FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, JULY 1, 1952, TO JUNE 30, 1953

IN THE MATTER OF

BETHANY COLLEGE AND DIVINITY SCHOOL 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 5562. Complaint, May 28, 1948—Decision, July 9, 1952

Academic degrees have for many years been recognized by educators and members of the public as conferred upon the recipient by a recognized college or institution of higher learning after successful completion of a required, approved course of study in specific subjects of learning. Such degrees are recognized by standard colleges and universities and accrediting organizations as evidence of scholastic attainment.

Where a corporation and a husband and wife, its officers, engaged in the interstate sale and distribution of correspondence courses in various subjects of higher learning—

(*a*) Made use of the word "college" in the corporate name, and represented thereby and through advertisements in religious periodicals, circulars, and catalogs that their school was a college which maintained a faculty of competent scholars and adequate facilities, including buildings and a library for the instruction of students in subjects of higher learning;

The facts being that their said school was not a college as understood by the purchasing public and the educational field, but was essentially a correspondence school only; it owned no buildings or other real property and never had a permanent location; had practically no financial resources; and the library thereof was limited to some 800 to 900 books including textbooks kept for sale to students; and

(*b*) Represented falsely through offering to confer or conferring so-called academic degrees, and through their aforesaid advertising, that their school was recognized by a standard accrediting organization, and that its credits and academic degrees were recognized by reputable accredited institutions of higher learning;

The facts being that the "National Association of Christian Schools" referred to was not a recognized educational institution, and said purported academic degrees were of no academic value whatsoever;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public and thereby cause its purchase of their courses of instruction:

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

In the aforesaid proceeding, while the distribution of respondents' courses of instruction appeared to have been discontinued about one year prior to the issuance of the complaint—though subsequent to the initiation of the preliminary investigation in the matter—it could only be concluded on the basis of the record that the corporate respondent was still in existence, and that it continued under the control of the aforesaid respondents, and the Commission was of the view that the public interest required issuance of an appropriate order to the end that the unfair acts and practices theretofore engaged in by respondents might not be resumed.

While ten other individuals were also joined in the complaint as respondents in the instant matter, which alleged that they served in various capacities with the corporate respondent, as members of its board of governors, administrative officials or teachers, and that in such connection they had participated in the formation of the corporate respondent's policies and in the performance of the deceptive acts and practices engaged in: it appeared that no meetings of the Board were held, that in most instances said individuals did not assume their respective positions, and that they did not share responsibility for the conduct of the enterprise or participate in formulating the policies which were adopted; and the charges of the complaint as to said individuals were accordingly dismissed.

As respects the charge in the complaint that respondents had falsely represented that they operated a divinity school as that term is understood by the public and in educational circles, the Commission was of the opinion that such charge had not been sustained by the greater weight of the evidence and that its dismissal also was warranted, since the evidence introduced into the record did not afford basis for the informed conclusion as to what impressions might be engendered among members of the purchasing public by the term "divinity school".

Before *Mr. Henry P. Alden* and *Mr. William L. Pack*, hearing examiners.

Mr. William L. Pencke for the Commission.

Erickson & Nygren, of Chicago, Ill., for Grace Sercomb.

Mr. Harry I. Hannah, of Mattoon, Ill., for Richard H. Crowder.

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 Bethany College and Divinity School, a corporation, and Carl M. Kilmer and Lulu M. Kilmer, individually, and as president and treasurer, and secretary and vice president, respectively, of said corporation, and William Potter, Grace Sercomb, Ted Victor Vorhees, J. Frederick Doering,

William Morgan Keller, Carl M. Kilmer, Jesse J. Coody, Richard H. Crowder, Merle P. Estabrooks, Edith C. Sheetz, and John W. Oliver, individually and as officers and members of the Board of Governors of said corporation, hereinafter referred to as respondents, have violated the provisions of the said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Bethany College and Divinity School, also referred to herein as School, is a corporation not for profit, organized, existing and doing business under the laws of the State of Illinois, with its principal office and place of business located at 123 Eighth Street, North, in the city of St. Petersburg and State of Florida;

Carl M. Kilmer is President, Treasurer, Chairman of the Board of Directors, and Treasurer of the Board of Governors of said corporate respondent, and is further designated Chairman of the Executive Committee, Director of Home Study and Extension, and a member of the faculty of said school. Lulu M. Kilmer is Secretary, a Vice President and Assistant Treasurer, and is also designated a member of the Executive Committee and the Librarian of said school. Both respondents reside at 123 Eighth Street, North, St. Petersburg, Florida.

William Potter, whose mailing address is Box 328, Carthage, Mississippi, is a Vice President and member of the Board of Governors; and is also designated Dean of the Department of Evangelism;

Grace Sercomb, with her business address at 123 Eighth Street, North, St. Petersburg, Florida, is a member of the Board of Governors, and also designated Registrar and Dean of Women;

Ted Victor Vorhees, residing at 209 Fourth Street, Monessen, Pennsylvania; J. Frederick Doering, residing at Morehead, Kentucky; William Morgan Keller, residing at Pineville, Louisiana; Jesse J. Coody, residing at 2905 Lake Shore Drive, Shreveport, Louisiana; Richard H. Crowder, 3321 Western Avenue, Mattoon, Illinois; Merle P. Estabrooks, whose mailing address is Box 193, Corinna, Maine; Edith C. Sheetz, residing at 4723 South Lake Park, Chicago, Illinois; and John W. Oliver, residing at 621 Olive Street, North Little Rock, Arkansas, are members of the Board of Governors of said respondent School, and in addition, said Ted Victor Vorhees is a member of the faculty, said J. Frederick Doering, President of the Board of Governors, said William Morgan Keller, Secretary of the Board of Governors and a member of the faculty, and said Edith C. Sheetz, a member of the faculty of said school.

All of said individual respondents participate in the conduct, operation and management of said Bethany College and Divinity School and in the formulation and determination of its policies in their respective capacities as officers, Board members and instructors as is hereinafter more fully shown.

PAR. 2. Said respondents are now and have been for more than one year last past, engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia, of courses of study and instruction in various subjects of higher learning, including foreign languages, mathematics, science, psychology, education, music, history, and numerous courses in theology, leading to bachelor's, master's and doctor's degrees. Said courses of study are pursued mainly by correspondence through the medium of the United States mail but are also offered in residence. Respondents, during the time aforesaid, caused and do now cause their said courses of study and instruction and the degrees and diplomas conferred and awarded by them, to be transported from their said place of business in the State of Florida to purchasers thereof located in the several States of the United States other than the State of Florida.

PAR. 3. There is now, and has been at all times hereinafter mentioned, a course of trade in said courses of study so sold and distributed by the respondents in commerce between the various States of the United States and the District of Columbia.

PAR. 4. A college, as generally understood in the educational field and by the general public, is an institution of higher learning, including subjects in the arts, sciences and professions, such as law, medicine, music, and theology, with adequate equipment in the form of buildings, laboratories, libraries and dormitories for resident students and sufficient financial resources to operate and maintain such institution; with an adequate and competent resident faculty of learned persons qualified and trained to teach the respective subjects offered by such institution and possessing degrees from recognized universities and colleges.

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

PAR. 5. In the course and conduct of their business, as aforesaid, respondents by means of newspaper advertisements, catalogs and circulars, mailed to purchasers and prospective purchasers of their said courses of study, have made and are making many false, exaggerated,

misleading and deceptive statements and representations with respect to said School and the acceptance and recognition of its credits and degrees awarded by them. Typical of said representations, but not all inclusive, are the following advertisements, published in religious magazines, such as The Pulpit Digest, The Christian Century, and others:

MINISTERS! TEACHERS!

Approved courses in theology, teacher training, Christian education. Improve your work. Earn a college degree. Low cost, books furnished. D. Th., B. Th., M. A., B. Sc. granted. Free catalogue. Bethany College and Divinity School.

Excellent faculty, coeducational, graduate and under-graduate. Home Study Department open to those unable to enter residence classes. 1946–1947 Bulletin free.

Graduate and Under-graduate work, excellent faculty, coeducational. Department of Home Study offers 330 subjects in 26 areas of instruction. 1946–1947 Bulletin now ready.

College and seminary levels, certificate courses. Home Study work for employed persons at modest cost.

In their 1946–1947 catalog or bulletin, distributed as aforesaid, respondents make many representations purporting to describe said School and its facilities and equipment. Among said representations are statements that the departments of instruction consist of residence and extension classes, a department of home study and the graduate division; that the scholastic year is divided into three quarters and a summer session, giving specific dates for registration and other activities; that the School is managed by four administrative officers, and a Board of Governors; that the institution consists of a Liberal Arts College and a Divinity School, administered by said Board of Governors of not less than nine qualified educators and ministers elected to the Board because of their special fitness for duties and responsibilities; that the work offered is of orthodox college level and in accordance with the standards set by recognized regional accrediting associations with reference to entrance requirements, faculty, text books and grading standards; that credits earned in other approved schools may be accepted toward advanced standing and students may transfer to other schools conditionally; that the faculty consists of ten or more qualified teachers, each possessing numerous degrees from various colleges and universities; that the college does not operate dormitories but will assist students in finding homes, a list of which will be kept in the office of the Registrar; that each new student in residence is required to pass a physical examination by the college physician; that the subjects offered in the Department of Home Study are the same that are taught in residence by the regular faculty and the same credit is given for work completed in

said department as for that completed in residence; that the Bachelor of Arts and Bachelor of Science degrees may be earned through home study in the College of Liberal Arts; and under-graduate degrees of Bachelor of Arts in Theology, Bachelor of Science, Bachelor of Theology and Bachelor of Religious Education may be earned in the Divinity School; and that the degrees of Bachelor of Divinity, Master of Arts, Master of Arts in Religion, Master of Arts in Christian Education, and Master of Sacred Theology and Doctor of Theology may be obtained in the Graduate Division of the Divinity School.

In a circular distributed as aforesaid, respondents represented among other things that "all work is strictly on a proper level and is accredited by the National Association of Christian Schools."

PAR. 6. By means of the foregoing representations and others of similar import not herein set out specifically, respondents represent and imply to the purchasing public: that they conduct and operate a college and divinity school as said terms are generally understood by the public and in educational circles; that under-graduate and graduate classes are conducted in many subjects of higher learning, including the arts and sciences, languages, music and theology, both in residence and by correspondence; that there is a resident faculty of qualified professional men carefully selected and competent to teach the subjects in their respective fields; that adequate class rooms, buildings and libraries are maintained; that the scholastic year is divided into quarters and sessions, with fixed dates therefor; that resident students are examined by the college physician as part of their entrance requirements; that the credits of said School are accepted at full value by many universities and colleges; that the School is recognized by a standard accrediting organization, and that it in turn recognizes credits from other accepted and recognized schools; that said school's general educational standards are high and comparable to the standards of recognized institutions of higher learning; that said school is operated by administrative officers and a Board of Governors, the members of which, together with the members of the faculty, devote part or all of their time to the work of said school, and that its academic degrees are recognized by reputable accredited educational institutions of higher learning.

PAR. 7. In truth and in fact all of the foregoing statements, representations and implications are grossly deceptive, false and misleading. The business operated by respondents is not that of an institution of higher learning. The school conducted by respondents is neither a college nor a divinity school or seminary, as said terms are generally understood by members of the public and the educational world.

Respondents have none of the facilities, equipment and faculty hereinabove described. Their business is operated in two small rooms in a one-story building in St. Petersburg, Florida, part of one of said rooms also being used as living quarters for respondents Carl M. Kilmer and Lulu M. Kilmer. There are no laboratories and no libraries consisting of text books, scientific journals or other material necessary or adequate for the study of the numerous subjects offered. Respondent Carl M. Kilmer maintains a small collection of books which constitute the library and stock of books for sale, both being wholly inadequate for use in the proper teaching and study of the many subjects offered by respondents.

Neither said administrative officers nor said Board of Governors function to administer the affairs of an educational institution. Respondents Carl M. Kilmer and his wife, Lulu M. Kilmer, are the only individuals devoting all of their time to the operation of said business. None of the other persons named as administrative officers and members of the Board of Governors have taken any active part whatever in the management or operation of said school, nor have they ever attended any meeting. With the exception of respondent Grace Sercomb, they are located in various States other than the State of Florida, and have never visited the place of business operated by respondents Carl M. and Lulu M. Kilmer. Their participation in the formulation and determination of the policies and practices of said school is as follows:

Respondent Grace Sercomb, designated as Dean of Women, has performed none of the work which usually devolves on a Dean of a department in a college, her activities consisting of coaching a few high school students.

Respondent J. Frederick Doering, described in respondents' said catalog as President of the Board of Governors, discussed the policies of the school on two occasions and advised as to location, fund raising, accreditation and a suitable staff of personnel with respondent Carl M. Kilmer on the latter's visit to Morehead, Kentucky.

Respondent William Morgan Keller, designated the Secretary of the Board of Governors, and teacher of music, has never performed any services nor met with the Board. He participated in the affairs of the school by preparing an outline for a music course; and was given an honorary degree of Doctor of Music.

Respondent Jesse J. Coody became a member of said Board of Governors while said school was located in Rodessa, Louisiana, where he attended several meetings of said Board.

Respondent Richard H. Crowder, since his appointment to the Board of Governors, performed no duties as member of said Board.

Respondent Merle P. Estabrooks originally enrolled as a student in said school in December 1945, received the honorary degree of Doctor of Divinity in August 1946, interested himself in enrolling students and caused some members of his church to make contributions to said school. He has been advised of all items of business and proposed changes of policy, and has been consulted regarding these matters by mail.

Respondent Edith C. Sheetz, through correspondence, made suggestions as to certain methods and means regarding a few items, planned courses in psychology and wrote teaching outlines, but has taught no subjects.

Respondent Ted Victor Vorhees contributed to the advertising representations made by said school by means of a testimonial letter.

By authorizing the publication of their names as members of the Board of Governors of said school, said individual respondents represent and imply to the purchasing public that they actively participate in the management and administration of the affairs of a resident school, when in truth and in fact said respondents live in States other than the State of Florida, and are taking no part whatever in the operation of said school since its establishment in St. Petersburg, Florida.

Respondents' school is not equipped to teach the numerous subjects offered for under-graduate and graduate work as represented in its catalog. With the exception of respondent Grace Sercomb, the members of its faculty are not resident teachers, but reside in places other than the State of Florida. Although said school has numerous correspondence students, said faculty members, with the exception of one or two instances, have never participated in any correspondence work; none of them has ever taught at respondents' school, and a number of them are engaged in pursuits other than teaching. While all of them appear to possess degrees from reputable institutions of learning, a number of them are listed in said catalog as possessing degrees from schools which are not recognized as reputable accredited institutions of higher learning; none of them are qualified to teach postgraduate subjects or to teach candidates for doctorates; and none of said instructors receive any compensation as regular faculty members but are paid on a commission basis.

There are no financial resources to operate and maintain a college.

In truth and in fact respondents' educational standards are not sufficient to satisfy the minimum requirements of any standard accepted college or seminary. The degrees awarded by said school are not recognized by any accepted educational institution or accrediting

agency. The representations that respondents recognize credits and work done in "other approved institutions" is grossly misleading as implying that said school is itself recognized and accredited, when such is not the fact.

PAR. 8. Academic degrees as defined in Paragraph Four hereof are conferred by duly authorized accredited and recognized educational institutions of higher learning as evidence and in recognition of prescribed scholastic attainments by students of said institutions and unless so earned and conferred they do not constitute degrees in the accepted meaning of said term and are of no meaning and effect whatever.

Honorary degrees are degrees conferred by said recognized institutions of higher learning upon individuals who have performed some outstanding service or achieved renown in some field of endeavor.

The practice of designating academic degrees by the use of letters or abbreviations, such as B. S. for Bachelor of Science, M. A. for Master of Arts, D. D. for Doctor of Divinity, has for many years been recognized by educators and members of the public as evidence that the person whose name is followed by such letters possesses a degree conferred upon him by a recognized college or university after successful completion of a required and well-established course of study in specific subjects of learning. Such degrees are recognized by reputable standard colleges and universities and accrediting organizations as evidence of such scholastic attainments.

While respondents' school is organized as a corporation not for profit, its purpose being "educational, including the preparation of persons for the ministry and other work in the church," there is in fact no relation between the granting of a charter to said school and the recognition of degrees issued by it; and the academic degrees so issued are not recognized for the reasons hereinabove set forth, and do not constitute degrees in the accepted meaning of said term. The honorary degrees issued by respondents were conferred upon persons who have merited no distinction by reason of outstanding service or achievement. Respondents in using said well-known and recognized abbreviations to designate academic degrees falsely represent and imply that said degrees are duly earned, accepted, recognized and accredited as aforesaid when such is not the fact.

The representation that said school is accredited by the National Association of Christian Schools is grossly misleading. Said association itself is not a standard recognized association of Christian or theological schools, and is not an accrediting organization in any sense of that term.

PAR. 9. The use of the terms college, seminary, departments of instruction and divinity school; the descriptions of a collegiate calendar, administrative officers, governing boards, the faculty, entrance requirements for resident students, library facilities and methods of accreditation; and the granting and conferring of academic and honorary degrees, all represent and imply the existence of a large and substantial institution of higher learning devoted to the teaching of numerous subjects in the arts, sciences, and theology by a qualified, resident faculty and managed by experienced administrators.

In truth and in fact, said school is not a college or institution of higher learning but a correspondence school.

PAR. 10. Each and all of the false, deceptive, exaggerated and misleading statements and representations made by the respondents, as hereinabove set forth, are calculated to, and do have a tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations of respondents are true; and as a direct consequence of such erroneous and mistaken beliefs, induced by the aforesaid actions and representations of respondents, a substantial number of the public has purchased respondents' courses of instruction and accepted degrees.

PAR. 11. The aforesaid acts and practices of respondents are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 28, 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 their separate answers by certain of the respondents, 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 to act in this proceeding, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answers thereto, testimony and other evidence, recommended decision of the hearing examiner there-

tofore duly designated by the Commission to act in the place and stead of the hearing examiner originally designated, and brief of counsel supporting the complaint (respondents having filed no brief and oral argument not having been requested); and the Commission, having duly considered the matter and being 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 Bethany College and Divinity School is a corporation organized and existing under the laws of the State of Illinois. The office and principal place of business from which corporate respondent's affairs were last conducted prior to the institution of this proceeding was at 123 Eighth Street, North, St. Petersburg, Florida.

At all the times mentioned herein, respondent Carl M. Kilmer has been president, treasurer and chairman of the board of directors of the corporate respondent, and respondent Lulu M. Kilmer, his wife, has been secretary and assistant treasurer of the respondent corporation. These individuals were two of the three incorporators of the school and at all times since its incorporation have been in active charge and control of its operations, in the formulation of its policies and in the direction of its business practices. Unless otherwise indicated, the term respondents, as used hereinafter, designates respondent Bethany College and Divinity School, respondent Carl M. Kilmer, and respondent Lulu M. Kilmer.

PAR. 2. Respondents have conducted a school and have engaged in the sale and distribution of courses of study and instruction in various subjects of higher learning, such courses having been pursued by students almost entirely through correspondence. Respondents have caused their courses of study and instruction, when sold, to be transported from their place of business first located in the State of Louisiana and later in the State of Florida to purchasers located in various other States of the United States. At all times during which such courses of home study were being distributed and sold, respondents have maintained a course of trade therein in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their business, respondents have advertised the school by means of advertisements inserted in religious periodicals and also by means of circulars and catalogs distributed among prospective purchasers of courses of instruction.

Among the statements appearing in such advertisements were the following:

MINISTERS! TEACHERS!

Approved courses in Theology, Teacher Training, Christian Education. Improve your work. Earn a college degree. Low cost, books furnished. D. Th., B. Th., M. A., B. SC. granted. Free catalog. Bethany College & Divinity School.

An inter-denominational college fully chartered and perpetually incorporated under the laws of the State of Illinois. Graduate work offered through HOME STUDY leads to the degrees B. S. Th., Th. M., A. M., and Th. D. This Bulletin is especially directed to pastors and other Christian workers who must complete their education through home study. Our work is accredited by the National Association of Christian Schools. * * * Credits earned in other approved schools will be accepted by us at full value.

Excellent faculty, co-educational, graduate and undergraduate. Home Study department open to those unable to enter residence classes. 1946–1947 Bulletin free.

Work offered is of orthodox college level and in accordance with the standards set by recognized regional accrediting associations with reference to entrance requirements and prerequisites, faculty training and qualifications, textbooks, and grading standards.

PAR. 4. Through the use of the foregoing statements and others of similar import, respondents have represented directly or by implication that their school is a college maintaining a faculty of competent scholars and adequate facilities, including buildings and a library for the instruction of students in subjects of higher learning, as the term college is understood by the purchasing public and in the educational field; that respondents' school is recognized by a standard accrediting organization and that its credits and academic degrees are recognized by reputable accredited institutions of higher learning.

PAR. 5. Respondent's school was incorporated in 1944 under the laws of the State of Illinois, the location of the school being given in the articles of incorporation as Mt. Carmel, Illinois. No school was ever organized at Mt. Carmel but steps were taken toward the organization and operation of a school late in 1945 after respondents Carl M. Kilmer and Mrs. Lulu M. Kilmer had moved to Baton Rouge, Louisiana. During their residence there, respondents began to issue and sell some correspondence courses of study. The school had no building of its own and a small dwelling house served as the school as well as a residence for Mr. and Mrs. Kilmer. After remaining in Baton Rouge some four months, respondents Carl M. Kilmer and Mrs. Lulu M. Kilmer moved to Shreveport, Louisiana, and there used some rooms in a church as headquarters for the school. About one year later they moved to St. Petersburg, Florida, where they hoped to acquire a building. A catalog promoting the school was issued when it appeared that a lease on a hotel building would be secured, but this transaction was

not completed. When these plans failed to materialize, sales of courses of study through correspondence continued for a brief period but operations of the enterprise were discontinued in July 1947 and the respondent individuals departed from St. Petersburg.

Practically all of the instruction carried on by the school was by correspondence, there being almost no resident students. For a brief period there were a few students receiving resident instruction but this, however, was limited to fewer than a half-dozen subjects. Whenever a student enrolled for a course of study by correspondence, his name was referred to one of several instructors listed as faculty members, all of whom with the exception of respondent Carl M. Kilmer and one other person were located in places other than St. Petersburg, Florida, and from that time on the student's contact was almost entirely with that instructor. None of the instructors to whom students were referred received any regular compensation but received a percentage of the tuition fees paid by students.

As indicated above, the school has never owned any buildings or other real property and has never had a permanent location. It has had practically no financial resources. Its library has consisted of some 800 to 900 books, including textbooks kept on hand for sale to students.

PAR. 6. Respondent Bethany College and Divinity School is chartered under the "General Not For Profit Act" of the State of Illinois. In addition to other corporate offices held by them, as mentioned hereinbefore, the respondent individuals have comprised the corporation's executive committee to which plenary powers in the operation and management of the enterprise were delegated at the outset under a resolution adopted by the board of directors. The corporate by-laws contain an acknowledgment that all assets had been derived from Mr. and Mrs. Kilmer, provide for priority in their favor upon any distribution of assets in the event of dissolution, and make provision for payment of compensation to Mrs. Kilmer for her future services in conducting the corporate affairs.

For respondent Carl M. Kilmer, compensation for future services as an officer, director or faculty member, over and above travelling expenses and rent, was set under the by-laws, as originally adopted, at $3,000 per annum for the years 1944, 1945 and 1946, and at $4,000 for the years 1947, 1948 and 1949, and it was further provided that for the year 1950 and succeeding years his salary would be fixed by the executive committee or by the board of directors at each annual meeting, but in no case should the amount be less than $5,000 per year. At all times since the incorporation of Bethany College and Divinity School its affairs were controlled by respondents Carl M. Kilmer and

Lulu M. Kilmer and it has served as the instrumentality under which they have engaged commercially in the sale of courses of home study and other courses.

The record in this proceeding establishes beyond question that respondents' school has fallen far short of meeting the minimum requirements for an institution of higher learning. The school was not a college but was essentially a correspondence school only. It was not an accredited institution and its work or credits were not and could not have been recognized by any reputable educational institution. The "National Association of Christian Schools" referred to in the advertising as having accredited the school is not a recognized accrediting association.

The purported academic degrees issued by the school were without any academic value whatsoever and none would have any recognition in the educational field. Academic degrees have for many years been recognized by educators and members of the public as evidence that the recipient possesses a degree conferred upon him by a recognized college or institution of higher learning after successful completion of a required, approved course of study in specific subjects of learning. Such degrees are recognized by standard colleges and universities and accrediting organizations as evidence of scholastic attainment. The offer by respondents to grant and confer an academic degree in and of itself constitutes a false representation that such degree is accepted, recognized and accredited by accredited institutions of higher learning.

PAR. 7. The acts and practices of respondents as set forth above, including the use of the word "college" to describe respondents' school, and the issuance of purported academic degrees, had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public and to cause such portion of the public to purchase respondents' courses of instruction as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondents as found hereinbefore are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. Upon the basis of the record in this case, it can only be concluded that the corporate respondent is still in existence and that it continues under the control of respondents Carl M. Kilmer and Lulu M. Kilmer. Although the distribution of respondents' courses of instruction appears to have been discon-

tinued approximately one year prior to the issuance of the complaint herein, which date was subsequent however to the initiation of the preliminary investigation which led to the institution of this proceeding, the Commission is of the view that the public interest requires issuance here of an appropriate order to the end that the use of the unfair and deceptive acts and practices heretofore engaged in by respondents be not resumed.

Named also in the complaint as respondents in this proceeding were William Potter, Grace Sercomb, Ted Victor Vorhees, J. Frederick Doering, William Morgan Keller, Jesse J. Coody, Richard H. Crowder, Merle P. Estabrooks, Edith C. Sheetz, and John W. Oliver. It is alleged therein that these individuals were designated to serve in various capacities with the corporate respondent either as members of its board of governors, as administrative officials or as teachers and that, in such connection, they have participated in the formulation of corporate respondent's policies and in the performance of the deceptive acts and practices engaged in. No meetings of the board were held, in most instances they did not assume their respective positions, and it appears from the record that these individuals have not shared responsibility for the conduct of the enterprise or participated in formulating the policies which were adopted. The charges of the complaint pertaining to these respondents are accordingly being dismissed.

It is additionally charged in the complaint that respondents have falsely represented that they operate a divinity school, as that term is understood by the public and in educational circles. Inasmuch as the evidence introduced into the record does not afford basis for the informed conclusion as to what impressions may be engendered among members of the purchasing public by the term divinity school, the Commission is of the opinion that this charge of the complaint has not been sustained by the greater weight of the evidence and that dismissal thereof also is warranted.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers thereto, testimony and other evidence taken before a hearing examiner of the Commission theretofore duly designated by it, the recommended decision of the substitute hearing examiner duly designated to act in the place and stead of the original hearing examiner, and brief of counsel supporting the complaint (respondents having filed no brief and oral argument not having been requested); and the Com-

mission having made its findings as to the facts and its conclusion that the respondents there designated have violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondents Bethany College and Divinity School, a corporation, and its officers, and Carl M. Kilmer and Lulu M. Kilmer, individually and as officers of said corporation, and said respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondents' courses of study and instruction, do forthwith cease and desist from:

(1) Using the word "college" or any word of similar import as a part of said corporation's corporate or trade name or otherwise representing, directly or by implication, that respondents' enterprise is a college or institution of higher learning.

(2) Representing, directly or by implication, that respondents' school is recognized by any standard or accepted accrediting organization or is an accredited educational institution.

(3) Representing, by offering to grant or to confer or through conferring any so-called academic degrees, or by any other means, that respondents' degrees are accepted, recognized or accredited by accredited institutions of higher learning.

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to respondents William Potter, Grace Sercomb, Ted Victor Vorhees, J. Frederick Doering, William Morgan Keller, Jesse J. Coody, Richard H. Crowder, Merle P. Estabrooks, Edith C. Sheetz, and John W. Oliver.

It is further ordered, That the charges of the complaint pertaining to advertising statements which have identified respondents' enterprise as a divinity school be, and the same hereby are, dismissed.

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

IN THE MATTER OF

MARTIN KORS, DOING BUSINESS AS CHICAGO NOVELTY SALES COMPANY

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

Docket 5660. Complaint, June 1, 1949—Decision, July 9, 1952

Where an individual engaged in the interstate sale and distribution of watches, jewelry, fountain pens, knives, and novelties; and of devices commonly known as push cards and punchboards, which, bearing explanatory legends or space therefor, were designed for and used only in combination with other merchandise in the sale thereof by ultimate purchasers by lot or chance under plans whereby customers who, by chance selected certain specified numbers, receives articles of merchandise without additional cost at much less than their normal retail price and others received nothing for their money other than the privilege of a push or punch—

(*a*) Sold and distributed such devices to dealers who made up assortments of candy, cigarettes, clocks, razors, cosmetics, clothing and other articles along with said devices, which were exposed and sold by the direct or indirect retail purchasers to the purchasing public by means thereof; and

(*b*) Sold assortments of merchandise packed and assembled with punchboards directly or indirectly to retail dealers by whom they were exposed and sold to the purchasing public through the use of the aforesaid punchboards; and

Thereby supplied to and placed in the hands of others the means of conducting lotteries, games of chance, or gift enterprises in the sale or distribution of merchandise, in contravention of an established public policy of the United States Government; and assisted and participated in the violation thereof;

With the result that many persons were attracted by the element of chance involved therein and were thereby induced to buy merchandise thus sold, and gambling among members of the public was encouraged:

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.

Before *Mr. Abner E. Lipscomb*, hearing examiner.
Mr. J. W. Brookfield, Jr., for the Commission.
Mr. John F. Reynolds, of Portland, Oreg., 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 Martin Kors, an individual, trading as Chicago Novelty Sales Company, hereinafter referred to as respondent has violated 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 its complaint by stating its charges in that respect as follows:

COUNT I

PARAGRAPH 1. Respondent Martin Kors in an individual, trading and doing business as Chicago Novelty Sales Company with his office and principal place of business located at 1221 S. W. Washington Street, in the city of Portland, Oregon. Respondent is now, and for more than three years last past has been 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 located in the various States of the United States.

Respondent causes and has caused said devices, when sold to be transported from his place of business in the State of Oregon to purchasers thereof at their points of location in the various States of the United State 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 his 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 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 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 respondents 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 card 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, engaging 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.

COUNT II

PARAGRAPH 1. Respondent Martin Kors is an individual trading and doing business as Chicago Novelty Sales Company with his office and principal place of business located at 1221 S. W. Washington Street, in the city of Portland, Oregon. Respondent is now and for more than 3 years last past has been engaged in the sale and distribution of watches, jewelry, fountain pens, knives, novelties and other articles of merchandise and has caused said merchandise when sold to be transported from his place of business in the city of Portland, Oregon to purchasers thereof at their respective points of location in the various States of the United States other than Oregon and in the District of Columbia. There is now and has been for more than three years last past a course of trade by respondent in such merchandise in commerce between and among various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as described in Paragraph One hereof, respondent sells and has sold to dealers certain assortments of merchandise so packed and assembled as to involve the

use of a game of chance, gift enterprise or lottery schemes when said merchandise is sold and distributed to the purchasing public.

Said assortments include a number of articles of merchandise and a punchboard. The punchboard has printed on the face thereof a legend or instructions that explain the manner in which the said device is to be used or may be used in the sale or distribution of the various specified articles of merchandise. The prices of the sales of punches on said punchboards vary in accordance with the individual device. Each purchase entitles the purchaser to one punch from the board and when a punch is made a printed slip is separated from the punchboard and a number disclosed. The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the punch completed. Certain specified numbers entitle the purchaser thereof to receive a designated article of merchandise. Persons punching a lucky or winning number receive an article of merchandise at a price much less than the normal retail price of said article. Persons who do not punch a lucky or winning number receive nothing for their money other than the privilege of making a punch from said board. The articles of merchandise are thus distributed to the consuming or purchasing public solely by lot or chance.

Respondent has sold and distributed numerous assortments of merchandise and punchboards, all of which are distributed by the dealer to the purchasing public as above described and such assortments vary only in detail as to the individual items of merchandise, the number of punches on the board and the price of each punch, the plans of all of said boards and assortments being similar to the one hereinabove described.

PAR. 3. Retail dealers who purchase respondent's punchboards and merchandise assortments directly or indirectly expose and sell merchandise to the purchasing public in accordance with the sales plans above described. Respondent thus supplies and places in the hands of others the means of conducting lotteries or games of chance in the sale of their products in accordance with the sales plans hereinabove set forth. The use by respondent of said sales plan or method in the sale of his merchandise, and the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods, is a practice which is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure one of the said articles of merchandise at a price much less than the normal retail price thereof. Many persons are attracted by

said sales plans or methods used by respondent and the element of chance involved therein and thereby are induced to buy and sell respondent's merchandise.

The use by respondent of a sales plan or method involving distribution of merchandise by means of chance, lottery or gift enterprise is contrary to the public interest and constitutes unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 1, 1949, issued and subsequently served its complaint in this proceeding upon the respondent, Martin Kors, an individual, charging him with the use of unfair acts and practices in commerce in violation of the provisions of that Act. No answer having been filed to said complaint within the time permitted under the Commission's Rules of Practice, a hearing was held at which testimony and other evidence in support of the allegations of the complaint were introduced before a hearing examiner of the Commission theretofore duly designated by it. Thereafter, upon motion of counsel for respondent, the hearing examiner permitted respondent to file his answer to said complaint. Said answer, which was filed subject to the condition that the Commission take no action herein until its final determination of the matter of Superior Products Company, Inc., Docket No. 5561, admits all of the material allegations of fact in said complaint, waives all intervening procedure, including the filing of a recommended decision by the hearing examiner, but specifically reserves the right of appeal from any decision entered by the Commission herein. Upon a joint motion of counsel supporting the complaint and counsel for respondent, all of the testimony taken herein was stricken from the record by the hearing examiner. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the aforesaid complaint and answer (the Commission in the meantime having issued its order to cease and desist in the matter of Superior Products Company, Inc.) ; 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 Martin Kors is an individual trading and doing business as Chicago Novelty Sales Company, with his office and principal place of business located at 1221 S. W. Washington Street, Portland, Oregon. Respondent for more than five years last past has been engaged in the sale and distribution of watches, jewelry, fountain pens, knives, novelties and of devices commonly known as push cards and punchboards.

Respondent has caused said merchandise and devices, when sold, to be transported from his place of business in the State of Oregon to purchasers thereof at their respective locations in the various other States of the United States and in the District of Columbia. There has been for more than five years last past a course of trade in said merchandise and said devices by said respondent between and among the various States of the United States and in the District of Columbia.

Respondent has sold and distributed push cards and punchboards in the manner above described to dealers in various other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, and to dealers located in the various States of the United States.

PAR. 2. In the course and conduct of his business as above described, respondent sells and distributes 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 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.

Many persons, firms and corporations who sell and distribute candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, purchase respondent's said push card and punchboard devices, and pack and assemble assortments comprised of various articles of merchandise together with said push cards and punchboard devices. These assortments are sold directly or indirectly to retail dealers who expose them to the purchasing public and sell and distribute said articles of merchandise to the public by means of the push cards or punchboards.

PAR. 3. In addition to selling push cards and punchboards as separate items, as hereinabove described, respondent in the course and conduct of his said business sells other articles of merchandise packed with a punchboard and assembled in such a manner as to provide a means by which said merchandise can be sold and distributed to the purchasing public by means of a game of chance, gift enterprise or lottery scheme. The punchboards so included have printed on them instructions that explain the manner in which they may be used in the sale and distribution of the merchandise with which they are packed. These punchboards, which are operated in the same manner as those described hereinabove, are so designed that the articles of merchandise sold and distributed through the use thereof are sold and distributed solely by lot or chance.

Respondent has sold and distributed numerous assortments of merchandise and punchboards, which assortments vary only in detail as to the individual items of merchandise, the number of punches on the

board and the price of each punch. These assortments are sold directly or indirectly to retail dealers who expose them to the purchasing public and sell and distribute said merchandise to the public by means of punchboards in the manner above described.

PAR. 4. By means of the sale of said push cards and punchboards separately and by means of the sale of said assortments of merchandise packed with punchboards, respondent supplies to and places in the hands of others the means of conducting lotteries, games of chance or gift enterprises in the sale or distribution of merchandise. The sale of merchandise by the use of a lottery, game of chance or gift enterprise provides the purchasing public with a chance to procure the merchandise at prices much less than the normal retail price thereof. Many persons are attracted by the element of chance involved therein and are induced to buy merchandise sold in this manner. The sale of merchandise in this manner encourages gambling among members of the public and is a practice which is in contravention of an established public policy of the Government of the United States and this respondent by supplying such means of selling merchandise through lotteries, games of chance or gift enterprises in this manner assisted and participated in the violation of said policy.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and respondent's answer admitting all of the material allegations of fact therein and waiving all intervening procedure, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Martin Kors, individually, and trading under the name Chicago Novelty Sales Company or trading under any other name, and his agents, representatives and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, push cards, punchboards, or other lottery devices which are to be used or which, due to their design, are

suitable for use in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

It is further ordered, That said respondent 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 watches, jewelry, fountain pens, knives, novelties, or other merchandise, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push cards, punchboards, or other lottery devices, either with other merchandise or separately, which said push cards, punchboards, or other lottery devices are to be used or which, due to their design, are suitable for use in the sale or distribution of said merchandise to the public.

2. Selling or distributing merchandise packed or assembled in such a manner as to provide the means of selling or distributing said merchandise to the public through the use of a game of chance, gift enterprise, or lottery scheme.

3. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

It is further ordered, That the respondent 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.

IN THE MATTER OF

ASA ARNSBERG ET AL. TRADING AS PREMIER SALES COMPANY

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

Docket 5662. Complaint, June 1, 1949—Decisions, July 9, 1952

Where three partners engaged in the interstate sale and distribution of watches, jewelry, and novelties, and of push cards and punchboards, which, bearing explanatory legends or space therefor, were designed for and used only in combination with other merchandise in the sale thereof by ultimate purchasers by lot or chance, under plans whereby customers who, by chance, selected certain specified numbers received articles without additional cost at much less than their normal retail price, and others received nothing for their money other than the privilege of a push or punch—

(*a*) Sold and distributed such devices to dealers who packed assortments of candy, cigarettes, clocks, razors, cosmetics, clothing and other articles together with said lottery devices, which were exposed by retail dealer purchasers to the purchasing public and sold and distributed by means of the aforesaid devices; and

(*b*) Sold assortments of the articles they dealt in, as above set forth, packed and assembled with punchboards, directly or indirectly to retail dealer purchasers by whom they were exposed and sold to the purchasing public by means of the aforesaid devices; and

Thereby supplied to and placed in the hands of others the means of conducting lotteries, games of chance, or gift enterprises in the sale or distribution of merchandise, in contravention of an established public policy of the United States Government; and assisted and participated in the violation thereof;

With the result that many persons were attracted by the element of chance involved and were thereby induced to buy merchandise thus sold, and gambling among members of the public was encouraged:

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.

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

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

Pedersen & Reynolds, of Portland, Oreg., 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 Asa Arensberg, Henry C. Arensberg, and Dorothy Schubach, individuals and copartners trading and doing business as Premier Sales 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 regard thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

COUNT I

PARAGRAPH 1. Respondents, Asa Arensberg, Henry C. Arensberg, and Dorothy Schubach, are individuals and co-partners trading as Premier Sales Company with their office and principal place of business located at 625 S. W. Twelfth Avenue, in the city of Portland, Oregon. All of said respondents have cooperated and acted together in the performance of the acts and practices hereinafter alleged.

Respondents are now and for more than three years last past have been 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.

Respondents cause and have caused said devices when sold to be transported from their place of business in the State of Oregon to purchasers 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 respondents in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their said business as described in Paragraph One hereof, respondents sell and distribute, and have 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. Respondents sell and distribute, and have 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 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 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 respondents 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 respondents' 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 respondents as hereinabove alleged supplies to and places in the hands of others the means of conducting lotteries, games of chance or gift enterprises in the sale or distribution of their merchandise. The respondents thus supply to, and place in the hands of, said persons, firms and corporations the means of, and instrumentalities for, engaging in unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

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

COUNT II

PARAGRAPH 1. Respondents, Asa Arensberg, Henry C. Arensberg, and Dorothy Schubach, are individuals and co-partners trading as Premier Sales Company with their office and principal place of business located at 625 S. W. Twelfth Avenue, in the city of Portland, Oregon. Respondents are now and for more than three years last past have been engaged in the sale of watches, jewelry, novelties, and other articles of merchandise, and have caused said merchandise when sold to be transported from their place of business in the city of Portland, Oregon, to purchasers thereof at their respective points of location in the various States of the United States other than Oregon and in the District of Columbia. There is now and has been for more than three years last past a course of trade by respondents in such merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in Paragraph One hereof, respondents sell and have sold to dealers certain assortments of merchandise so packed and assembled as to involve the use of a game of chance, gift enterprises or lottery schemes when said merchandise is sold and distributed to the purchasing public.

Said assortments include a number of articles of merchandise and a punchboard. The punchboard has printed on the face thereof a legend or instructions that explain the manner in which the said device is to be used or may be used in the sale or distribution of the various specified articles of merchandise. The prices of the sales of punches on said punchboards vary in accordance with the individual device. Each purchase entitles the purchaser to one punch from the board and when a punch is made a printed slip is separated from the punchboard and a number disclosed. The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the punch completed. Certain specified numbers entitle the purchaser thereof to receive a designated article of merchandise. Persons punching a lucky or winning number receive an article of merchandise at a price much less than the normal retail price of said article. Persons who do not punch a lucky or winning number receive nothing for their money other than the privilege of making a punch from said board. The articles of merchandise are thus distributed to the consuming or purchasing public solely by lot or chance.

Respondents have sold and distributed numerous assortments of merchandise and punchboards, all of which are distributed by the dealer to the purchasing public as above described and such assortments vary only in detail as to the individual items of merchandise, the number of punches on the board and the price of each punch, the plans of all of said boards and assortments being similar to the one hereinabove described.

PAR. 3. Retail dealers who purchase respondents' punchboards and merchandise assortments directly or indirectly expose and sell merchandise to the purchasing public in accordance with the sales plans above described. Respondents thus supply to and place in the hands of others the means of conducting lotteries or games of chance in the sale of their products in accordance wth the sales plans hereinabove set forth. The use by respondents of said sales plan or method in the sale of their merchandise, and the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods, is a practice which is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure one of the said articles of merchandise at a price much less than the normal retail price thereof. Many persons are attracted by said sales plans or methods used by respondent and the element of chances involved therein and thereby are induced to buy and sell respondents' merchandise.

The use by respondents of a sales plan or method involving distribution of merchandise by means of chance, lottery or gift enterprise is contrary to the public interest and constitutes unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 1, 1949, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof charging them with the use of unfair acts and practices in commerce in violation of the provisions of that Act. Thereafter, on December 5, 1949, respondents filed their answer to said complaint, permission to file after time allowed by the Commission's Rules of Practice having been granted by a hearing examiner of the Commission duly designated by it. Said answer, which was filed subject to the condition that any order entered in this matter be held in abeyance pending the final determination by the Commission of the matter of Superior Products, Inc., et al., Docket No. 5561, admits all of the material allegations of fact in said complaint and waives all intervening procedure herein. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the aforesaid complaint and answer (the Commission in the meantime having issued an order to cease and desist in the matter of Superior Products, Inc.); 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, Asa Arnsberg and Harry C. Arnsberg (erroneously named in the complaint as Asa Arensberg and Henry

C. Arensberg), and respondent, Dorothy Schubach, are individuals and copartners trading as Premier Sales Company, with their office and principal place of business located at 625 S. W. Twelfth Avenue, Portland, Oregon. Respondents for more than five years last past have been engaged in the sale of watches, jewelry, novelties, and of devices commonly known as push cards and punchboards.

Respondents have caused said merchandise and devices when sold to be transported from their place of business in the city of Portland, Oregon, to purchasers thereof at their respective points of location in the various States of the United States other than Oregon and in the District of Columbia. There has been for more than five years last past a course of trade by respondents in such merchandise and said devices in commerce between and among the various States of the United States and in the District of Columbia.

Respondents have sold and distributed push cards and punchboards in the manner above described to dealers in various other 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 such other articles of merchandise in the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their said business as above described, respondents sell and distribute 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. Respondents sell and distribute 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 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 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 respondents 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.

Many persons, firms and corporations who sell and distribute candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, purchase respondents' 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. These assortments are sold directly or indirectly to retail dealers who expose them to the purchasing public and sell and distribute said articles of merchandise to the public by means of the push cards and punchboards in the manner above described.

PAR. 3. In addition to selling push cards and punchboards as separate items, as hereinabove described, respondents in the course and conduct of their said business sell other articles of merchandise packed with a punchboard and assembled in such a manner as to provide a means by which said merchandise can be sold and distributed to the purchasing public by means of a game of chance, gift enterprise or lottery scheme. The punchboards so included have printed on them instructions that explain the manner in which they may be used in the sale and distribution of the merchandise with which they are packed. These punchboards, which are operated in the same manner as those described hereinabove, are so designed that the articles of merchandise sold and distributed through the use thereof are sold and distributed solely by lot or chance.

Respondents have sold and distributed numerous assortments of merchandise and punchboards, which assortments vary only in detail as to the individual items of merchandise, the number of punches on

the board and the price of each punch. These assortments are sold directly or indirectly to retail dealers who expose them to the purchasing public and sell and distribute said merchandise to the public by means of punchboards in the manner above described.

PAR. 4. By means of the sale of said push cards and punchboards separately and the sale of said assortments of merchandise packed with punchboards, respondents supply and place in the hands of others the means of conducting lotteries or games of chance in the sale of merchandise. The sale of merchandise by lottery or games of chance provides the purchasing public with a chance to procure the merchandise at prices much less than the normal retail price thereof. Many persons are attracted by the element of chance involved therein and are induced to buy merchandise sold in this manner. The sale of merchandise in this manner encourages gambling among members of the public and is a practice which is contrary to the established public policy of the Government of the United States and these respondents by supplying such means of selling merchandise through lotteries or games of chance in this manner assisted and participated in the violation of such policy.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and respondents' answer admitting all of the material allegations of fact therein and waiving all intervening procedure, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Asa Arnsberg, Harry C. Arnsberg and Dorothy Schubach, individually or as copartners trading under the name Premier Sales Company or trading under any other name, and their agents, representatives and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, push cards, punchboards, or other lottery devices which are to be used, or which, due to their design are

suitable for use in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise or lottery scheme.

It is further ordered, That said respondents and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of watches, jewelry, novelties or other merchandise, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push cards, punchboards, or other lottery devices, either with other merchandise or separately, which said push cards, punchboards, or other lottery devices are to be used, or which, due to their design, are suitable for use in the sale or distribution of said merchandise to the public.

2. Selling or distributing merchandise packed or assembled in such a manner as to provide the means of selling or distributing said merchandise to the public through the use of a game of chance, gift enterprise or lottery scheme.

3. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise or lottery scheme.

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

IN THE MATTER OF

FLORIDA CITRUS CANNERS COOPERATIVE ET AL.

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

Docket 5640. Complaint, Feb. 18, 1949—Decision, July 14, 1952

Where a corporate cooperative association, engaged in the canning of citrus fruit juice products processed from fruit obtained principally from its members, and in the competitive interstate sale and distribution thereof to customers competitively engaged with each other and with the customers of said association, also competitors, in the purchase and resale of such products within their respective trade areas;

In selling its said products to the Great Atlantic and Pacific Tea Company chain grocery system which, with its parent company and subsidiary organizations and affiliates, constituted the largest purchasers of retail grocery products within the United States, with warehouses in some thirty cities, and during the 1945–46 canning season purchased about 750,000 cases of said association's "Donald Duck" brand citrus products—

Discriminated in price between purchasers competing in the resale of its products of like grade and quality by selling to some at lower prices than it sold to others, and thereby discriminated in favor of said A & P system;

With the result that the aforesaid system, as recipient of discriminatory price benefits aggregating some $600,000, was enabled to retail said "Donald Duck" citrus fruit juice products at a decided price advantage over competitive retailers selling said cooperative's products of like grade and quality in the areas involved;

Effect of which discriminations was, and might be, to substantially lessen competition in the sale and distribution of citrus fruit juice products in the respective lines of commerce in which said cooperative and its customers were engaged, and to injure, destroy or prevent competition in the sale and distribution of said products with it and its customers who received the benefits of said discriminatory prices:

Held, That such discriminations in price, under the circumstances set forth, constituted violations of Sec. 2 (a) of the Clayton Act, as amended.

Mr. Eldon P. Schrup and *Mr. James S. Kelaher* for the Commission.
Mr. Counts Johnson, of Tampa, Fla., for respondents.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, have violated and are now violating the provisions of section 2 (a) of the Clayton Act (U. S. C. Title 15, sec. 13), as amended by the Robinson-

Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Florida Citrus Canners Cooperative is a corporate cooperative association organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located at Lake Wales, Florida.

Said cooperative association, under the management and control of various officers, directors and members since its inception and now, is engaged in the business of the canning for sale of citrus fruit juice products processed from fruit obtained principally from association members.

Representative of the officers, directors and members of said association are the following for the 1945–1946 canning season:

President, Mr. H. S. Norman.
First Vice President, Mr. D. A. Hunt.
Second Vice President, Mr. W. J. Hanley.
Exec. Vice Pres. and General Manager, Mr. L. G. Foster.
Vice Pres. in Charge of Sales, Mr. C. P. Fish.
Secretary & Treasurer, Mr. Lee A. Wheeler.
Assistant Secretary and Treasurer, Mr. Ray M. Moore.

Avon Park Citrus Growers Association, Avon Park, Florida, with Director representative Mr. E. G. Todd, Avon Park, Florida.

Chase Investment Company, Sanford, Florida, with Director representative Mr. Sydney O. Chase, Jr., Sanford, Florida.

Citrus Grove Development Company, Babson Park, Florida, with Director representative Mr. A. H. Stafford, Babson Park, Florida.

Dundee Citrus Growers Association, Dundee, Florida, with Director representative Mr. L. P. Kinsey, Winter Haven, Florida.

Great Southern Citrus Association, Winter Haven, Florida, with Director representative Mr. H. L. Smith, Winter Haven, Florida.

Haines City Citrus Growers Association, Haines City, Florida, with Director representative Mr. H. E. Strohm, Davenport, Florida.

Hunt Bros. Cooperative, Lake Wales, Florida, with Director representative Mr. D. A. Hunt, Lake Wales, Florida.

Lake Byrd Citrus Packing Company, Avon Park, Florida, with Director representative Mr. C. H. Walker, Avon Park, Florida.

Mountain Lake Corporation, Lake Wales, Florida, with Director representative Mr. W. J. Hanley, Lake Wales, Florida.

South Lake Apopka Citrus Growers Association, Oakland, Florida, with Director representative Mr. H. C. Tilden, Winter Garden, Florida.

Umatilla Citrus Growers Association, Umatilla, Florida, with Director representative Mr. C. B. Hipson, Umatilla, Florida.

Waverly Growers Cooperative, Waverly, Florida, with Director representative Mr. H. S. Norman, Lake Wales, Florida.

Winter Haven Citrus Growers Association, Winter Haven Florida, with Director representative, Mr. G. B. Ayerigg, Winter Haven, Florida.

PAR. 2. Florida Citrus Canners Cooperative since June 19, 1936 and now, in the course and conduct of its said business, sells and distributes the aforesaid products in commerce to purchasers thereof located in the various States of the United States, and causes said products, when sold, to be shipped and transported from its place of business in the State of Florida to the purchasers thereof located in the various States of the United States other than and including the State of origin of such shipments. There is and has been at all times mentioned herein, a constant current of trade and commerce in said products between Florida Citrus Canners Cooperative located in the State of Florida; and its customers located in the various other States of the United States and in the District of Columbia. Said products are sold and distributed principally to wholesale grocers, super markets and chain stores for resale within and throughout the United States.

In the course and conduct of its business, as aforesaid, Florida Citrus Canners Cooperative has been, and is now, engaged in substantial competition, in commerce, with other canners, sellers and distributors of citrus fruit juice products, who, for many years prior hereto, have been and are now engaged in canning, selling and distributing such products, in commerce, across State lines, to purchasers thereof located in the various States of the United States and in the District of Columbia. Many of Florida Citrus Canners Cooperative's customers are competitively engaged with each other and with the customers of said association's competitors in the purchase and resale of such products within the trade areas in which Florida Citrus Canners Cooperative's said customers respectively offer for sale and sell such products so purchased.

PAR. 3. Florida Citrus Canners Cooperative, in the furtherance of the said sale and distribution of its said citrus fruit juice products, periodically publishes and causes to be distributed to the trade, price bulletins, telegrams and other material descriptive of said products and the prices at which said products are at such time available for purchase.

Florida Citrus Canners Cooperative operates in a competitive market subject to fluctuating prices, and said association's said prices

when so offered as above will approximate or equal the prices then offered or effected by other canners competing with Florida Citrus Canners Cooperative in the sale and distribution of similar products of like grade and quality at such times, and collectively such prices will represent the then prevailing market price for such products.

During the 1945–1946 canning season, Florida Citrus Canners Cooperative sold and distributed for resale throughout the United States approximately three and one-half million cases of its said citrus fruit juice products of like grade and quality, the preponderance of which products were sold and distributed under Florida Citrus Canners Cooperative's "Donald Duck" label, which represents a nationally advertised brand of well developed consumer recognition and acceptance.

PAR. 4. In the course and conduct of its business, as hereinabove described, since June 19, 1936, Florida Citrus Canners Cooperative has been and is now discriminating in price between different purchasers of its products of like grade and quality by selling said products to some of its customers at lower prices than it sells such products of like grade and quality to other of its customers, many of whom are competitively engaged, one with the other, in the resale of such products within the United States.

PAR. 5. The following designated Table "A" discloses the prevailing prices and the effective dates within the 1945–1946 canning season at which Florida Citrus Canners Coperative's citrus fruit juice products of like grade and quality, under "Donald Duck" labels and otherwise, were offered for sale and sold and distributed by said association to some, but not all, of said association's buyer-customers:

TABLE A

Selling prices, f. o. b. Lake Wales, Fla.	Grapefruit juice				Orange juice				Blended juice			
	12/46 oz. S/A per doz.	12/46 oz. unsw. per doz.	24/2 S/A per doz.	24/2 unsw. per doz.	12/46 oz. S/A per doz.	12/46 oz. unsw. per doz.	24/2 S/A per doz.	24/2 unsw. per doz.	12/46 oz. S/A per doz.	12/46 oz. unsw. per doz.	24/2 S/A per doz.	24/2 unsw. per doz.
EFFECTIVE DATES												
March 18, 1946	$2.50	$2.45	$1.10	$1.075	$3.80	$3.75	$1.625	$1.60	$3.25	$3.20	$1.375	$1.35
March 21, 1946	2.625	2.575	1.125	1.10	4.05	4.00	1.70	1.675	3.35	3.30	1.40	1.375
April 12, 1946	3.25	3.20	1.375	1.35	4.40	4.35	1.825	1.80	3.90	3.85	1.625	1.60
April 18, 1946	3.25	3.20	1.375	1.35	4.65	4.60	1.925	1.90	4.15	4.10	1.725	1.70
April 22, 1946	3.55	3.50	1.475	1.45	5.00	4.95	2.075	2.05	4.50	4.45	1.875	1.85

PAR. 6. The New York Great Atlantic & Pacific Tea Company, Inc. and subsidiary organizations and affiliates comprising The Great Atlantic & Pacific Tea Company chain grocery system, are the largest purchasers and retailers of grocery products within the United States. Among the warehouses operated for and supplying the retail stores of said system with such products for resale in their respective areas, are those located as follows:

Albany, New York
Altoona, Pennsylvania
Atlanta, Georgia
Baltimore, Maryland
Birmingham, Alabama
Boston, Massachusetts
Buffalo, New York
Charlotte, North Carolina
Chicago, Illinois
Cleveland, Ohio
Columbus, Ohio
Des Moines, Iowa
Detroit, Michigan
Grand Rapids, Michigan
Indianapolis, Indiana
Jacksonville, Florida
Louisville, Kentucky
Milwaukee, Wisconsin
Newark, New Jersey
New Orleans, Louisiana
New York, New York
Philadelphia, Pennsylvania
Pittsburgh, Pennsylvania
Portland, Maine
Richmond, Virginia
Scranton, Pennsylvania
Springfield, Massachusetts
St. Louis, Missouri
Toledo, Ohio
Youngstown, Ohio

PAR. 7. The following designated Table "B" discloses the selling prices to other buyer customers for the same or like grade and quality products and the comparable discriminatory prices and the effective dates within the 1945–1946 canning season at which Florida Citrus Canners Cooperative's "Donald Duck" labeled citrus fruit juice products were offered for sale and sold and distributed by said association to The Great Atlantic & Pacific Tea Company system for resale by the retail stores of said system located in the warehouse areas hereinabove set forth:

TABLE B

Prices are f. o. b. Lake Wales, Fla.	Grapefruit juice				Orange juice				Blended juice			
	12/46 oz. S/A per doz.	12/46 oz. unsw. per doz.	24/2 S/A per doz.	24/2 unsw. per doz.	12/46 oz. S/A per doz.	12/46 oz. unsw. per doz.	24/2 S/A per doz.	24/2 unsw. per doz.	12/46 oz. S/A per doz.	12/46 oz. unsw. per doz.	24/2 S/A per doz.	24/2 unsw. per doz.
Selling price effective Mar. 18, 1946	$2.50	$2.45	$1.10	$1.075	$3.80	$3.75	$1.625	$1.60	$3.25	$3.20	$1.375	$1.35
A & P price	$2.50	$2.45	$1.10	$1.075	$3.60	$3.55	$1.50	$1.475	$3.20	$3.15	$1.35	$1.325
Price discrimination:												
Per dozen	None	None	None	None	$0.20	$0.20	$0.125	$0.125	$0.05	$0.05	$0.025	$0.025
Per can (cents)	None	None	None	None	1.7	1.7	1.0	1.0	.4	.4	.2	.2
Percent	None	None	None	None	5.3	5.3	7.7	7.8	1.5	1.6	1.8	1.9
Selling price effective Mar. 21, 1946	$2.625	$2.575	$1.125	$1.10	$4.05	$4.00	$1.70	$1.675	$3.35	$3.30	$1.40	$1.375
A & P price	$2.50	$2.45	$1.10	$1.075	$3.60	$3.55	$1.50	$1.475	$3.20	$3.15	$1.35	$1.325
Price discrimination:												
Per dozen	$0.125	$0.125	$0.025	$0.025	$0.45	$0.45	$0.20	$0.20	$0.15	$0.15	$0.05	$0.05
Per can (cents)	1.0	1.0	.2	.2	3.8	3.8	1.7	1.7	1.3	1.3	1.4	.4
Percent	4.8	4.9	2.2	2.3	11.1	11.3	11.8	11.9	4.5	4.5	3.6	3.6
Selling price effective Apr. 12, 1946	$3.25	$3.20	$1.375	$1.35	$4.40	$4.35	$1.825	$1.80	$3.90	$3.85	$1.625	$1.60
A & P price	$2.50	$2.45	$1.10	$1.075	$3.60	$3.55	$1.50	$1.475	$3.20	$3.15	$1.35	$1.325
Price discrimination:												
Per dozen	$0.75	$0.75	$0.275	$0.275	$0.80	$0.80	$0.325	$0.325	$0.70	$0.70	$0.275	$0.275
Per can (cents)	6.3	6.3	2.3	2.3	6.7	6.7	2.7	2.7	5.8	5.8	2.3	2.3
Percent	23.1	23.4	20.0	20.4	18.2	18.4	17.8	18.1	17.9	18.2	16.9	17.2
Selling price effective Apr. 18, 1946	$3.25	$3.20	$1.375	$1.35	$4.65	$4.60	$1.925	$1.90	$4.15	$4.10	$1.725	$1.70
A & P price	$2.50	$2.45	$1.10	$1.075	$3.60	$3.55	$1.50	$1.475	$3.20	$3.15	$1.35	$1.325
Price discrimination:												
Per dozen	$0.75	$0.75	$0.275	$0.275	$1.05	$1.05	$0.425	$0.425	$0.95	$0.95	$0.375	$0.375
Per can (cents)	6.3	6.3	2.3	2.3	8.8	8.8	3.5	3.5	7.9	7.9	3.1	3.1
Percent	23.1	23.4	20.0	20.4	22.6	22.8	22.1	22.4	22.9	23.2	21.7	22.1
Selling price effective Apr. 22, 1946	$3.55	$3.50	$1.475	$1.45	$5.00	$4.95	$2.075	$2.05	$4.50	$4.45	$1.875	$1.85
A & P price	$2.50	$2.45	$1.10	$1.075	$3.60	$3.55	$1.50	$1.475	$3.20	$3.15	$1.35	$1.325
Price discrimination:												
Per dozen	$1.05	$1.05	$0.375	$0.375	$1.40	$1.40	$0.575	$0.575	$1.30	$1.30	$0.525	$0.525
Per can (cents)	8.8	8.8	3.1	3.1	11.7	11.7	4.8	4.8	10.8	10.8	4.4	4.4
Percent	29.6	30.0	25.4	25.9	28.0	28.3	27.7	28.0	28.9	29.2	28.0	28.4

PAR. 8. The discriminatory prices reflected in Table "B" above were granted in numerous transactions by and between Florida Citrus Canners Cooperative and The Great Atlantic & Pacific Tea Company system which involved sales of approximately 750,000 cases of "Donald Duck" brand citrus fruit juice products offered for sale, sold and distributed to said system during the times set forth in said Table "B" at an aggregate purchase price of some $2,000,000.00. Said sales transactions disclosed said system to have been the recipient thereby of discriminatory price benefits aggregating $600,000.00 more or less, being the aggregate difference between the lesser purchase prices paid by said system for said products during said times and the comparable higher purchase prices offered to and paid by other buyer-customers of Florida Citrus Canners Cooperative for such products of like grade and quality during said times.

The discriminatory prices at which said products were offered for sale, sold and distributed by Florida Citrus Canners Cooperative to The Great Atlantic & Pacific Tea Company system as afore-described enabled said system to retail "Donald Duck" labeled citrus fruit juice products as a decided sales price advantage over other retailers selling Florida Citrus Canners Cooperative's products of like grade and quality in competitive resale in the areas concerned.

The following designated Table "C" discloses the retail selling prices which The Great Atlantic & Pacific Tea Company system was enabled to effect in the competitive resale of such products in two representative areas in comparison with the purchase prices offered by and paid to Florida Citrus Canners Cooperative during such times by other customers purchasing such products of like grade and quality for resale in all areas including said areas:

TABLE C

	A & P retail selling price per can— Representative area No. 1	A & P retail selling price per can—Representative area No. 2	Purchase price per can, not including freight costs, offered to and paid by wholesalers, supermarkets, and chain stores for resale in all areas including A & P Representative areas Nos. 1 and 2
	Cents	*Cents*	*Cents*
Grapefruit juice:			
12/46 S/A	29	27	29.6
12/46 unsw	29	27	29.2
24/2 S/A	13	11.7 (3 for 35)	12.3
24/2 unsw	13	11.7 (3 for 35)	12.1
Orange juice:			
12/46 S/A	40	38	41.7
12/46 unsw	40	38	41.3
24/2 S/A	16	16	17.3
24/2 unsw	16	16	17.1
Blended juice:			
12/46 S/A	36	34	37.5
12/46 unsw	36	34	37.1
24/2 S/A	15	14.5 (2 for 29)	15.6
24/2 unsw	15	14.5 (2 for 29)	15.4

PAR. 9. The effect of the discriminations in prices as hereinabove set forth may be, has been, and is substantially to lessen competition in the sale and distribution of citrus fruit juice products in the respective lines of commerce in which Florida Citrus Canners Cooperative and its recipient customers are engaged, and has been, and may be, to injure, destroy or prevent competition in the sale and distribution of said products with said association and with its customers who receive the benefits of such discriminatory prices.

PAR. 10. The foregoing discriminatory prices by said association between different purchasers of Florida Citrus Canners Cooperative citrus fruit juice products of like grade and quality in commerce as hereinbefore set forth, constitute violations of subsection (a) of section 2 of the Clayton Act (U. S. C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an Act of Congress approved June 19, 1936 (the Robinson-Patman Act) (15 U. S. C. Sec. 13), the Federal Trade Commission on February 18, 1949, issued and subsequently served its complaint in this proceeding upon the respondent, Florida Citrus Canners Cooperative, a corporate cooperative association, and upon

its officers and directors and upon certain members of said cooperative association as representative of all the members of the association as a class, charging said Florida Citrus Canners Cooperative, its officers, directors, and members with having violated the provisions of subsection (a) of Section 2 of said Clayton Act, as amended by the Robinson-Patman Act.

After the issuance of said complaint and the filing of the respondents' answer thereto, the respondents, pursuant to leave granted, withdrew said answer and filed in lieu thereof a substitute answer in which for the purpose of this proceeding the respondents admitted all of the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearings as to said facts, but reserved to themselves the right of a hearing with oral argument and the filing of briefs before the Commission as to what order, if any, should be issued upon the facts admitted. Subsequently, counsel for the respondents waived oral argument and consented to submission of the matter to the Commission on the record as then constituted. Thereafter, the proceeding regularly came on for final hearing before the Commission upon the complaint, the respondents' substitute answer, a memorandum for disposition of the case filed by counsel in support of the complaint, attached to which was a proposed form of order to cease and desist, and brief filed by counsel for the respondents in which it was contended that no order to cease and desist should be issued herein, but that if an order is to be issued the order proposed was "probably as fair and reasonable to all parties concerned in its terms and provisions as any that could be issued."

The Commission, being of the opinion that the proposed form of order to cease and desist should be altered in certain material respects, declined to dispose of the proceeding by the entry of an order in the form recommended and, on September 24, 1951, issued a tentative order which the Commission proposed to enter after making appropriate findings as to the facts and conclusion based upon and fully consistent with the facts alleged in the complaint and admitted in the substitute answer thereto, and gave the respondents leave to show cause why said tentative order should not be entered herein as the Commission's order to cease and desist. The respondents on October 8, 1951, filed their "Objection to Tentative Order Issued September 24, 1951"; and the Commission, having duly considered said objection and the matter as a whole and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Florida Citrus Canners Cooperative is a corporate cooperative association organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located at Lake Wales, Florida.

Said cooperative association, under the management and control of various officers, directors and members, since its inception has been and now is engaged in the business of the canning for sale of citrus fruit juice products processed from fruit obtained principally from association members.

Representative of the officers, directors and members of said association are the following for the 1945–1946 canning season:

President, Mr. H. S. Norman.
First Vice President, Mr. D. A. Hunt.
Second Vice President, Mr. W. J. Hanley.
Executive Vice President and General Manager, Mr. L. G. Foster.
Vice President in Charge of Sales, Mr. C. P. Fish.
Secretary & Treasurer, Mr. Lee A. Wheeler.
Assistant Secretary & Treasurer, Mr. Ray M. Moore.

Avon Park Citrus Growers Association, Avon Park, Florida, with Director representative Mr. E. G. Todd, Avon Park, Florida.

Chase Investment Company, Sanford, Florida, with Director representative Mr. Sydney O. Chase, Jr., Sanford, Florida.

Citrus Grove Development Company, Babson Park, Florida, with Director representative Mr. A. H. Stafford, Babson Park, Florida.

Dundee Citrus Growers Association, Dundee, Florida, with Director representative Mr. L. P. Kinsey, Winter Haven, Florida.

Great Southern Citrus Association, Winter Haven, Florida, with Director representative Mr. H. L. Smith, Winter Haven, Florida.

Haines City Citrus Growers Association, Haines City, Florida, with Director representative Mr. H. E. Strohm, Davenport, Florida.

Hunt Bros. Cooperative, Lake Wales, Florida, with Director representative Mr. D. A. Hunt, Lake Wales, Florida.

Lake Byrd Citrus Packing Company, Avon Park, Florida, with Director representative Mr. C. H. Walker, Avon Park, Florida.

Mountain Lake Corporation, Lake Wales, Florida, with Director representative Mr. W. J. Hanley, Lake Wales, Florida.

South Lake Apopka Citrus Growers Association, Oakland, Florida, with Director representative Mr. H. C. Tilden, Winter Garden, Florida.

Umatilla Citrus Growers Association, Umatilla, Florida, with Director representative Mr. C. B. Hipson, Umatilla, Florida.

Waverly Growers Cooperative, Waverly, Florida, with Director representative Mr. H. S. Norman, Lake Wales, Florida.

Winter Haven Citrus Growers Association, Winter Haven, Florida, with Director representative, Mr. G. B. Aycrigg, Winter Haven, Florida.

PAR. 2. In the course and conduct of its business since June 19, 1936, Florida Citrus Canners Cooperative has sold and distributed, and now sells and distributes, the aforesaid products in commerce to purchasers thereof located in the various States of the United States, and said respondent has caused and now causes said products, when sold, to be shipped and transported from its place of business in the State of Florida to the purchasers thereof located in the various States of the United States other than and including the state of origin of such shipments. There is now and at all times mentioned herein there has been a constant current of trade and commerce in said products between Florida Citrus Canners Cooperative, located in the State of Florida, and its customers located in the various other States of the United States and in the District of Columbia. Said products are sold and distributed principally to wholesale grocers, super markets and chain stores for resale within and throughout the United States.

In the course and conduct of its business, as aforesaid, Florida Citrus Canners Cooperative has been, and is now, engaged in substantial competition in commerce with other canners, sellers and distributors of citrus fruit juice products, who, for many years prior hereto, have been and are now engaged in canning, selling and distributing such products in commerce to purchasers thereof located in the various States of the United States and in the District of Columbia. Many of Florida Citrus Canners Cooperative's customers are competitively engaged with each other and with the customers of said association's competitors in the purchase and resale of such products within the trade areas in which Florida Citrus Canners Cooperative's said customers respectively offer for sale and sell such products so purchased.

PAR. 3. Florida Citrus Canners Cooperative, in the furtherance of the said sale and distribution of its said citrus fruit juice products, periodically publishes and causes to be distributed to the trade price bulletins, telegrams and other material descriptive of said products and the prices at which said products are at such time available for purchase.

Florida Citrus Canners Cooperative operates in a competitive market subject to fluctuating prices, and said association's said prices when so offered as above will approximate or equal the prices then offered or effected by other canners competing with Florida Citrus Canners Cooperative in the sale and distribution of similar products of like grade and quality at such times, and collectively such prices will represent the then prevailing market price for such products.

During the 1945–1946 canning season, Florida Citrus Canners Cooperative sold and distributed for resale throughout the United States approximately three and one-half million cases of its said citrus fruit juice products of like grade and quality, the preponderance of which products were sold and distributed under Florida Citrus Canners Cooperative's "Donald Duck" label, which represents a nationally advertised brand of well developed consumer recognition and acceptance.

PAR. 4. In the course and conduct of its business, as hereinabove described, since June 19, 1936, and particularly during the 1945–1946 canning season, Florida Citrus Canners Cooperative has discriminated in price as between different purchasers of its products of like grade and quality by selling said products to some of its customers at lower prices than it sold such products of like grade and quality to others of its customers, many of whom were competitively engaged, one with the other, in the resale of such products within the United States.

PAR. 5. The following designated Table "A" discloses the prevailing prices and the effective dates within the 1945–1946 canning season at which Florida Citrus Canners Cooperative's citrus fruit juice products of like grade and quality, under "Donald Duck" labels and otherwise, were offered for sale and sold and distributed by said association to some, but not all, of said association's buyer-customers:

TABLE A

Selling prices, f. o. b. Lake Wales, Fla.	Grapefruit juice				Orange juice				Blended juice			
	12/46 oz. S/A per doz.	12/46 oz. unsw. per doz.	24/2 S/A per doz.	24/2 unsw. per doz.	12/46 oz. S/A per doz.	12/46 oz. unsw. per doz.	24/2 S/A per doz.	24/2 unsw. per doz.	12/46 oz. doz.	12/46 oz. unsw. per doz.	24/2 S/A per doz.	24/2 unsw. per doz.
EFFECTIVE DATES												
March 18, 1946	$2.50	$2.45	$1.10	$1.075	$3.80	$3.75	$1.625	$1.60	$3.25	$3.20	$1.375	$1.35
March 21, 1946	2.625	2.575	1.125	1.10	4.05	4.00	1.70	1.675	3.35	3.30	1.400	1.375
April 12, 1946	3.25	3.20	1.375	1.35	4.40	4.35	1.825	1.80	3.90	3.85	1.625	1.60
April 18, 1946	3.25	3.20	1.375	1.35	4.65	4.60	1.925	1.90	4.15	4.10	1.725	1.70
April 22, 1946	3.55	3.50	1.475	1.45	5.00	4.95	2.075	2.05	4.50	4.45	1.875	1.85

PAR. 6. The New York Great Atlantic & Pacific Tea Company, Inc., and subsidiary organizations and affiliates comprising The Great Atlantic & Pacific Tea Company chain grocery system are the largest purchasers and retailers of grocery products within the United States. Among the warehouses operated for and supplying the retail stores of said system with such products for resale in their respective areas are those located as follows:

Albany, New York	Jacksonville, Florida
Altoona, Pennsylvania	Louisville, Kentucky
Atlanta, Georgia	Milwaukee, Wisconsin
Baltimore, Maryland	Newark, New Jersey
Birmingham, Alabama	New Orleans, Louisiana
Boston, Massachusetts	New York, New York
Buffalo, New York	Philadelphia, Pennsylvania
Charlotte, North Carolina	Pittsburgh, Pennsylvania
Chicago, Illinois	Portland, Maine
Cleveland, Ohio	Richmond, Virginia
Columbus, Ohio	Scranton, Pennsylvania
Des Moines, Iowa	Springfield, Massachusetts
Detroit, Michigan	St. Louis, Missouri
Grand Rapids, Michigan	Toledo, Ohio
Indianapolis, Indiana	Youngstown, Ohio

PAR. 7. The following designated Table "B" discloses the selling prices to other buyer-customers for the same or like grade and quality products and the comparable discriminatory prices and the effective dates within the 1945–1946 canning season at which Florida Citrus Canners Cooperative's "Donald Duck" labeled citrus fruit juice products were offered for sale and sold and distributed by said association to The Great Atlantic & Pacific Tea Company system for resale by the retail stores of said system located in the warehouse areas hereinabove set forth:

TABLE B

Prices are f. o. b. Lake Wales, Fla.	Grapefruit juice				Orange juice				Blended juice			
	12/46 oz. S/A per doz.	12/46 oz. unsw. per doz.	24/2 S/A per doz.	24/2 unsw. per doz.	12/46 oz. S/A per doz.	12/46 oz. unsw. per doz.	24/2 S/A per doz.	24/2 unsw. per doz.	12/46 oz. S/A per doz.	12/46 oz. unsw. per doz.	24/2 S/A per doz.	24/2 unsw. per doz.
Selling price effective Mar. 18, 1946	$2.50	$2.45	$1.10	$1.075	$3.80	$3.75	$1.625	$1.60	$3.25	$3.20	$1.375	$1.35
A & P prices	$2.50	$2.45	$1.10	$1.075	$3.60	$3.55	$1.50	$1.475	$3.20	$3.15	$1.35	$1.325
Price discrimination:												
Per dozen	None	None	None	None	$0.20	$0.20	$0.125	$0.125	$0.05	$0.05	$0.025	$0.025
Per can (cents)	None	None	None	None	1.7	1.7	1.0	1.0	.4	.4	.2	.2
Percent	None	None	None	None	5.3	5.3	7.7	7.8	1.5	1.6	1.8	1.9
Selling price effective Mar. 21, 1946	$2,625	$2.575	$1.125	$1.10	$4.05	$4.00	$1.70	$1.675	$3.35	$3.30	$1.40	$1.375
A & P prices	$2.50	$2.45	$1.10	$1.075	$3.60	$3.55	$1.50	$1.475	$3.20	$3.15	$1.35	$1.325
Price discrimination:												
Per dozen	$0.125	$0.125	$0.025	$0.025	$0.45	$0.45	$0.20	$0.20	$0.15	$0.15	$0.05	$0.05
Per can (cents)	1.0	1.0	.2	.2	3.8	3.8	1.7	1.7	1.3	1.3	.4	.4
Percent	4.8	4.9	2.2	2.3	11.1	11.3	11.8	11.9	4.5	4.5	3.6	3.6
Selling price effective Apr. 12, 1946	$3.25	$3.20	$1.375	$1.35	$4.40	$4.35	$1.825	$1.80	$3.90	$3.85	$1.625	$1.60
A & P prices	$2.50	$2.45	$1.10	$1.075	$3.60	$3.55	$1.50	$1.475	$3.20	$3.15	$1.35	$1.325
Price discrimination:												
Per dozen	$0.75	$0.75	$0.275	$0.275	$0.80	$0.80	$0.325	$0.325	$0.70	$0.70	$0.275	$0.275
Per can (cents)	6.3	6.3	2.3	2.3	6.7	6.7	2.7	2.7	5.8	5.8	2.3	2.3
Percent	23.1	23.4	20.0	20.4	18.2	18.4	17.8	18.1	17.9	18.2	16.9	17.2
Selling price effective Apr. 18, 1946	$3.25	$3.20	$1.375	$1.35	$4.65	$4.60	$1.925	$1.90	$4.15	$4.10	$1.725	$1.70
A & P prices	$2.50	$2.45	$1.10	$1.075	$3.60	$3.55	$1.50	$1.475	$3.20	$3.15	$1.35	$1.325
Price discrimination:												
Per dozen	$0.75	$0.75	$0.275	$0.275	$1.05	$1.05	$0.425	$0.425	$0.95	$0.95	$0.375	$0.375
Per can (cents)	6.3	6.3	2.3	2.3	8.8	8.8	3.5	3.5	7.9	7.9	3.1	3.1
Percent	23.1	23.4	20.0	20.4	22.6	22.8	22.1	22.4	22.9	23.2	21.7	22.1
Selling price effective Apr. 22, 1946	$3.55	$3.50	$1.475	$1.45	$5.00	$4.95	$2.075	$2.05	$4.50	$4.45	$1.875	$1.85
A & P prices	$2.50	$2.45	$1.10	$1.075	$3.60	$3.55	$1.50	$1.475	$3.20	$3.15	$1.35	$1.325
Price discrimination:												
Per dozen	$1.05	$1.05	$0.375	$0.375	$1.40	$1.40	$0.575	$0.575	$1.30	$1.30	$0.525	$0.525
Per can (cents)	8.8	8.8	3.1	3.1	11.7	11.7	4.8	4.8	10.8	10.8	4.4	4.4
Percent	29.6	30.0	25.4	25.9	28.0	28.3	27.7	28.0	28.9	29.2	28.0	28.4

PAR. 8. The discriminatory prices reflected in Table "B" above were granted in numerous transactions by and between Florida Citrus Canners Cooperative and The Great Atlantic & Pacific Tea Company system which involved sales of approximately 750,000 cases of "Donald Duck" brand citrus fruit juice products offered for sale, sold and distributed to said system during the times set forth in said Table "B" at an aggregate purchase price of some $2,000,000. Said sales transactions disclosed said system to have been the recipient thereby of discriminatory price benefits aggregating $600,000 more or less, being the aggregate difference between the lesser purchase prices paid by said system for said products during said times and the comparable higher purchase prices offered to and paid by other buyer-customers of Florida Citrus Canners Cooperative for such products of like grade and quality during said times.

The discriminatory prices at which said products were offered for sale, sold and distributed by Florida Citrus Canners Cooperative to The Great Atlantic & Pacific Tea Company system as above described enabled said system to retail "Donald Duck" labeled citrus fruit juice products at a decided sales price advantage over other retailers selling Florida Citrus Canners Cooperative's products of like grade and quality in competitive resale in the areas concerned.

The following designated Table "C" discloses the retail selling prices which The Great Atlantic & Pacific Tea Company system was enabled to effect in the competitive resale of such products in two representative areas in comparison with the purchase prices offered by and paid to Florida Citrus Canners Cooperative during such times by other customers purchasing such products of like grade and quality for resale in all areas including said areas:

TABLE C

	A & P retail selling price per can—Representative Area No. 1	A & P retail selling price per can—Representative Area No. 2	Purchase price per can, not including freight costs, offered to and paid by wholesalers, super markets, and chain stores for resale in all areas, including A & P Representative Areas Nos. 1 and 2
Grapefruit juice:	*Cents*	*Cents*	*Cents*
12/46 S/A	29	27	29.6
12/46 unsw	29	27	29.2
24/2 S/A	13	11.7 (3 for 35)	12.3
24/2 unsw	13	11.7 (3 for 35)	12.1
Orange juice:			
12/46 S/A	40	38	41.7
12/46 unsw	40	38	41.3
24/2 S/A	16	16	17.3
24/2 unsw	16	16	17.1
Blended juice:			
12/46 S/A	36	34	37.5
12/46 unsw	36	34	37.1
24/2 S/A	15	14.5 (2 for 29)	15.6
24/2 unsw	15	14.5 (2 for 29)	15.4

PAR. 9. The record shows, and the Commission therefore finds, that the effect of the discriminations in price described herein, namely, price differences as small as 1.5 per cent of the higher price, was substantially to lessen competition in the sale and distribution of citrus fruit juice products in the respective lines of commerce in which Florida Citrus Canners Cooperative and its recipient customers are engaged, and was to injure, destroy or prevent competition in the sale and distribution of said products with said association and with its customers who received the benefits of such discriminatory prices. In view of this showing the Commission further finds that any substantial discrimination in price, including discriminations smaller than 1.5 per cent of the higher price, in the sale of citrus fruit juice products, may have the same or substantially the same competitive effect.

CONCLUSION

The discriminations in price by the respondent association between different purchasers of Florida Citrus Canners Cooperative citrus fruit juice products of like grade and quality, as herein found, constituted violations of subsection (a) of Section 2 of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Act of Congress approved June 19, 1936 (the Robinson-Patman Act).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the substitute answer of the respondents, in which answer said respondents, for the purpose of this proceeding, admitted all of the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearings as to said facts, a memorandum of counsel in support of the complaint proposing disposition of the case, attached to which was a proposed form of order to cease and desist, and briefs in support of and in opposition to the complaint and in opposition to the tentative order to cease and desist included in the Commission's order of September 24, 1951, rejecting the form of order to cease and desist proposed by counsel in support of the complaint and affording the respondents an opportunity to show cause why said tentative order should not be entered as the Commission's order to cease and desist; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of sub-

section (a) of Section 2 of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an Act of Congress approved June 19, 1936 (the Robinson-Patman Act):

It is ordered, That the respondents, Florida Citrus Canners Cooperative, a corporate cooperative association, and its officers, members, agents, representatives, and any other parties acting for or on its behalf, directly or through any corporate or other device, in connection with the sale of citrus fruit juice products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from discriminating, directly or indirectly, in the price of such products of like grade and quality:

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

2. By selling such products, directly or through brokers, to any purchaser at prices lower than the prices charged other purchasers when such other purchasers buy from the respondents directly or through the respondents' agents or representatives, including brokers, and in fact compete in the sale and distribution of such products with said favored purchaser.

For the purpose of comparison the term "price" as used in this order takes into account discounts, rebates, allowances and other terms or conditions of sale (excepting C. O. D. and other terms or conditions requiring payment before or upon delivery when shown by the respondents to have been used in a particular instance solely because poor or bad credit risk was involved).

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

Commissioner Mead not participating.

IN THE MATTER OF

THE IRVING DREW CORPORATION

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

Docket 5946. Complaint, Jan. 22, 1952—Decision, July 15, 1952

An "orthopedic" shoe, in the medical profession, is understood to be one which is specifically designed and constructed to cure, correct or improve particular abnormalities, diseases or disorders of the feet, and is usually prescribed by an orthopedic specialist of the medical profession after a thorough physical examination of the individual involved, and such a shoe, sometimes also referred to as a "health" shoe, is likewise regarded as thus specially designed for the particular individual.

Despite similarities in type, the foot deformities or abnormalities of particular individuals vary, and may not even be the same as between the two feet of the same individual; and where, after proper examination and diagnosis, it is determined the treatment of the deformity, disease or abnormality of a particular individual requires special orthopedic shoes or devices, these are prescribed by the physician to meet his particular needs, but in many cases where an individual's foot condition has resulted from wearing improper shoes and has not become sufficiently aggravated to require the wearing of special orthopedic shoes or devices for corrective purposes, the physician may advise merely that the individual change to a standard well-fitted stock shoe of good construction.

Abnormalities and diseases of the feet result in some cases from causes residing in the feet and in others from causes which have a systemic origin, such as arteriosclerosis, circulatory insufficiency, arthritis or diabetes, in which event the medication or treatment of other parts of the body, without the wearing of special types of shoes or devices, may be required.

Even where the source of foot trouble lies primarily in the feet the treatment indicated may consist of exercise or other method which involves no special shoes or shoe devices.

Where the course of treatment revolves about the shoes, it may take the form of a special cushion, wedge, arch support or similar device or special orthopedic shoe prescribed by a physician to meet the particular needs of the individual, and no one shoe, and particularly no standard stock shoe, can assure balanced foot function or establish or maintain the health of the feet and the general health, or cause foot troubles to disappear, or afford relief from the various abnormalities, disorders and diseases of the feet.

Where a corporation engaged in the manufacture and interstate sale and distribution of shoes for women, designated as "The Drew Arch-Rest Shoe" and "Drew Cushion-Flex Shoes" and sold by retail stores to the general public—

(*a*) Represented through use of the words "orthopedic" and "health" to describe its shoes and their construction and the last on which they were made, in statements on labels attached thereto and on containers, and in advertise-

ments in newspapers, catalogues, cards, folders and circulars, directly or by implication, that its shoes were specially designed and constructed so as to cure, correct or improve the particular abnormalities, diseases or disorders of the feet of the individuals who purchased them;

The facts being that while its shoes were well constructed they did not differ substantially from any other stock shoe of good construction and could not be considered to be orthopedic or health shoes; and

(*b*) Represented as aforesaid that the wearing of its shoe would afford balanced foot function and would establish and maintain the health of the feet and the general health, and that the wearing of its "Cushion-Flex" shoes would afford relief for tired, tender or aching feet, and for bunion and callous pains, and would cause foot troubles to disappear;

The facts being that the only instance where the wearing of its shoes would have any effect on any disorders or discomforts of the feet would be where the particular foot condition of the individual was caused by wearing improperly constructed or improperly fitted shoes, and had not become sufficiently aggravated to require any treatment other than a change to a properly fitted shoe of good construction; and that even in such instance its said shoes would not necessarily afford adequate relief, and in cases in which the feet did not require the specific types of support they provided, might adversely affect the feet;

With tendency and capacity to mislead a substantial portion of the purchasing public into the mistaken belief that said representations were true, and thereby induce purchase of substantial quantities of its shoes; and with result of placing in the hands of dealers a means whereby they might mislead the purchasing public:

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

As respects respondent's contention that the terms "orthopedic" and "health" had, through long and general usage, acquired a different secondary meaning, namely, that the shoes met certain basic standards of good construction so as to promote the general health of the feet as distinguished from shoes intended to correct, improve or cure particular diseases, abnormalities or disorders: Respondent offered no evidence or testimony in support of its contention, there was no substantial testimony in the record to establish a different understanding, and respondent's contention was clearly belied by its own advertising matter, which included such statements as "designed and adapted to fit problem feet", etc.

Before *Mr. John Lewis*, hearing examiner.
Mr. B. G. Wilson and *Mr. John M. Doukas* for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The Irving Drew

Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of the said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, The Irving Drew Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Ohio. Its office and principal place of business is located at Lancaster, Ohio.

PAR. 2. Respondent is now, and has been for more than two years last past, engaged in the manufacture, sale and distribution in commerce of shoes for women designated as "The Drew Arch Rest Shoe" and "Drew Kushion-Flex Shoes." They are sold by retail stores to any and all persons who desire them for their use.

PAR. 3. The respondent causes and has caused its said shoes, when sold, to be transported from its said place of business in the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia. The respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said shoes in commerce between and among the various States of the United States and in the District of Columbia. Respondent's volume of business in the sale of said shoes in commerce is, and has been, substantial.

PAR. 4. In the course and conduct of its business and for the purpose of inducing the purchase of its said shoes, respondent has made various statements and representations concerning the nature and usefulness of its said shoes by means of labels attached to the shoes, statements on the cartons in which the shoes are contained, advertisements in newspapers, catalogs, cards, folders and circulars. Among and typical of such statements and representations in said advertisements are the following:

Drew footwear * * * the smartest health shoe * * * with Drew's exclusive orthopedic features.

Drew shoes are * * * made over * * * orthopedic foot-health lasts.

Drew shoes are * * * orthopedically designed * * *.

* * * a scientifically designed steel shank for balanced foot function * * * and other orthopedic features.

Mary * * * a splendid orthopedic shoe.

The Flare * * * orthopedic construction.

Meteor * * * orthopedic shoe.

The Oliver * * * orthopedic construction.

Walker * * * orthopedic construction.

Shoes by Drew are made on exclusive Basic and Orthopedic lasts.

Constructed for foot health.

Spring in your step * * * vibrant health * * * The essence of youth * * * Preserve it with Drew shoes.

Kushion-Flex shoes by Drew * * * relieve callous pain, tired aching feet.

* * * will comfort your tired and tender feet * * * ease your callous and bunion pains * * * in Kushion-Flex shoes by Drew.

Women who are suffering from tired and tender feet or from callous and bunion pains will be your loyal customers forever.

Foot troubles disappear.

PAR. 5. Through the use of the word "health" to describe its shoes, respondent has represented, directly and by implication, that the said shoes are constructed in such a manner that their use will prevent and cure diseases and abnormalities of the feet, will keep the feet healthy, prevent the development of abnormalities and deformities of the feet and correct all disorders of the feet which may be present.

PAR. 6. The said representations are untrue. In truth and in fact the use of the said shoes will not prevent or cure diseases or abnormalities of the feet, keep the feet healthy, prevent the development of abnormalities, or deformities, or correct any disorders of the feet. Said shoes cannot be properly or truthfully designated as health shoes or as possessing health features.

PAR. 7. Through the use of the words "orthopedic," "orthopedic features," "orthopedic construction," and "orthopedic lasts" to describe its shoes, as set forth above, respondent has represented, directly and by implication, that the said shoes are specially designed to, and will prevent and correct deformities, diseases and disorders of the feet.

PAR. 8. The said representations are untrue. In truth and in fact the respondent's said shoes are stock shoes and not orthopedic shoes and are not so constructed as to, and will not, prevent or correct deformities, diseases or disorders of the feet.

PAR. 9. Through the use of the additional statements and claims hereinabove set forth, and others similar thereto not specifically set out herein, respondent has represented, directly and by implication, that the wearing of Drew shoes results in balanced foot function, and will establish and maintain the health of the feet and the general health.

PAR. 10. The said representations are untrue. The wearing of Drew shoes does not give the wearer balanced foot function, and will not establish or will not maintain the health of the feet or the general health. In truth and in fact respondent's shoes are merely stock shoes, made by quantity production methods, and, while they may contain some features not found in some other stock shoes, the effect of these features upon the feet in the prevention or correction of foot ailments is insignificant.

PAR. 11. Through the use of the representations and claims hereinabove set forth, and others similar thereto not specifically set out herein, with particular reference to respondent's "Kushion-Flex" shoes, respondent has represented, directly and by implication, that the wearing of "Kushion-Flex" shoes affords relief for feet which are tired, tender or aching and from the pains incident to bunions and callouses, and that any foot troubles which the wearer may have will disappear.

PAR. 12. The said representations are untrue. In truth and in fact, the wearing of "Kushion-Flex" shoes does not relieve tired, tender or aching feet, nor the pains incident to bunions or callouses, and does not cause foot troubles which the wearer may have to disappear.

PAR. 13. The use by respondent of the foregoing false, deceptive and misleading statements and representations with respect to its shoes has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and to induce them, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's shoes, and has placed in the hands of dealers in said shoes means and instrumentalities whereby they may deceive and mislead the purchasing public in the respects stated herein.

PAR. 14. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated July 15, 1952, the initial decision in the instant matter of Hearing Examiner John Lewis, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 22, 1952, issued and subsequently served its complaint in this proceeding upon respondent, The Irving Drew Corporation, a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation

of the provisions of said Act. Said respondent filed its answer to the complaint herein but failed to appear at the time and place fixed for hearing. At said hearing testimony and other evidence in support of the allegations of the complaint were introduced before the above-named hearing 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 hearing examiner on the complaint, the answer thereto, testimony and other evidence, proposed findings as to the facts and conclusions presented by counsel in support of the complaint (respondent having been advised of its right to file such proposed findings and conclusions but having failed to do so), and oral argument not having been requested; and said hearing examiner having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, the Irving Drew Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Ohio. Its office and principal place of business is located at Lancaster, Ohio.

PAR. 2. Respondent is now, and has been for more than two years last past, engaged in the manufacture, sale, and distribution in commerce of shoes for women designated as "The Drew Arch Rest Shoe" and "Drew Kushion-Flex Shoes." They are sold by retail stores to the general public.

PAR. 3. Respondent causes and has caused its said shoes, when sold, to be transported from its said place of business in the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said shoes in commerce between and among the various States of the United States and in the District of Columbia. Respondent's volume of business in the sale of said shoes in commerce is, and has been, substantial.

PAR. 4. In the course and conduct of its business and for the purpose of inducing the purchase of its said shoes, respondent has made various statements and representations concerning the nature and usefulness of its said shoes by means of labels attached to the shoes, statements on the cartons in which the shoes are contained, advertisements

in newspapers, catalogs, cards, folders and circulars. Among and typical of such statements and representations in said advertisements are the following:

Drew footwear * * * the smartest health shoe * * * with Drew's exclusive orthopedic features.

Drew shoes are * * * made over * * * orthopedic foot-health lasts.

Drew shoes are * * * orthopedically designed * * *.

* * * a scientifically designed steel shank for balanced foot function * * * and other orthopedic features.

Mary * * * a splendid orthopedic shoe.

The Flare * * * orthopedic construction.

Meteor * * * orthopedic shoe.

The Oliver * * * orthopedic construction.

Walker * * * orthopedic construction.

Shoes by Drew are made on exclusive Basic and Orthopedic lasts.

Constructed for foot health.

Spring in your step * * * vibrant health * * * The essence of youth * * * Preserve it with Drew shoes.

Kushion-Flex shoes by Drew * * * relieve callous pain, tired aching feet.

* * * will comfort your tired and tender feet * * * ease your callous and bunion pains * * * in Kushion-Flex shoes by Drew.

Women who are suffering from tired and tender feet or from callous and bunion pains will be your loyal customers forever.

Foot troubles disappear.

PAR. 5. In the medical profession an "orthopedic" shoe is understood to be one which is specially designed and constructed to cure, correct, or improve particular abnormalities, diseases, or disorders of the feet. It is usually prescribed by an orthopedic specialist of the medical profession after a thorough physical examination of the individual involved. A substantial part of the consuming public likewise regards an "orthopedic" shoe, sometimes also referred to as a "health" shoe, as one which is specially designed to cure, correct, or improve the particular abnormalities, diseases, and disorders of the feet from which the individual is suffering.

In its answer respondent avers, in effect, that the terms "orthopedic" and "health" have through long and general usage in the industry acquired a secondary meaning, other than as above indicated. Although the precise nature of this secondary meaning is not clear from the pleadings, respondent apparently contends that these terms are understood to refer to shoes which meet certain basic standards of good construction so as to promote the general health of the feet, as distinguished from shoes intended to correct, improve, or cure the particular diseases, abnormalities, or disorders of the feet of the individuals purchasing same. However, respondent offered no evidence or testimony at the hearing in support of its contention. Not only

is there substantial testimony in the record establishing a different understanding, but respondent's contention, in this respect, is clearly belied by its own advertising matter. Thus, the following statements are made by it:

Shoes by Drew are designed and adapted to fit problem feet.
Drew's Basic Lasts take care of a very, very large percent of problem feet.
Proper shoes for "your" feet must meet your personal needs.
Your foot requires a specific last—a "sculpture-of-your-foot"—Drew has it. There is a Drew Shoe made for your foot.

It is therefore clear from the record, and it is so found, that through the use of the words "orthopedic" and "health" to describe its shoes, the construction thereof, and the lasts on which they are made, the respondent has represented, directly or by implication, that its shoes are specially designed and constructed so as to cure, correct, or improve the particular abnormalities, diseases, or disorders of the feet of the individuals purchasing such shoes.

PAR. 6. Through the use of the statements set forth in Paragraph Four hereof and others similar thereto, respondent has represented, directly or by implication, that the wearing of its shoes will assure balanced foot function and will establish and maintain the health of the feet and the general health, and that the wearing of its "Kushion-Flex" shoes will afford relief for feet which are tired, tender, or aching, and from the pains incident to bunions and callouses, and will cause foot troubles to disappear.

PAR. 7. The foregoing representations made by respondent in connection with its shoes are false and misleading:

(*a*) Respondent's shoes are not orthopedic or health shoes, but are ordinary stock shoes. An orthopedic or so-called health shoe is one which is specially designed to cure, correct, or improve the abnormalities, diseases, or disorders of the foot of a particular individual. Such a shoe is ordinarily prescribed by an orthopedic physician after a thorough physical examination of the individual to determine the cause of his particular foot trouble. Despite similarities in type, the foot deformities or abnormalities of particular individuals vary and are not exactly the same in any two individuals. There may even be differences between the condition of the two feet of the same individual. Where, after proper examination and diagnosis, it is determined that treatment of the deformity, disease, or abnormality of a particular individual requires special orthopedic shoes or devices, these are prescribed by the physician to meet the particular needs of the individual. In many cases where the individual's foot condition has resulted from wearing improper shoes and has not become sufficiently aggravated to require the wearing of special orthopedic shoes or

devices for corrective purposes, the physician may advise merely that the individual change to a standard, well-fitted stock shoe of good construction. Such a shoe is not, however, an orthopedic or health shoe. Although respondent's shoes are well constructed, they do not differ substantially from any other stock shoe of good construction, and cannot be considered to be orthopedic or health shoes.

(*b*) Respondent's shoes will not result in balanced foot function and will not establish or maintain the health of the feet or the general health; nor will the wearing of its "Kushion-Flex" shoes afford relief from feet which are tired, tender, or aching, or from the pains incident to bunions and callouses, or cause foot troubles to disappear.

Abnormalities and diseases of the feet result from a variety of causes. In some cases the cause of the difficulty may reside in the feet, while in others it may have a systemic origin resulting from such conditions as arteriosclerosis, circulatory insufficiency, arthritis or diabetes. To ascertain the cause, a proper diagnosis must be made by a competent medical authority. Where the cause of the foot trouble is systemic in origin, it may require medication or treatment of other parts of the body and may not require the wearing of special types of shoes or devices. Even where the source of the trouble lies primarily in the feet, the treatment indicated may consist of exercise, medication, braces, strapping, surgery, or other modes of treatment not involving special shoes or shoe devices. In those instances where the course of treatment revolves about the shoes it may take the form of a special cushion, wedge, arch support, or similar device or a special orthopedic shoe, prescribed by a physician to meet the particular needs of the individual. No one shoe, and particularly no standard stock shoe, can assure balanced foot function or establish or maintain the health of the feet and the general health, or cause foot troubles to disappear, or afford relief from the various abnormalities, disorders, and diseases of the feet.

The only instance where the wearing of respondent's shoes would have any effect on any disorders or discomforts of the feet would be where the particular foot condition of the individual was caused by wearing improperly constructed or improperly fitted shoes and had not become sufficiently aggravated to require any treatment other than a change to a properly fitted shoe of good construction. Even in such instance respondent's shoes, even though of good construction, would not necessarily afford adequate relief and, in some instances, might adversely affect the feet. Thus, its "Arch Rest" and "Kushion-Flex" shoes contain a form of arch support and the latter shoe contains a special heel cushion, which devices act as a crutch and prevent proper

exercise of foot muscles not requiring these specific types of support. Only where by accident the foot of the particular individual required the types of support contained in these shoes would they help promote the health of the foot and exercise any salutary effect on the general health.

PAR. 8. The use by respondent of the foregoing false, deceptive, and misleading statements and representations with respect to its shoes has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and to induce them, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's shoes, and has placed in the hands of dealers in said shoes a means and instrumentality whereby they may deceive and mislead the purchasing public in the respects stated herein.

CONCLUSION

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

ORDER

It is ordered, That the respondent, the Irving Drew Corporation, a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondent's shoes designated "The Drew Arch Rest Shoe" and "Drew Kushion-Flex Shoe" or any other shoe of similar construction or performing similar functions irrespective of the designation applied thereto, do forthwith cease and desist from:

1. Using the words "orthopedic" or "health" or any other word or term of similar meaning, alone or in combination with any other word or words, to designate, describe, or refer to respondent's shoes, or representing in any other manner that the wearing of respondent's shoes will cure, correct, or improve the diseases, disorders, or abnormalities of the feet of the individuals purchasing such shoes.

2. Representing, directly or by implication, that the wearing of said shoes will assure balanced foot function or will establish or maintain the health of the feet or the general health.

3. Representing, directly or by implication, that the wearing of respondent's "Kushion-Flex" shoes relieves tired, tender, or aching feet, or the pain incident to bunions or callouses, or causes foot troubles to disappear.

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 July 15, 1952].

Syllabus

IN THE MATTER OF

DR. HISS SHOES, INC.

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

Docket 5947. Complaint, Jan. 22, 1952—Decision, July 15, 1952

An orthopedic shoe is one which is especially designed to cure, correct or improve the abnormalities, diseases, or disorders of the feet of a particular individual.

Despite similarities in type, the foot troubles of particular individuals vary and are not exactly the same in two individuals, and there may even be differences between the condition of the two feet of the same individual, so that it ordinarily requires an orthopedic physician to determine what particular type of orthopedic shoe or device, if any, is required to meet the individual case.

A standard stock shoe, even though of good construction, is not an orthopedic shoe and cannot be expected to deal effectively with the myriad of foot conditions affecting the individuals purchasing such shoes, and stock shoes will not afford a cure or give effective relief in those instances where a special orthopedic shoe or device is required, aside from the fact that in many cases foot troubles are a manifestation of some systemic disorder requiring treatment of other parts of the body, where no type of shoe can be expected to be of help, and where the proper determination of the cause of trouble and the prescription of effective relief requires thorough physical examination and diagnosis by a competent physician.

Where a corporation engaged in the manufacture and interstate sale and distribution of its "Dr. Hiss Balanced Shoes" for women sold by retail stores to the general public; through statements on labels on the cartons containing its said shoes and in catalogs, cards, folders, and circulars, directly and by implication—

(*a*) Represented that the purchaser of its said shoes received benefits comparable to those derived from personal treatment and prescription at a competent foot clinic; the facts being its said shoes were stock shoes and could not assure the purchaser benefits comparable to those obtained from personal attendance at such a clinic where he would receive a complete examination, including laboratory and X-ray studies, if necessary, and where, if a special shoe or device was required, it would be prescribed by a competent physician to meet his specific needs;

(*b*) Falsely represented that the wearing of its said shoes gave a proper distribution of the body weight through the different parts of the feet and resulted in better foot function, body balance, and posture;

(*c*) Falsely represented that the wearing of said shoes maintained the health of healthy feet and would improve the health of the feet and the general health, would eliminate pressure and tension, and exercise the muscles of the feet and alleviate foot troubles and the discomfort thereof;

(*d*) Represented that support for the feet was necessary and would be properly furnished by the wearing of its said shoes; the facts being that such sup-

port, outside of that given by any well-constructed, well-fitted shoe, is unnecessary; that where special support is required in individual cases, its stock shoes would not furnish it; and that where such support is necessary it should be prescribed to fit the foot needs of the particular individual;

(*e*) Represented through the use of the term "cuboid balance" to describe the shank used in its shoes and statements made in connection therewith, that said shank influenced the position or action of the cuboid bone; and that the wearing of said device would beneficially affect the functioning of the foot and give effective support thereto;

The facts being positioning of the cuboid bone is not commonly encountered, and, where such a condition existed, said "balancer" would not provide sufficient support for said bone to give any effective relief; and

(*f*) Falsely represented directly and by implication through the use of the word "orthopedic" to describe certain of its said shoes, that they were especially designed to and would cure, correct, or improve the particular deformities, diseases and disorders of the feet of the individuals who purchased the same;

With tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that such representations were true, and thereby induce purchase of substantial quantities of its said shoes; and with the result of placing in the hands of dealers a means whereby they might mislead the purchasing public in the aforesaid respects:

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.

Although in its answer respondent alleged that by common usage in the industry its shoes were considered to be orthopedic typed, no proof was offered by it at the hearing to establish that there was an accepted secondary understanding of the term other than as found above.

Before *Mr. John Lewis*, hearing examiner.

Mr. B. G. Wilson and *Mr. John M. Doukas* for the Commission.

COMPLAINT

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

PARAGRAPH 1. Respondent, Dr. Hiss Shoes, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Ohio. Its office and principal place of business is located at Lancaster, Ohio.

PAR. 2. Respondent is now, and has been for more than two years last past, engaged in the manufacture, sale and distribution in com-

merce of shoes for women designated as "Dr. Hiss Balanced Shoes." They are sold by retail stores to any and all persons who desire them for their use.

PAR. 3. The respondent causes and has caused its said shoes, when sold, to be transported from its said place of business in the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said shoes in commerce between and among the various States of the United States and in the District of Columbia. Respondent's volume of business in the sale of said shoes in commerce is, and has been, substantial.

PAR. 4. In the course and conduct of its business and for the purpose of inducing the purchase of its said shoes, respondent has made various statements and representations concerning the nature and usefulness of its said shoes by means of labels on the cartons in which the shoes are contained, catalogs, cards, folders and circulars. Among and typical of such statements and representations contained in said advertisement are the following:

(Name of Dealer) brings the benefits of America's Greatest Foot Clinic to you in Dr. Hiss Balanced Shoes.

The Dr. Hiss Shank (cuboid balancer) contained within the insole distributes weight properly, and encourages natural foot function—the basis of this great clinic-tested shoe's comfort and correctness. You will benefit from better balance, poise and walking comfort in Dr. Hiss Shoes.

Dr. Hiss shoes extend to you "balanced" support.

Keep your feet healthy.

A shoe developed for foot health.

Better foot health through better foot function is the promise which goes with every purchase of Dr. Hiss shoes.

Correct foot function and sound health go hand in hand.

Correct shoe for foot function and comfort should meet these requirements:

Elimination of pressure and tension,
Distribution of weight,
Exercise of muscles,
Protection and support.

The Dr. Hiss shoe is that kind of a shoe.

They scientifically ease and aid troubled feet.

Mary * * * long inside orthopedic counter * * * a splendid orthopedic shoe * * * an elemental orthopedic style.

Plaza * * * (orthopedic constructed) long orthopedic counter * * * a modified orthopedic style.

Clinic * * * a correct orthopedic shoe.

PAR. 5. Through the use of the statements and claims hereinabove set forth and others of similar import not specifically set out herein, respondent has represented, directly and by implication, that the

purchaser of "Dr. Hiss Balanced Shoes" receives benefits comparable to those derived from personal treatment and prescription of shoes at a competent foot clinic; that the wearing of Dr. Hiss shoes gives a proper distribution of the body weight through the different parts of the feet, causes the feet to function more normally, improves the functioning of the feet and results in better body balance and posture; that the wearing of said shoes maintains continued health for healthy feet and will improve the health of the feet and the general health; that wearing said shoes will eliminate pressure and tension, exercise the muscles of the feet and alleviate foot trouble of any kind and the discomforts thereof; that support for the feet is necessary and will be furnished properly by wearing Dr. Hiss Balanced Shoes.

PAR. 6. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact respondent's shoes are merely stock shoes made by quantity production methods, and while they may contain some features not found in some other stock shoes, the effect of these features upon the feet in the prevention or correction of foot ailments is insignificant. The benefits obtained by personal attendance at a properly conducted foot clinic are above and beyond the mere fitting of a pair of Dr. Hiss stock shoes. The wearing of Dr. Hiss shoes has no beneficial effect upon the distribution of the body weight through the different parts of the feet and does not cause the feet to function more normally, nor will they have any influence upon the body balance or improve the posture. The wearing of said shoes will not assure continued health in healthy feet nor will they improve the health of the feet or the general health. The wearing of said shoes will not eliminate pressure and tension and will not exercise the muscles of the feet. The wearing of respondent's shoes will not alleviate foot troubles of any kind or discomforts incident thereto. "Support" of the feet is usually not necessary, and in those instances in which it is, Dr. Hiss shoes cannot be relied upon to furnish the support needed to meet the requirements of the individual case.

PAR. 7. Through the use of the term "cuboid balancer" to describe the shank used in the said shoe, as set forth above, respondent has represented, directly and by implication, that the said shank influences the position or action of the cuboid bone.

PAR. 8. The said representation is untrue. In truth and in fact the said shank or "cuboid balancer" has no influence upon the position or action of the cuboid bones of the wearer of said shoes.

PAR. 9. Through the use of the word "orthopedic" to describe its "Mary," "Plaza" and "Clinic" shoes, as set forth above, respondent has represented, directly and by implication, that the said shoes are

especially designed to, and will, prevent and correct deformities, diseases and disorders of the feet.

PAR. 10. The said representation is untrue. In truth and in fact the respondent's said "Mary," "Plaza" and "Clinic" shoes are stock shoes and not orthopedic shoes, and are not so constructed as to, and will not, prevent or correct deformities, diseases or disorders of the feet.

PAR. 11. The use by respondent of the foregoing false, deceptive and misleading statements and representations with respect to its shoes has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were true and to induce them, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's shoes and has placed in the hands of dealers in said shoes means and instrumentalities whereby they may deceive and mislead the purchasing public in the respects stated herein.

PAR. 12. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated July 15, 1952, the initial decision in the instant matter of Hearing Examiner John Lewis, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 22, 1952, issued and subsequently served its complaint in this proceeding upon respondent, Dr. Hiss Shoes, Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. Said respondent filed its answer to the complaint herein but failed to appear at the time and place fixed for hearing. At said hearing testimony and other evidence in support of the allegations of the complaint were introduced before the above-named hearing 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 hearing examiner on the complaint, the answer thereto, testimony and other evidence, proposed findings as to the facts and conclusions presented by counsel in support of the complaint (respondent having been advised of its right to file such proposed findings and conclusions but having failed to do so), and oral argument not having been requested; and said hearing examiner having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Dr. Hiss Shoes, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Ohio. Its office and principal place of business is located at Lancaster, Ohio.

PAR. 2. Respondent is now, and has been for more than two years last past, engaged in the manufacture, sale and distribution in commerce of shoes for women designated as "Dr. Hiss Balanced Shoes." They are sold by retail stores to the general public.

PAR. 3. The respondent causes and has caused its said shoes, when sold, to be transported from its said place of business in the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said shoes in commerce between and among the various States of the United States and in the District of Columbia. Respondent's volume of business in the sale of said shoes in commerce is, and has been, substantial.

PAR. 4. In the course and conduct of its business and for the purpose of inducing the purchase of its said shoes, respondent has made various statements and representations concerning the nature and usefulness of its said shoes by means of labels on the cartons in which the shoes are contained, catalogs, cards, folders and circulars. Among and typical of such statements and representations are the following:

(Name of Dealer) brings the benefits of America's Greatest Foot Clinic to you in Dr. Hiss Balanced Shoes.

The Dr. Hiss Shank (cuboid balancer) contained within the insole distributes weight properly, and encourages natural foot function—the basis of this great clinic-tested shoe's comfort and correctness. You will benefit from better balance, poise and walking comfort in Dr. Hiss shoes.

Dr. Hiss shoes extend to you "balanced" support.

Keep your feet healthy.

A shoe developed for foot health.

Better foot health through better foot function is the promise which goes with every purchase of Dr. Hiss shoes.

Correct foot function and sound health go hand in hand.

A correct shoe for foot function and comfort should meet these requirements:

Elimination of pressure and tension
Distribution of weight
Exercise of muscles
Protection and support

The Dr. Hiss shoe is that kind of a shoe.

They scientifically ease and aid "troubled" feet.

Mary * * * long inside orthopedic counter * * * (a splendid orthopedic shoe) * * * An elemental orthopedic style.

Plaza * * * (orthopedic construction) long orthopedic counter * * * a modified orthopedic style.

Clinic * * * a correct orthopedic shoe.

PAR. 5. Through the use of the statements and claims hereinabove set forth, and others of similar import not specifically set out herein, respondent has represented, directly and by implication, that the purchaser of "Dr. Hiss Balanced Shoes" receives benefits comparable to those derived from personal treatment and prescription at a competent foot clinic; that the wearing of Dr. Hiss shoes gives a proper distribution of the body weight through the different parts of the feet and results in better foot function, body balance, and posture; that the wearing of said shoes maintains the health of healthy feet, and will improve the health of the feet and the general health; that the wearing of such shoes will eliminate pressure and tension, exercise the muscles of the feet, and alleviate foot troubles and the discomforts thereof; that support for the feet is necessary and will be properly furnished by wearing Dr. Hiss Balanced Shoes.

PAR. 6. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact, respondent's shoes are stock shoes and cannot assure to the purchaser thereof benefits comparable to those obtained from personal attendance at a competent foot clinic where he will receive a complete examination, including clinical examination and laboratory and X-ray studies, where necessary, and where if a special shoe or device is required it will be prescribed by a competent physician to meet his specific needs. The wearing of respondent's shoes will have no significant beneficial effect upon the distribution of body weight through the different parts of the feet nor will it assure better foot function, better body balance or better posture. The wearing of said shoes will not assure continued health in healthy feet nor will it have any significant effect in improving the health of the feet or the general health. The wearing of such shoes will not assure the elimination of pressure or tension, or the

alleviation of foot troubles or the discomforts incident thereto, nor will it exercise the muscles of the feet. Support for the feet, outside of that given by any well-constructed, well-fitted shoe, is unnecessary, and where special support is required in individual cases respondent's stock shoes will not furnish it.

PAR. 7. Through the use of the term "cuboid balancer" to describe the shank used in its shoes and the statements made in connection therewith, as above set forth, respondent has represented, directly or by implication, that the said shank influences the position or action of the cuboid bone and that the wearing of said device in its shoes will beneficially affect the functioning of the foot and give effective support thereto.

PAR. 8. The said representations are false, misleading and deceptive. In truth and in fact said shank or "cuboid balancer" has no significant effect upon the position or action of the cuboid bone, will not beneficially affect the functioning of the foot, and will not furnish effective support to the foot where required. The cuboid bone, which said shank is apparently intended to support, is one of the smaller bones located on the outer ball of the foot and displacement or malpositioning of such bone is not commonly encountered. In those instances where such condition does exist the "cuboid balancer" or shank contained in respondent's shoes will not provide sufficient support for the cuboid bone to give any effective relief. Moreover, as above found, most feet do not require any special support in the shoe. Where special support is necessary it should be prescribed to fit the foot needs of the particular individual.

PAR. 9. Through the use of the word "orthopedic" to describe its "Mary," "Plaza," and "Clinic" shoes, as above set forth, respondent has represented, directly and by implication, that the said shoes are especially designed to, and will, cure, correct, or improve the particular deformities, diseases, and disorders of the feet of the individuals purchasing same. This is the understanding of the term "orthopedic" in the medical profession and among a substantial part of the consuming public. Although in its answer respondent alleges that by common usage in the industry its shoes are considered to be orthopedic types, no proof was offered by it at the hearing to establish that there is an accepted secondary understanding of this term other than as found above.

PAR. 10. The said representation is false, misleading, and deceptive. In truth and in fact respondent's said "Mary," "Plaza," and "Clinic" shoes are stock shoes and not orthopedic shoes and the wearing of said shoes will not effectively cure, correct, or improve disorders, diseases, and deformities of the feet. As found above, an orthopedic shoe is

one which is especially designed to cure, correct, or improve the abnormalities, diseases, or disorders of the feet of a particular individual. Despite similarities in type, the foot troubles of particular individuals vary and are not exactly the same in any two individuals. There may even be differences between the condition of the two feet of the same individual. For this reason it ordinarily requires an orthopedic physician to determine what particular type of orthopedic shoe or device, if any, is required to meet the needs of the individual case. A standard stock shoe, even though of good construction, is not an orthopedic shoe and cannot be expected to deal effectively with the myriad of foot conditions affecting the individuals purchasing such shoes. Not only will such stock shoes not afford a cure or give effective relief in those instances where a special orthopedic shoe or device is required, but there are many cases where foot troubles are merely a manifestation of some systemic disorder requiring treatment of some other parts of the body and where no type of shoe can be expected to be of any help. In order to properly determine the cause of the trouble and prescribe effective relief in such case a thorough physical examination and diagnosis by a competent physician is required.

PAR. 11. The use by respondent of the foregoing false, deceptive, and misleading statements and representations with respect to its shoes has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were true and to induce them, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's shoes and has placed in the hands of dealers in said shoes a means and instrumentality whereby they may deceive and mislead the purchasing public in the respects stated herein.

CONCLUSION

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

ORDER

It is ordered, That the respondent, Dr. Hiss Shoes, Inc., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondent's shoes designated "Dr. Hiss Balanced Shoes" or any other shoe of similar

construction or performing similar functions irrespective of the designation applied thereto, do forthwith cease and desist from:

1. Representing, directly or by implication, that a purchaser of respondent's shoes will receive benefits comparable to those derived from personal treatment or prescription of shoes at a competent foot clinic.

2. Representing, directly or by implication that the wearing of respondent's shoes will beneficially affect the distribution of body weight or result in better foot function, body balance, or posture.

3. Representing, directly or by implication, that respondent's shoes will assure continued health in healthy feet or will improve foot health or the general health or will alleviate foot troubles or the discomforts thereof.

4. Representing, directly or by implication, that the wearing of said shoes will eliminate pressure or tension or exercise the muscles of the feet.

5. Representing, directly or by implication, that support for the feet is necessary unless representation be limited to the categories of foot disorders in which support for the feet is required, or representing, directly or by implication, that the wearing of respondent's shoes will furnish the support needed in the individual case.

6. Representing, directly or by implication, through the use of the term "cuboid balancer" to describe a shank in respondent's shoes, or by any other means, that the said shank will influence the position or action of the cuboid bones of the wearer of said shoes, or that the wearing of said device in its shoes will beneficially affect the functioning of the feet or give effective support thereto.

7. Using the word "orthopedic," alone or in combination with any other word or words, to describe or designate said shoes, or using any other word or words in any manner to represent, directly or by implication, that respondent's shoes will cure, correct, or improve deformities, diseases, or disorders of the feet.

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 July 15, 1952].

Syllabus

IN THE MATTER OF

ALBERT H. FISHER ET AL. DOING BUSINESS AS FISHER & DERITIS

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

Docket 5944. Complaint, Jan. 21, 1952—Decision, July 17, 1952

Sweaters made from wool have for many years held great public esteem and confidence because of their outstanding qualities and, in said connection, camels hair is generally recognized by the public as a type of wool and a highly desirable material for such products.

Sweaters made from rayon fabric so manufactured as to simulate wool in texture and appearance have the appearance and feel of wool and many members of the purchasing public are unable to distinguish between the two types of garments, and some readily accept the rayon sweaters as the wool product.

There is no arbitrary standard of fabric characteristic that has been set up as a criterion to determine the degree of flammability of rayon or brushed rayon and the fact that a garment or fabric is made thereof and has a raised fibrous surface does not necessarily render it especially flammable, a test of each type of material being necessary before the degree of flammability can be definitely determined.

Where two partners engaged in the manufacture and interstate sale and distribution of sweaters of a brushed rayon fabric with a raised fiber surface which resembled wool in texture and appearance, and was invoiced by the manufacturer as being an "especially inflammable"; preceding their discontinuance of business and the taking of various steps to bring about the destruction of the garments involved—

(*a*) Set forth, among other things, upon the labels attached to said sweaters and the containers thereof the depiction of a camel and the words "Camel Sportswear", notwithstanding the fact that said products were not made of wool; and

(*b*) Without disclosing on the containers the "especially inflammable" character of the sweaters, sold approximately 100 dozen sets to some 70 to 80 "peddlers" located through the several states and in the District of Columbia, who resold them to the public with no such disclosure;

With tendency and capacity to mislead purchasers of said products into the false belief that they were made of camel's hair and were suitable and safe to be worn as wool sweaters ordinarily are, and with the result of placing in the hands of retail distributors of their said product the means correspondingly to mislead members of the consuming public in the aforesaid respects, and thereby into the purchase of said products:

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

Before *Mr. Everett F. Haycraft*, hearing examiner.
Mr. Joseph Callaway for the Commission.
Furia & DiCinto, of Philadelphia, Pa., for respondents.

COMPLAINT [1]

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Albert H. Fisher and Vincent DeRitis, individuals, trading and doing business as a partnership under the firm name of Fisher & DeRitis, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents are individuals trading and doing business as a partnership under the firm name of Fisher & DeRitis with their office and principal place of business located at the southwest corner of 12th and Carpenter Streets in Philadelphia, Pennsylvania. The home address of respondent Albert H. Fisher is 1321 South 15th

[1] The complaint is published as amended by an order dated May 6, 1952, which, after placing the case on the Commission's own docket for review, amended the complaint, vacated and set aside the initial decision of the hearing examiner, and remanded the case, as follows:

Service of the initial decision of the hearing examined in this proceeding having been completed on March 24, 1952, and the Commission having, on April 15, 1952, extended until further order of the Commission the date on which said initial decision would otherwise become the decision of the Commission; and

Counsel supporting the complaint having filed on March 25, 1952, a motion requesting that this proceeding be reopened for the taking of additional evidence, and the respondents having no objections to the granting of said motion; and

It appearing from said motion and the record herein that the complaint does not adequately allege the reason why the garments manufactured and sold by the respondents are highly inflammable and that, therefore, the evidence heretofore taken in the matter does not provide a sufficient basis for determining whether the initial decision of the hearing examiner constitutes an appropriate disposition of this proceeding; and

The Commission being of the opinion that, rather than reopen the proceeding for the taking of additional testimony as requested by counsel supporting the complaint, the complaint herein should be amended so as to adequately allege the reason or reasons why the said garments are highly inflammable, and that the case should be remanded to the hearing examiner for further proceedings upon the complaint, as amended:

It is therefore ordered, In conformity with the provisions of Rule XXII of the Commission's Rules of Practice, that this case be, and it hereby is, placed on the Commission's own docket for review.

It is further ordered, That the complaint herein be, and it hereby is, amended by striking the second sentence in the third subparagraph of Paragraph Five of said complaint and inserting in lieu thereof the following allegations: In truth and in fact the said sweaters, made of brushed rayon, are highly inflammable because of the length of the fibers on the brushed-up surface of this particular material and are dongerous and unsafe to be worn as an article of clothing.

It is further ordered, That the initial decision of the hearing examiner heretofore filed in this proceeding be, and it hereby is, vacated and set aside.

It is further ordered, That this case be, and it hereby is, remanded to the hearing examiner for further proceedings in conformity with the Commission's Rules of Practice.

Street, Philadelphia, and the home address of respondent Vincent DeRitis is 1311 South 11th Street, Philadelphia.

PAR. 2. The respondents are now and for more than one year last past have been engaged in manufacturing articles of wearing apparel including sweaters which are composed of rayon. Respondents cause their products when sold to be transported from their place of business in the State of Pennsylvania to the purchasers thereof located in the various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Rayon is a chemically manufactured fiber which may be manufactured so as to simulate wool in texture and appearance. Articles of wearing apparel manufactured from such rayon fibers have the appearance and feel of wool and many members of the purchasing public are unable to distinguish between such rayon articles of wearing apparel and articles of wearing apparel manufactured from wool. Consequently, such rayon articles of wearing apparel are readily accepted by some of the purchasing public as wool products.

PAR. 4. In the course and conduct of their said business respondents sell and distribute sweaters in boxes labeled as follows:

Town and Country

Camel

(picture of a camel)

Camel Sportswear

Sportswear

Hand Tailored

Sewn in the sweaters so boxed is a cloth label containing the following:

(picture of a camel)

Camel

Sportswear
100% Pure
Spun Yarn

PAR. 5. Products manufactured from wool have for many years held, and still hold, great public esteem and confidence because of their outstanding qualities. Camel's hair is a type of wool and is a highly desirable material for sweaters. By the aforesaid labeling

of said sweaters respondents have represented that said sweaters are made of camel's hair. In truth and in fact, said sweaters are not made of camel's hair or of any other type of wool.

By the labeling of said sweaters and by selling and distributing them as aforesaid, respondents do not inform the purchasing public of the fact that the sweaters which resemble wool in texture and appearance are made of rayon and not of wool.

By the labeling of said sweaters and by selling and distributing them as aforesaid, respondents have represented and impliedly warranted that they are suitable and safe to be worn as wool sweaters are ordinarily worn. In truth and in fact the said sweaters, made of brushed rayon, are highly inflammable because of the length of the fibers on the brushed-up surface of this particular material and are dangerous and unsafe to be worn as an article of clothing. At no place on the sweaters themselves, on the containers in which they are packaged or otherwise is the fact revealed that said sweaters are highly inflammable and dangerous and unsafe to wear.

PAR. 6. The practice of respondents as aforesaid of representing said sweaters as made of camel's hair, failing to reveal that said sweaters are made of rayon, and failing to reveal that said sweaters are made of a highly inflammable material unsafe to be worn as an article of clothing has had, and now has, the tendency and capacity to mislead and deceive the ultimate purchasers and prospective purchasers of said sweaters into the false and erroneous belief that said sweaters are made of camel's hair and are suitable and safe to be worn as wool sweaters are ordinarily worn, and into the purchase thereof. Furthermore, respondents' said practices place in the hands of retailers of respondents' sweaters a means and instrumentality to mislead and deceive members of the buying and consuming public into the false and erroneous belief that said sweaters are made of camel's hair and are fit and safe to be worn as wool sweaters are ordinarily worn, and into the purchase thereof in reliance upon 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 July 17, 1952, the initial

decision in the instant matter of Hearing Examiner Everett F. Haycraft, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 21, 1952, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondents' answer thereto, a hearing was held in Washington, D. C., at which testimony and other evidence in support of the allegations of said complaint were introduced before the above-named hearing examiner, theretofore duly designated by the Commission, the introduction of testimony and other evidence by the respondents being waived, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, on March 6, 1952, the hearing examiner filed his initial decision which was duly served upon the parties. Thereafter, on March 25, 1952, counsel in support of the allegations of the complaint moved the Commission to order the proceeding reopened and remanded to the hearing examiner for the taking of additional evidence. Thereafter, the Commission, on May 6, 1952, entered its order placing the case on the Commission's own docket for review, amending the complaint, vacating and setting aside initial decision of hearing examiner and remanding the case to the hearing examiner for further proceedings in conformity with the Commission's Rules of Practice.

Thereafter, on May 23, 1952, counsel in support of the complaint entered into a stipulation as to the facts with counsel for respondents, subject to the approval of the hearing examiner, whereby it was agreed that the evidence taken under the complaint before amendment should be considered as evidence under the complaint as amended and that a statement of facts which was made a part thereof should be made a part of the record and be taken as facts in lieu of additional evidence in this proceeding; that the hearing examiner may proceed upon said statement of facts and the other evidence in the record to make his initial decision, stating his findings as to the facts and including inferences which he may draw from the said stipulation of facts and the other evidence and his conclusion based thereon and enter his order disposing of the proceeding without the filing of proposed findings and conclusions or the presentation of oral argument. It was fur-

ther stipulated and agreed that the Federal Trade Commission may, if the proceeding comes before it upon appeal from the initial decision of the hearing examiner or by review upon the Commission's own motion, set aside the stipulation and remand the case to the hearing examiner for further proceedings under the amended complaint.

Thereafter, the proceeding regularly came on for final consideration by the hearing examiner upon the amended complaint and the said stipulation, and said hearing examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents are individuals trading and doing business as a partnership under the firm name of Fisher & DeRitis, with their office and principal place of business, during the years 1950 and 1951, located at the southwest corner of 12th and Carpenter Streets (1000 South 12th Street) in Philadelphia, Pennsylvania. The home address of respondent Albert H. Fisher is 1321 South 15th Street, Philadelphia, Pennsylvania, and the home address of respondent Vincent DeRitis is 1311 South 11th Street, Philadelphia, Pennsylvania.

PAR. 2. Said respondents for more than one year prior to January 1952, have been engaged in manufacturing and selling articles of wearing apparel including pullover and jacket sweaters which were composed of brushed rayon with a raised fiber surface, causing said products, when sold, to be transported from their place of business in the State of Pennsylvania to the purchasers thereof located in the various other States of the United States and in the District of Columbia. Said respondents at all times herein mentioned have maintained a substantial course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business respondents sell and distribute sweaters in boxes labeled as follows:

Town and Country

Camel

(picture of an animal commonly known as a camel)

Camel Sportwear

Sportswear

Hand Tailored

Sewn in the sweaters so boxed is a cloth label containing the following:

(picture of an animal commonly known as a camel)

Camel

Sportswear
100% Pure
Spun Yarn

PAR. 4. Sweaters manufactured from wool have for many years held and still hold great public esteem and confidence because of their outstanding qualities. Camel's hair is generally recognized by the public as a type of wool and is a highly desirable material for sweaters. By the aforesaid labeling of said sweaters, respondents have represented that said sweaters are made from camel's hair. In truth and in fact said sweaters are not made from camel's hair or any other type of wool.

PAR. 5. Rayon is a chemically manufactured fiber from which a fabric may be manufactured so as to simulate wool in texture and appearance. Sweaters manufactured from such rayon fabric have the appearance and feel of wool and many members of the purchasing public are unable to distinguish between sweaters manufactured from such fabric and sweaters manufactured from wool. Consequently, such rayon sweaters are readily accepted by some of the purchasing public as wool products.

PAR. 6. Respondents, prior to January 1952, in the course and conduct of their said business purchased from the manufacturers thereof a fabric made of brushed rayon with a raised fiber surface which resembled wool in texture and appearance and which they were informed by the manufacturer on the invoices was an "especially inflammable" material. Said respondents in their factory manufactured approximately 100 dozen sets of men's and women's sweaters daily during 1951 and sold the same to 70 to 80 "peddlers," located throughout the several States of the United States and in the District of Columbia, who resold the said sweaters to the public without disclosing that said sweaters were made of "especially inflammable" material.

PAR. 7. Flammability tests evaluating the flammabiilty of the said sweaters by measurement of rate of burning when ignited were made by a chemist in the Fire Protection Section of the Building Technology Division of the United Sttaes Bureau of Standards of Washington, D. C. From the tests made it was found that the fabric tested came within the class of "Fabrics burning rapidly or intensely, and in

which the base fabric is ignited or fused. The quick ignition and fast burning of the fabrics tested is due in part to the fact that all of the specimens had a raised fiber surface which allows the air to more nearly surround each individual strand of fiber." It was further found by this chemist that "material of ordinary wool such as is commonly used in pullover vests and jackets will not even ignite within the one second of time the apparatus used applies the ignition flame, but those fabrics burn with a surface flash only and the base fabric is not ignited or fused."

PAR. 8. Because a garment or a fabric is made of brushed rayon and has a raised fiber surface does not necessarily render it especially flammable. Some fabrics of brushed rayon may have such a short surface nap that they cannot be said to be especially flammable because of the raised fiber surface. The length of the fibers on the brushed up surface has a bearing on the degree of flammability of such material, but there are also other factors that would probably have a bearing. Among them are the fineness of the individual strands of fiber and the proximity of each individual strand to the other strands of fiber. There is no arbitrary standard of fiber characteristics that has been set up as a criterion to determine the degree of inflammability of rayon or brushed rayon. By long practice an expert, by looking at and examining a piece of rayon fabric, can have a pretty good idea of its degree of flammability, but a test of each type of material is necessary before the degree of flammability can be definitely determined.

PAR. 9. By the labeling of said sweaters and by selling and distributing them as aforesaid, respondents have represented and impliedly warranted that they are made of wool and are suitable and are safe to be worn as wool sweaters are ordinarily worn. At no place on the sweaters themselves, on the containers in which they are packaged or otherwise is the fact revealed to the public that said sweaters were "especially inflammable."

PAR. 10. Respondents in January 1952 ceased manufacturing said sweaters and immediately notified all distributors to return unsold sweaters to respondents, and notified all railroads, express companies, airlines and trucking companies either to return all sweaters in transit to the respondents at the expense of the respondents, or to destroy same at the expense of the respondents. Furthermore, respondents, prior to the filing of the complaint herein, on their own volition requested the aid of the Fire Marshall and with his assistance burned all finished sweaters, cut and unsewed sweaters, and approximately 50 bolts of sixty inch wide material, (about 20 truck loads) valued at $40,000.00, on one of the city dumps of Philadelphia. Respondents

have sold all their machines and equipment and gave up their lease and are now out of business.

PAR. 11. The practice of respondents as aforesaid of representing said sweaters as made of camel's hair; failing to reveal that said sweaters are made of an especially inflammable material; has had the tendency and capacity to mislead and deceive the ultimate purchasers and prospective purchasers of said sweaters into the false and erroneous belief that said sweaters were made of camel's hair and were suitable and safe to be worn as wool sweaters are ordinarily worn, and into the purchase thereof in reliance upon such false and erroneous belief. Furthermore, respondents' said practices placed in the hands of retail distributors of respondents' sweaters a means and instrumentality to mislead and deceive members of the buying and consuming public into the false and erroneous belief that said sweaters were made of camel's hair and were fit and safe to be worn as wool sweaters are ordinarily worn, and into the purchase thereof in reliance upon such false and erroneous belief.

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, Albert H. Fisher and Vincent DeRitis, individually and trading and doing business under the firm name of Fisher & DeRitis, or under any other name or names, and their respective representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of sweaters or of any other garments made of the material known as brushed rayon with a raised fiber surface or of any similar material, do forthwith cease and desist from:

(1) Representing directly or by implication that said garments are made of camel's hair or any other type of wool;

(2) Offering for sale or selling any garments composed in whole or in part of rayon without affirmatively and clearly disclosing thereon such rayon content;

(3) Offering for sale or selling garments made of a highly inflammable material without affirmatively and clearly disclosing thereon

that said garments are highly inflammable and are dangerous and unsafe to be worn as articles of clothing.

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 July 17, 1952].

IN THE MATTER OF

KENTUCKY CHEMICAL INDUSTRIES, INC.

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

Docket 5971. Complaint, Mar. 24, 1952—Decision, Aug. 6, 1952

Where a corporation which was engaged in the manufacture and competitive interstate sale and distribution, primarily to retail feed dealers in the eastern and southeastern United States, of animal proteins known as "K–C Brand" meat and bone scraps and digester tankage, and of its "Provico" brand complete feeds and concentrates;

In selling its said feed products through two so-called volume rebate plans known as "Dealer Patronage Dividend Contracts", pursuant to which it paid patronage dividends, discounts, rebates or refunds, to the less than 50% of its dealers who qualified—

(*a*) Discriminated in price between different purchasers in the "Delmarva" peninsula principally, through the use of a sliding scale, under which discounts ranged from 50¢ per ton for monthly purchases of from 60 to 120 tons, to $1.50 per ton for 480 tons or over; and

(*b*) Similarly discriminated in price between different purchasers in other areas through the use of a plan pursuant to which the dealer received points on all of its feed purchases during a twelve-month period, with higher point values for the more expensive purchases, and under which the dealer received discounts of from 5¢ to 20¢ per point, depending upon the points accumulated, ranging from a minimum of 300 to 10,000 and over;

Effect of which discriminations in price might be substantially to lessen competition or tend to create a monopoly in respondent in the line of commerce in which it was engaged, and to injure, destroy and prevent competition between it and other manufacturers and sellers of animal feed products; and to injure, destroy and prevent competition between customers who received the benefits of such discriminations which it granted, and competing dealer purchasers who did not:

Held, That such plans, acts and practices were in violation of the provisions of Sec. 2 (a) of the Clayton Act as amended, by the Robinson-Patman Act.

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

Mr. Fletcher G. Cohn and *Mr. Robert F. Quinn* for the Commission.

Frost & Jacobs, of Cincinnati, Ohio, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Antitrust Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission, having

reason to believe that the respondent named in the caption hereof, and hereinafter more particularly described, has violated and is now violating the provisions of section 2 (a) of said Act, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Kentucky Chemical Industries, Inc., hereinafter referred to as "respondent Kentucky Industries," is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its general offices and principal place of business located on Estee Avenue, Cincinnati 32, Ohio.

PAR. 2. The respondent Kentucky Industries, since 1937, has been engaged, and is now engaged, in the manufacture, sale and distribution of animal feed products of various types, including complete feeds and concentrates. Said animal feed products, manufactured, sold and distributed by respondent, are known as "Provico" brand feed. Said feeds are sold by respondent primarily to retail feed dealers in the sales area comprising the Eastern and Southeastern United States, from the Northeast part thereof to Florida; respondent does not sell its products to wholesalers or distributors.

During the calendar year 1948, respondent's gross sales of feed were 87,466 tons, valued at $9,035,127.74; in 1949, the gross sales were 144,933 tons, valued at $10,585,373.58.

Respondent's manufacturing plant is located at Cincinnati, Ohio, and it has warehouses located at Seaford, Delaware, and Gainesville, Georgia.

Said respondent Kentucky Industries sells and distributes in commerce, as "commerce" is defined in the Clayton Antitrust Act, as amended by the Robinson-Patman Act, said animal feed products to retail dealers located in various States of the United States and in the District of Columbia. Respondent causes said animal feed products, when sold, to be transported and shipped from its respective manufacturing plant and warehouses in the several States in which they are located, across State lines, to the purchasers thereof, located in the District of Columbia and in the various States of the United States other than where such shipments originate. Respondent maintains, and has maintained, during all the times mentioned herein a course of trade in said products, in commerce, among and between the several States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent, since its organization in 1937, has been engaged in substantial competition with other persons, partnerships, firms and corporations which likewise manufacture animal feed products, and which sell and seek to sell and distribute said products in commerce

between and among the several States of the United States to retail feed dealers, except insofar as such competition has been, or may be, affected by the acts and practices hereinafter alleged.

PAR. 4. In the course and conduct of its business, as aforesaid, since in or about June, 1947, respondent has been, and is now, discriminating in price between different purchasers of its animal feed products of like grade and quality by selling such products to some of its purchasers at higher prices than it sells these said products of like grade and quality to others of its purchasers who are in competition one with the other in the sale of said products within the United States.

Some of the purchases, which were and are involved in such discriminations, were, and are, in commerce, and the animal feed products so involved, were, and are, sold for use, consumption or resale within the United States.

PAR. 5. Among the aforesaid price discriminations are those which were and are accomplished by so-called volume rebate plans which were instituted by respondent in or about June, 1947. Since then, these plans, both known as "Dealer Patronage Dividend Contracts," have been utilized continuously, and are still utilized by respondent in the sale and distribution of its animal feeds and concentrates.

Under such plans, respondent's dealers are paid discounts, refunds or rebates on their total purchases of such feeds and concentrates for the period beginning December 1 and ending November 30 of each succeeding year.

One type of "Dealer Patronage Dividend Contract" which has been, and is still used by respondents, principally in the "Delmarva" area (this area is a peninsula composed of the State of Delaware and several counties of the States of Maryland and Virginia, and which is located between the Chesapeake Bay and the Atlantic Ocean), provides for the calculation of the discount, refund or rebate on the basis of the total number of tons of "Provico" feeds and concentrates purchased during the period. There is a sliding scale where the discount, refund or rebate per ton is proportionally higher according to the number of tons of said feeds purchased during the period. Any dealer who purchases a minimum of 60 tons of said feeds during the aforesaid period is the recipient of the minimum discount, refund or rebate at the rate of 50 cents per ton. Should a dealer's total purchases not aggregate this required minimum during any specific month of the aforesaid period, such dealer receives no discount, refund or rebate on his purchases. As respondent's dealers purchase larger quantities of said feeds, they obtain larger discounts, refunds or rebates which are computed at a higher rate per ton, according to the

following schedule of total purchases during any particular month of such period:

	Per ton
60 tons	$0.50
120 tons	.75
210 tons	1.00
330 tons	1.25
480 tons	1.50

The discount, refund or rebate under this particular type of the respondent's Dealer Patronage Dividend is on a monthly basis and is not cumulative: for example, if a dealer buys 210 tons of feed in any one month, his patronage dividend, discount, refund, or rebate for that month will be $1.00 per ton, but should he buy only 60 tons the succeeding month, his dividend, discount, refund or rebate will be 50 cents per ton on the feed purchased during that month; should a dealer buy in excess of 480 tons in any one month during the period, there is no carry over of excess tonnage into the succeeding month, but such a dealer will receive a patronage dividend, discount, refund or rebate of $1.50 per ton on the total number of tons purchased during the month, including those tons in excess of 480 tons. This is explained to all the respondent's dealers, who, when they begin purchasing respondent's feeds, enter into this so-called "Dealer Patronage Dividend Contract" with the respondent; as aforesaid, only those dealers who are located in the aforementioned "Delmarva" area for the most part, enter into this particular type of contract.

The other type of volume rebate plan, which is likewise called by the respondent "Dealer Patronage Dividend Contract" and which has been utilized by respondent since its inception in or about June, 1947, in all of the areas in which respondent sells its feeds other than that of "Delmarva," provides for the assignment of certain point values per ton for the various feeds and concentrates which respondent manufactures; the purchaser receives a certain number of points on all of said feeds purchased during the aforesaid period, with such feeds having different point values, the more expensive being assigned the higher point values. Any dealer who accumulates a minimum of 300 points during the aforesaid annual period from December 1 to November 30 is the recipient of the minimum discount, refund or rebate of 5 cents per point on his purchases from the respondent during this period. If a dealer fails to accumulate the minimum, he receives no discount, refund or rebate on his purchases. Respondent's dealers who earn a greater number of total points during the period are accredited with and paid discounts, refunds or rebates which are computed at a higher rate per point based on the following schedule:

Points per year:	Value (cents)	Points per year:	Value (cents)
300–499	5	4,000–4,499	13
500–999	6	4,500–4,999	15
1,000–1,499	7	5,000–5,999	16
1,500–1,999	8	6,000–6,999	17
2,000–2,499	9	7,000–7,999	18
2,500–2,999	10	8,000–8,999	19
3,000–3,499	11	10,000 and over	20
3,500–3,999	12		

Under this type of patronage dividend, the points are cumulative, and as soon as a dealer purchases from respondent sufficient feed to accumulate 300 points therefor, he begins to "earn dividends" on his purchases, and the total points acquired during the aforesaid period form the basis for the computation of his discount, refund or rebate on his purchases. When a dealer begins purchasing his feeds from the respondent, and is not located in the "Delmarva" area, he enters into another type of "Dealer Patronage Dividend Contract," which sets forth the points allowed for the different types of feeds manufactured and sold by the respondent, as well as the aforesaid schedule of discounts, refunds or rebates based upon the total number of points per year.

The patronage dividends, discounts, rebates or refunds under both the aforesaid plans, or "Dealer Patronage Dividend Contracts," are paid in cash after December 1 of each specific year to the various dealers who qualify, without the necessity of application or any other action on the part of the dealer.

During the year of 1948, the total dealers' patronage dividend, discount, refund or rebate paid was $61,838.27; during the year of 1949, it was over $80,000; these amounts were distributed to less than 50% of respondent's dealers, with the balance not purchasing sufficient of respondent's animal feeds during these years to receive benefits under the applicable plan.

Respondent does not use any system of sub-dealers, nor does it sell to any chain purchasers or to any dealers purchasing on a group or pool basis. Respondent does not require any of its dealers to sell respondent's brand of animal feeds to the exclusion of competitive brands of feed produced and sold by other manufacturers, and most of the dealers to whom respondent sells its animal feed products do purchase and sell one or more competitive brands of said products.

PAR. 6. The effect of the discriminations in price, as alleged herein and of any part or fraction thereof, may be substantially to lessen competition or tend to create a monopoly in the respondent in the line of commerce in which it has been and is now engaged, and to

injure, destroy and prevent competition between the respondent and other manufacturers and sellers of animal feed products, and in the line of commerce in which the customers of the respondent, their dealer purchasers, are engaged, may be to injure, destroy and prevent competition between those customers, who in purchasing respondent's products receive the benefits of such discriminations which respondent grants, as hereinbefore set forth, and those competing dealer purchasers from the respondent who do not receive such benefits.

PAR. 7. The foregoing described plans, acts and practices of respondent are in violation of the provisions of subsection (a) of section 2 of the Clayton Antitrust Act, as amended by the Robinson-Patman Act, approved June 19, 1936.

CONSENT SETTLEMENT [1]

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission, on the 24th day of March 1952, issued and subsequently served its complaint on the respondent named in the caption herein, charging it with violation of subsection (a) of section 2 of the Clayton Act, as amended.

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

1. Admits all of the jurisdictional allegations set forth in the complaint.

[1] The Commission's "Notice of Acceptance of Consent Settlement and Order to File Report of Compliance", follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was on August 6, 1952, accepted by the Commission, subject only to the condition that the respondent comply with the requirements of the following paragraph with respect to the filing of a report showing the manner and form in which it has complied with the order to cease and desist; and subject to such condition said consent settlement was ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

It is accordingly ordered, That the respondent, Kentucky Chemical Industries, Inc., a corporation, shall within sixty (60) days after service upon it of this notice and 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 contained in the consent settlement entered herein.

2. Consents that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist. It is understood that the respondent, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrains from admitting, or denying that it has engaged in any of the acts or practices stated therein to be in violation of law or that such acts and practices, if engaged in, would be in violation of law.

3. Agrees that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in paragraph (f) of Rule V of the Commission's Rules of Practice.

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

COMMISSION'S FINDINGS AS TO THE FACTS

PARAGRAPH. 1. Respondent Kentucky Chemical Industries, Inc., hereinafter referred to as "respondent Kentucky Industries," is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its general offices and principal place of business located on Este Avenue, Cincinnati 32, Ohio.

PAR. 2. The respondent, Kentucky Industries, since 1937, has been engaged, and is now engaged, in the manufacture, sale and distribution of animal proteins known as K–C Brand meat and bone scraps and digester tankage and since August 1942 has also been engaged, and is now engaged, in the manufacture and sale of complete feeds and concentrates which are manufactured, sold and distributed by respondent as "Provico" Brand feed. Said feeds are sold by respondent primarily to retail feed dealers in the sales area comprising the Eastern and Southeastern United States, from the Northeast part thereof to Florida; respondent does not sell its products to wholesalers or distributors.

During the calendar year 1948, respondent's gross sales of feed were 87,466 tons, valued at $9,035,127.74; in 1949, the gross sales were 144,933 tons, valued at $10,585,373.58.

Respondent's manufacturing plant is located at Cincinnati, Ohio.

Said respondent Kentucky Industries sells and distributes in commerce, as "commerce" is defined in the Clayton Antitrust Act, as amended by the Robinson-Patman Act, said animal feed products to retail dealers located in various States of the United States and in the

District of Columbia. Respondent causes said animal feed products, when sold, to be transported and shipped from its respective manufacturing plant and warehouses in the several States in which they are located, across State lines, to the purchasers thereof, located in the District of Columbia and in the various States of the United States other than where such shipments originate. Respondent maintains, and has maintained, during all the times mentioned herein, a course of trade in said products, in commerce, among and between the several States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent, since its organization in 1937, has been engaged in substantial competition with other persons, partnerships, firms and corporations which likewise manufacture animal feed products, and which sell and seek to sell and distribute said products in commerce between and among the several States of the United States to retail feed dealers, except insofar as such competition may have been affected by the acts and practices hereinafter stated.

PAR. 4. In the course and conduct of its business, as aforesaid, since in or about June, 1947, respondent has been (until the time mentioned in Paragraph 5 hereof) discriminating in price between different purchasers of its animal feed products of like grade and quality by selling such products to some of its purchasers at higher prices than it sells these said products of like grade and quality to others of its purchasers who are in competition one with the other in the sale of said products within the United States.

Some of the purchases which were involved in such discriminations were in commerce, and the animal feed products so involved were sold for use, consumption or resale within the United States.

PAR. 5. The aforesaid price discriminations were accomplished by so-called volume rebate plans which were instituted by respondent in or about June, 1947. Since then these plans, both known as "Dealer Patronage Dividend Contracts," were utilized continuously by respondent in the sale and distribution of its animal feeds and concentrates until December 1, 1951, which was subsequent to the investigation by the Federal Trade Commission.

The following is a description of the plans as then used by respondent:

(1) Under such plans, respondent's dealers are paid discounts, refunds, or rebates, on their total purchases of such feeds and concentrates for the period beginning December 1 and ending November 30 of each succeeding year.

(2) One type of "Dealer Patronage Dividend Contract," which has been used by respondents, principally in the "Delmarva" area

(this area is a peninsula composed of the State of Delaware and several counties of the States of Maryland and Virginia and which is located between the Chesapeake Bay and the Atlantic Ocean), provides for the calculation of the discount, refund or rebate on the basis of the total number of tons of "Provico" feeds and concentrates purchased during the period. There is a sliding scale whereby the discount, refund or rebate per ton is proportionally higher according to the number of tons of said feeds purchased during the period. Any dealer who purchases a minimum of 60 tons of said feeds during any specific month of the aforesaid period is the recipient of the minimum discount, refund or rebate at the rate of 50 cents per ton. Should a dealer's total purchases not aggregate this required minimum during any specific month of the aforesaid period, such dealer receives no discount, refund or rebate on his purchases. As respondent's dealers purchase larger quantities of said feeds, they obtain larger discounts, refunds or rebates which are computed at a higher rate per ton, according to the following schedule of total purchases during any particular month of such period:

	Per ton
60 tons	$0.50
120 tons	.75
210 tons	1.00
330 tons	1.25
480 tons	1.50

(3) The discount, refund or rebate under this particular type of respondent's Dealer Patronage Dividend is on a monthly basis and is not cumulative; for example, if a dealer buys 210 tons of feed in any one month, his patronage dividend, discount, refund or rebate for that month, will be $1.00 per ton, but should he buy only 60 tons the succeeding month, his dividend, discount, refund or rebate will be 50 cents per ton on the feed purchased during the month; should a dealer buy in excess of 480 tons in any one month during the period, there is no carryover of excess tonnage into the succeeding month, but such a dealer will receive a patronage dividend, discount, refund or rebate of $1.50 per ton on the total number of tons purchased during the month, including those tons in excess of 480 tons. This is explained to all the respondent's dealers, who, when they begin purchasing respondent's feeds, enter into this so-called "Dealer Patronage Dividend Contract" with the respondent; as aforesaid, only those dealers who are located in the aforementioned "Delmarva" area for the most part, enter into this particular type of contract.

(4) The other type of volume rebate plan, which is likewise called by the respondent "Dealer Patronage Dividend Contract," and which was utilized by respondent since its inception in or about June, 1947,

until December 1, 1951, which was subsequent to the investigation by the Federal Trade Commission, in all of the areas in which respondent sells its feeds other than that of "Delmarva," provides for the assignment of certain point values per ton for the various feeds and concentrates which respondent manufactures; the purchaser receives a certain number of points on all of said feeds purchased during the aforesaid period, with such feeds having different point values, the more expensive being assigned the higher point values. Any dealer who accumulates a minimum of 300 points during the aforesaid annual period from December 1 to November 30 is the recipient of the minimum discount, refund or rebate of 5 cents per point on his purchases from the respondent during this period. If a dealer fails to accumulate the minimum points, he receives no discount, refund or rebate on his purchases. Respondent's dealers who earn a greater number of total points during the period are accredited with and paid discounts, refunds or rebates which are computed at a higher rate per point based on the following schedule:

Points per year:	*Value (cents)*	Points per year:	*Value (cents)*
300–499	5	3,500–3,399	12
500–999	6	4,000–4,499	13
1,000–1,499	7	4,500–4,999	15
1,500–1,999	8	5,000–5,999	16
2,000–2,499	9	6,000–6,999	17
2,500–2,999	10	7,000–7,999	18
3,000–3,499	11	8,000–8,999	19
		10,000 and over	20

(5) Under this type of patronage dividend, the points are cumulative, and as soon as a dealer purchases from respondent sufficient feed to accumulate 300 points therefor, he begins to "earn dividends" on his purchases, and the total points acquired during the aforesaid period form the basis for the computation of his discount, refund or rebate on his purchases. When a dealer began purchasing his feeds from the respondent, and was not located in the "Delmarva" area, he entered into the foregoing type of "Dealer Patronage Dividend Contract," which set forth the points allowed for the different types of feeds manufactured and sold by the respondent, as well as the aforesaid schedule of discounts, refunds or rebates based upon the total number of points per year.

(6) The patronage dividends, discounts, rebates or refunds under both the aforesaid plans, or "Dealer Patronage Dividend Contracts," were paid in cash after December 1 of each specific year to the various dealers who qualify without the necessity of application or any other action on the part of the dealer.

During the year 1948, the total dealers' patronage dividend, discount, refund or rebate paid was $61,838.27; during the year of 1949,

it was over $80,000.00; these amounts were distributed to less than 50% of respondent's dealers, with the balance not purchasing sufficient of respondent's animal feeds during these years to receive benefits under the applicable plan.

Respondent does not use any system of sub-dealers, nor does it sell to any chain purchasers or to any dealers purchasing on a group or pool basis. Respondent does not require any of its dealers to sell respondent's brand of animal feeds to the exclusion of competitive brands of feed produced and sold by other manufacturers, and most of the dealers to whom respondent sells its animal feed products do purchase and sell one or more competitive brands of said products.

PAR. 6. The effect of the discriminations in price, as stated herein and of any part or fraction thereof, may be substantially to lessen competition or tend to create a monopoly in the respondent in the line of commerce in which it has been and is now engaged, and to injure, destroy and prevent competition between the respondent and other manufacturers and sellers of animal feed products, and in the line of commerce in which the customers of the respondent, their dealer purchasers, are engaged, may be to injure, destroy and prevent competition between those customers, who in purchasing respondent's products receive the benefits of such discriminations which respondent grants, as hereinbefore set forth, and those competing dealer purchasers from the respondent who do not receive such benefits.

COMMISSION'S CONCLUSION

The foregoing described plans, acts and practices of respondent are in violation of the provisions of subsection (a) of section 2 of the Clayton Antitrust Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, Sec. 13).

ORDER TO CEASE AND DESIST

It is ordered, That the respondent, Kentucky Chemical Industries, Inc., a corporation, directly or indirectly, through any corporate or other device, through its officers, agents, representatives or employees, or by any other means or methods in the sale of animal feed products, including both concentrate and complete feeds, whether sold under the name of "Provico" or any other name or designation, in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Directly or indirectly discriminating in price between different competing purchasers of animal feed products, including both concentrate and complete feeds of like grade and quality, where the afore-

said products are sold for use, consumption or resale within the United States, by employing in any manner, or by any means, any arrangement or plan, regardless of designation, whereby allowances, discounts, rebates, refunds, compensation or consideration of any nature or description are granted or paid in any manner to competing dealer purchasers of such products when such allowances, discounts, rebates, refunds, compensation or consideration are compiled or computed at varied or different rates or percentages dependent upon the quantity or amount of the products purchased.

KENTUCKY CHEMICAL INDUSTRIES, INC.,
By (S) R. W. MACGREGOR,
President.

MAY 22, 1952.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record this 6th day of August, 1952, subject only to the condition that the respondent shall, within sixty (60) days after service upon it of a copy of this consent settlement, 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 contained in said consent settlement.