal place of business located at 316 Court Avenue, Des Moines, Iowa.

Said respondents are now, and for more than one year last past have been, engaged in the manufacture, sale and distribution of a carrying case, in which a cushion is incorporated, containing a robe, designated "Cush-N-Robe." Respondents Harold D. Rubinson and Inez R. Erbstein at all times mentioned herein have been and now are respectively the President and Treasurer, Vice-President and Secretary of the corporate respondent and control and direct its operations, and the said respondent corporation is in fact an instrumentality through which the said Harold D. Rubinson and Inez R. Erbstein conduct their business.

PAR. 2. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their Cush-N-Robes, respondents have circulated and are now circulating throughout the United States by United States Mails, circulars and other advertising media, containing various statements and representations concerning their products. Among and typical of such statements and representations are the following:

CUSH-N-ROBE

100% WOOL ROBE VALUE

THE CUSH-N-ROBE case has a top covering of the same material as the robe inside.

Zip it open—Out comes the 100% wool robe.

PAR. 3. Through the use of the term "100% wool" to describe said cushion top coverings and robes, respondents have represented, directly and by implication, that the said articles are composed solely of "wool" as that term is generally understood by a substantial portion

of the public, namely woolen fibers which have not been reclaimed from goods, products or articles in which they had been previously incorporated.

PAR. 4. The said representation is untrue. In truth and in fact the said articles contained a substantial percentage of woolen fibers which had been reclaimed from goods, products and articles in which they had been previously incorporated.

PAR. 5. The use by respondents of the aforesaid false, deceptive and misleading statements and representations with respect to their product has had the tendency and capacity to mislead and deceive a substantial number of retailers and members of the purchasing public into the erroneous and mistaken belief that such statements and representations were true and has caused substantial numbers of retailers and the purchasing public to purchase substantial quantities of respondents' product because of such erroneous and mistaken belief.

PAR. 6. The aforesaid acts and practices of respondents as hereinbefore alleged, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

PAR. 7. Since January 1950, respondents have manufactured for introduction, and introduced, into commerce, and offered for sale, sold and distributed in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products, as "wool products" are defined in said Act. The said wool products were robes and the top coverings of cushions, the covered cushion constituting a part of the carrying case in which the robe was placed, and the combination, sold as a single unit, constituted the "Cush-N-Robe" previously referred to herein.

PAR. 8. Upon the labels affixed to the said "Cush-N-Robe" appeared:

100% wool robe.

The Cush-N-Robe has a top covering of the same material as the robe inside.

PAR. 9. The said wool products were misbranded within the intent and meaning of the said Act, and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively labeled with respect to the character and amount of their constituents fibers. In truth and in fact the said top coverings and robes were not composed entirely of wool, as "wool" is defined in said Act, but contained a substantial amount of "reused wool," as that term is defined in said Act. The said articles were further so misbranded in that the labels affixed thereto did not show the percentage of the total fiber weight thereof, exclusive of ornamentation not exceeding five per centum of

said total fiber weight, of the "wool" and "reused wool," as such terms are defined in said Act, contained therein.

PAR. 10. The acts and practices of the respondents as alleged in Paragraphs Seven, Eight and Nine hereof 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 December 7, 1951, the initial decision in the instant matter of Trial Examiner John W. Addison, as set out as follows, became on that date the decision of the Commission.

#### INITIAL DECISION BY JOHN W. ADDISON, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, and the Wood Products Labeling Act of 1939, and pursuant to the authority vested in it by said Acts, the Federal Trade Commission on February 2, 1951, issued and subsequently served its complaint in this proceeding upon respondents Iowa Fibre Products, Inc., a corporation, and Harold D. Rubinson and Inez R. Erbstein, individually and as officers of Iowa Fibre Products, Inc., charging them with the use of acts and practices in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder and constituting unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. After the issuance of said complaint and the filing of respondents' answers thereto, a hearing was held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before the above-named trial examiner theretofore duly designated by the Commission, 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 answers thereto, testimony and other evidence, no proposed findings and conclusions having been presented by counsel and no oral argument having been requested; and the trial examiner, having 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. Harold D. Rubinson and Inez R. Erbstein are individuals and Iowa Fibre Products, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Iowa with its office and principal place of business located at 316 Court Avenue, Des Moines, Iowa.

Said respondents are now, and for more than one year last past have been, engaged in the manufacture, sale and distribution of a carrying case, in which a cushion is incorporated, containing a robe, designated "Cush-N-Robe." Respondents Harold D. Rubinson and Inez R. Erbstein at all times mentioned herein have been and now are respectively the President and Treasurer and the Vice President and Secretary of the corporate respondent and control and direct its operations.

PAR. 2. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its Cush-N-Robes, respondent Iowa Fibre Products, Inc., circulated prior to August 25, 1950, throughout the United States by United States mails, circulars and other advertising media containing various statements and representations concerning their products. Among and typical of such statements and representations are the following:

## CUSH-N-ROBE

## 100% WOOL ROBE VALUE

The CUSH-N-ROBE case has a top covering of the same material as the robe inside.

Zip it open—Out comes the 100% wool robe.

PAR. 3. Through the use of the term "100% wool" to describe said cushion top coverings and robes, respondents represented, directly and by implication, that the said articles are composed solely of "wool" as that term is generally understood by a substantial portion of the public, namely, woolen fibers which have not been reclaimed from goods, products or articles in which they had been previously incorporated.

PAR. 4. The said representation was untrue. In truth and in fact, many of the said articles contained a substantial percentage of woolen fibers which had been reclaimed from goods, products, and articles in which they had been previously incorporated. In August 1950 respondents deleted the claim that Cush-N-Robes were "100% wool robe value" and securely placed upon the articles labels bearing their name and address and showing in a clear and conspicuous manner the words

and figures: "35% wool & 65% reused wool" and have since continued to follow this practice.

PAR. 5. The use by respondents of the aforesaid false, deceptive and misleading statements and representations with respect to their product had the tendency and capacity to mislead and deceive a substantial number of retailers and members of the purchasing public into the erroneous and mistaken belief that such statements and representations were true and caused substantial numbers of retailers and the purchasing public to purchase substantial quantities of respondents' product because of such erroneous and mistaken belief.

PAR. 6. The aforesaid acts and practices of respondents as herein found were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

PAR. 7. Since January 1950, respondents have manufactured for introduction, and introduced, into commerce, and offered for sale, sold and distributed in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products, as "wool products" are defined in said Act. The said wool products were robes and the top coverings of cushions, the covered cushion constituting a part of the carrying case in which the robe was placed, and the combination, sold as a single unit, constituted the Cush-N-Robe previously referred to herein.

PAR. 8. Upon the labels affixed to many of the said Cush-N-Robes prior to August 25, 1950, appeared:

100% wool robe.

The Cush-N-Robe has a top covering of the same material as the robe inside.

PAR. 9. The said wool products were misbranded within the intent and meaning of the said Act, and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively labeled with respect to the character and amount of their constituent fibers. In truth and in fact the said top coverings and robes were not composed entirely of wool, as "wool" is defined in said Act, but contained a substantial amount of "reused wool," as that term is defined in said Act. The said articles were further so misbranded in that the labels affixed thereto did not show the percentage of the total fiber weight thereof, exclusive of ornamentation not exceeding five per centum of said total fiber weight, of the "wool" and "reused wool," as such terms are defined in said Act, contained therein.

#### CONCLUSION

The acts and practices of the respondents as found in Paragraphs Seven, Eight and Nine hereof were in violation of the Wool Products

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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.

## ORDER

*It is ordered*, That the respondents Iowa Fibre Products, Inc., a corporation, and Harold D. Robinson and Inez R. Erbstein, individually and as officers of Iowa Fibre Products, Inc., and their representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of Cush-N-Robes or other wool products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting in any way the constituent fiber or material used in its merchandise or the respective percentages thereof;
2. Describing, designating or in any way referring to any product or portion of a product which is "reprocessed wool" or "reused wool" as "wool";
3. Using the word "wool" to describe, designate or in any way refer to any product or portion of a product which is not the fiber from the fleece of the sheep or lamb, or hair of the Angora goat or Cashmere goat, or hair of the camel, alpaca, llama or vicuna which has never been reclaimed from any woven or felted product.

*It is further ordered*, That the respondents Iowa Fibre Products, Inc., a corporation, and Harold D. Robinson and Inez R. Erbstein, individually and as officers of Iowa Fibre Products, Inc., and their 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 of such products in commerce, as "commerce" is defined in the aforesaid Acts, do forthwith cease and desist from misbranding their Cush-N-Robes or other "wool products," as defined in and subject to the Wool Products Labeling Act of 1939, which 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:

1. By falsely or deceptively stamping, tagging, labeling or otherwise identifying such product;
2. By failing to securely affix to or place on such products a stamp, tag, label or other means of identification showing in a clear and conspicuous manner:

(a) The percentage of the total fiber weight of such wool products, exclusive of ornamentation not exceeding five per centum of said total fiber weight of—



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- (1) wool,
  - (2) reprocessed wool,
  - (3) reused wool,
  - (4) each fiber other than wool where said percentage by weight of such fiber is five per centum or more, and
  - (5) the aggregate of all other fibers;
- (b) The maximum percentage of the total weight of such wool product of any nonfibrous loading, filling or adulterating matter;
- (c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation or distribution thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act and in the Wool Products Labeling Act of 1939;

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

*Provided further*, That nothing contained in this order shall be construed as limiting any applicable provisions of said Act or the Rules and Regulations promulgated thereunder.

ORDER TO FILE REPORT OF COMPLIANCE

*It is ordered*, That the respondents herein shall, within 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 December 7, 1951].