

## Syllabus

## IN THE MATTER OF

CZECHO-SLOVAK CRYSTAL IMPORTERS ASSOCIATION,  
INC. (IMPORTED CRYSTAL ASSOCIATION, INC.) ET AL.

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

*Docket 5988. Complaint, May 12, 1952—Decision, June 25, 1953*

While a small percentage of the lighting glass products made for use in the United States is presently manufactured in Japan, Germany, Austria and other foreign countries as well as in the United States, such glass products have generally been deemed to be of inferior quality to Czechoslovakian lighting glass products and have not enjoyed the acceptance in the United States accorded to said Czechoslovakian products.

Where twelve corporations, two partnerships and an individual, which were engaged in importing "lighting glass products"—i. e., glass crystals, prisms, drops, chandeliers, and related products—from Czechoslovakia and other foreign countries for sale and distribution throughout the United States and for use in the manufacture of lighting fixtures for such sale and distribution; would have been in competition with one another, except for the facts below set forth, and were in competition with their customers and with importers who were not members of their association; and for a number of years theretofore imported about 90% of the volume of lighting glass products made in Czechoslovakia for sale and distribution in the United States and thereby dominated and controlled the lighting glass products industry in this country; together with their association, incorporated in 1946 to "advance the business of importers of crystal chandeliers and of all chandelier parts from Czechoslovakia, and to deal with problems concerning or affecting them and of allied and kindred businesses; \* \* \*"—Cooperated, combined, conspired, agreed, and entered into and carried out an understanding and planned common course of action between and among themselves and others (1) to prevent competing purchasers from importing lighting glass products directly from the suppliers; (2) to fix and establish prices, terms, and conditions of purchase in connection with the importation of such products; and (3) to monopolize within themselves the import, sale and distribution of said products in commerce; and as a part and parcel of said action and practice unlawfully to thwart, hinder, frustrate, and suppress competition—

- (a) Restricted the membership of their association and obtained an agreement from the Czechoslovakian glass import authorities whereby the sale of said products was restricted to members of their association and other importers approved by them;
- (b) Caused said Czechoslovakian glass export authorities to enjoin glass exporters from selling such products to nonmember importers in the United States;

## Syllabus

49 F. T. C.

- (c) Agreed with the Czechoslovak Glass Export Co., Ltd., that that export agency would lower its prices to enable said members to meet the competition of such products of other origin; that the sale of the Czechoslovakian products would be made exclusively to the members and other importers they approved; and that respondents would confine their purchases of such lighting glass products to said export agency to the exclusion of other sources of supply;
- (d) Agreed among themselves and with their source of supply in Czechoslovakia that the purchase price paid by any member of any lighting glass product would be identical with that paid by any other members for the same product; and
- (e) Organized and used their said association as an unlawful medium of effectuating and carrying out such agreement, understanding, and practices; and

Where their aforesaid association—

- (f) Received from the Czechoslovakian government officials their current list of United States lighting glass product importers and also numerous inquiries to such officials from non-member importers in the United States in regard to the purchase of lighting glass products; and advised said officials as to whether or not said non-member importers should be allowed to purchase directly from Czechoslovakia; and
- (g) Kept said government officials apprised of its membership and of competitive activities in the industry; and

Where the aforesaid members during the same period of time—

- (h) Refrained from purchasing lighting glass products from sources outside of Czechoslovakia; and

Where respondents, through the terms of an agreement entered into on or about August 29, 1949, with the Czechoslovak Glass Export Co. Ltd.—

- (i) Further implemented and insured a successful continuation of their unlawful cooperation, planned common course of action, etc. through the terms of said agreement whereby the association members were supplied with new prices and price lists, sales were limited to members with certain approved exceptions, members undertook to purchase exclusively in Czechoslovakia, competitive orders were to be cancelled if possible, and said Export Company undertook to quote competitive prices against all other suppliers, proof of whose lower prices was to be made available by the association; and

Where said respondents and said Glass Export Company, notwithstanding latter's notice in April 1950 that the agreement would not be renewed—

- (j) Continued to adhere to its terms and conditions until on or about October 1951 when circumstances beyond their control precluded respondents' further importation of lighting glass products from said country;

Capacity, tendency, and effect of which agreement, understanding, etc., and of the acts and practices done pursuant thereto were to substantially lessen, restrain, and eliminate competition among and between said respondent members and between them and others in the importation of lighting glass products and in the sale and distribution thereof and of lighting fixtures

1475

## Complaint

manufactured therefrom in commerce; empower and enable respondent members to control the market for said products and fixtures; enhance prices paid for said products and fixtures by competitors and consumers; and to tend dangerously to create a monopoly in respondent members in the importation of lighting glass products and in the sale and distribution of such products and fixtures in commerce:

*Held*, That such acts and practices were all to the injury and prejudice of the public and competitors, and constituted unfair methods of competition in commerce.

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

*Mr. Floyd O. Collins* and *Mr. J. Wallace Adair* for the Commission.

*Davis & Heffner*, of New York City, for respondents generally.

*Mr. Daniel Schnabel*, of Beverly Hills, Calif., for Lewis J. Smith.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the parties named in the caption hereof and more particularly described and referred to hereinafter as respondents, have violated Section 5 of the Federal Trade Commission Act (U. S. C. Title 15, Section 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Czecho-Slovak Crystal Importers Association, Inc., hereinafter referred to as respondent "Association", is a New York corporation, incorporated in 1946, with its principal office and place of business presently located at 48 West 37th Street, New York, New York, which is the business office of its Secretary, Irvin G. Nelson. The membership of the respondent Association is composed of corporations and individuals trading as partnerships or sole proprietors who are generally engaged in the business of importing glass crystals, prisms, drops, chandeliers and other similar or related products (sometimes hereinafter referred to as "lighting glass products") for sale and distribution in commerce and for use in the construction of lighting fixtures for sale and distribution in commerce among and between the various states of the United States.

The constitution and by-laws of the respondent Association declares its purpose to be:

## ARTICLE II—PURPOSES

Section 1. The general purposes of the Association shall be to foster, encourage and generally to advance the business of importers of crystal chandeliers

## Complaint

49 F. T. C.

and of all chandelier parts from Czechoslovakia, and to deal with problems concerning or affecting them and of allied and kindred businesses; to secure freedom from unjust and unlawful exactions; to unite for appropriate study and action, the said importers and allied or kindred businesses who are interested in the tariff law and in the administration of the Customs in general; to secure for said businesses the fair and administrative treatment to which they are entitled and to discourage ill-considered tariff legislation which might result not only in unfair discrimination in the United States but also in adverse effects on our international trade in general; to reform abuses relating to said businesses, and to promote and encourage sound, ethical and progressive business methods among them; to collect and disseminate accurate and reliable information relating to matters of said businesses and also the standing of persons and corporations engaged therein; to procure uniformity and certainty of practices and usages of said businesses; to settle differences between its members and those with whom they do business; to insure united action wherever else the interests of its members are concerned; and to do all such things as may be necessary and proper for the carrying out of the foregoing purposes.

## ARTICLE IV—MEMBERSHIP, DUES, VOTING, COMPLAINTS

Section 1. Any American citizen or a partnership, or a corporation, consisting of American citizens, or of whom American citizens shall be controlling or managing members or directors, who import merchandise into the United States or its territories, or who deal in imported merchandise or who are interested in the tariff laws, shall be eligible to membership in the Association.

PAR. 2. The following is a description of the corporate and individual respondents (sometimes hereinafter referred to as "respondent members"), all of whom are members of respondent Association:

Bohemia Import Co., Inc., is a New York corporation, incorporated in 1946, with its principal office and place of business located at 39 West 23rd Street, New York, New York.

Crystal Mart, Incorporated, is a New York corporation, incorporated in 1946, with its principal office and place of business located at 31 East 27th Street, New York, New York.

Elite Glass Co., Inc., is a New York corporation, incorporated in 1926, with its principal office and place of business located at 111 West 22nd Street, New York, New York.

Nelson Bead Co., Inc., is a New York corporation, incorporated in 1946, with its principal office and place of business located at 48 West 37th Street, New York, New York.

Weiss & Biheller Merchandise Corporation is a New York corporation, incorporated in 1934, with its principal office and place of business located at 584 Broadway, New York, New York.

Lightolier Co., Inc., is a New York corporation, incorporated in 1904, with its principal office and place of business located at 346 Claremont Avenue, Jersey City, New Jersey.

1475

## Complaint

Rialto Import Corporation is a New York corporation, incorporated in 1925, with its principal office and place of business located at 135 West 44th Street, New York, New York.

Gregory Sales Company, Inc., is a New York corporation, incorporated in 1938, with its principal office and place of business located at 232 East 59th Street, New York, New York.

Charles J. Winston & Co., Inc., is a New York corporation, incorporated in 1940, with its principal office and place of business located at 515 Madison Avenue, New York, New York.

Lawson Crystal, Inc., is a Missouri corporation, incorporated in 1947, with its principal office and place of business located at 4453a Olive Street, St. Louis, Missouri.

Sol Horn, Inc., is a New York corporation, incorporated in 1946, with its principal office and place of business located at 236 Fifth Avenue, New York, New York.

Warren Kessler, Inc., is a New York corporation, incorporated in 1929, with its principal office and place of business located at 220 Fifth Avenue, New York, New York.

Isaac Albert, Louis Albert, and Charles Albert are individuals and co-partners, trading and doing business under the partnership name and style of I. Albert Co., with their principal office and place of business located at 232 East 59th Street, New York, New York.

Sol Goodman and Edith Goodman are individuals and copartners, trading and doing business under the partnership name and style of Goody Lamp Co., with their principal office and place of business located at 40 West 27th Street, New York, New York.

Lewis J. Smith is an individual trading and doing business under the firm name and style of Crystal Import Co., with his principal office and place of business located at 7201 Melrose Avenue, Los Angeles, California.

PAR. 3. The respondent Association is not engaged in the business of importing, selling, or distributing lighting glass products as herein described, but said respondent has aided, abetted, guided, and assisted its respondent members in the performance of unlawful acts and practices hereinafter alleged.

PAR. 4. The respondent members are now, and since October 1946 have been, engaged in the business of importing lighting glass products from Czechoslovakia and other foreign countries for sale and distribution throughout the United States and for use in the manufacture of lighting fixtures for sale and distribution throughout the United States. Said respondents cause such products, when sold, to be shipped to purchasers thereof, many of whom are located in the

several states of the United States other than the states of origin of said shipments and in the District of Columbia; and there has been, and now is, a constant current and course of trade in said lighting glass products and lighting fixtures in commerce, as "commerce" is defined in the Federal Trade Commission Act, among and between the several states of the United States and in the District of Columbia.

PAR. 5. Except for the unlawful cooperation, planned common course of action, understanding, agreement, combination and conspiracy hereinafter alleged, respondent members would be in competition with one another in the import of lighting glass products. Said respondent members have been, and are now, in competition with others engaged in the import of lighting glass products. Said respondents are also in competition with their customers and with importers who are not members of respondent Association in the offering for sale, sale and distribution of lighting glass products and lighting fixtures manufactured from such products throughout the several states of the United States and in the District of Columbia.

PAR. 6. Prior to World War II, and for several years thereafter, substantially all of the lighting glass products used in the United States in the manufacture of chandeliers and other similar or related lighting fixtures were obtainable only from Czechoslovakia. A small percentage of the lighting glass products manufactured for use in the United States is presently manufactured in Japan, Germany, Austria, and other foreign countries as well as in the United States. Such glass products have generally been deemed to be of inferior quality to Czechoslovakian lighting glass products and have not enjoyed the acceptance in the United States accorded to said Czechoslovakian glass products. Respondent members have for several years past imported, and still do import, approximately 90 percent of the volume of lighting glass products manufactured in Czechoslovakia for sale and distribution in the United States, and by reason of this fact possess the ability and the means of dominating and controlling, and have actually, for several years past, dominated and controlled the lighting glass products industry in the United States.

PAR. 7. For more than five years last past, the respondent members, together with the respondent Association, have been and are engaged in unfair methods of competition and unfair acts and practices in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that they have acted and are still acting unlawfully to thwart, hinder, frustrate and suppress competition by cooperating, combining, conspiring, agreeing and entering into and car-

rying out an understanding and planned common course of action between and among themselves and others to prevent competing purchasers from importing lighting glass products directly from the suppliers thereof; to fix and establish prices, terms and conditions of purchase in connection with the purchase and importation of lighting glass products; and to monopolize within themselves the import, sale, and distribution of said products in said commerce. As a part and parcel thereof they have committed acts and promulgated and used policies, methods and practices hereinafter more particularly set forth in subparagraphs 1 to 7, inclusive, of this Paragraph 7:

1. Respondents restricted the membership of respondent Association and obtained an agreement or understanding from the Czechoslovakian glass export authorities, which were in control of the shipment of lighting glass products from Czechoslovakia, whereby the sale of said lighting glass products was restricted to respondent members and other importers approved by respondents.

2. Respondents caused the Czechoslovakian glass export authorities to enjoin glass exporters from selling lighting glass products to importers in the United States who were not members of respondent Association.

3. Respondents agreed with Czechoslovak Glass Export Co., Ltd. that that export agency would lower its price to enable respondent members to meet the competition of lighting glass products of other origin; that the sale of Czechoslovakian lighting glass products would be made exclusively to the respondent members and other importers approved by respondents; and that respondents would confine their purchases of such lighting glass products to the said export agency to the exclusion of other sources of supply.

4. Respondents agreed among themselves and with their source of supply in Czechoslovakia that the purchase price paid by any respondent member for any lighting glass product would be identical to that paid by any other respondent member for the same product.

5. Respondents organized and used, and are now using, respondent Association as an unlawful medium of effectuating and carrying out the agreement, understanding, and practices herein alleged.

6. In compliance with the aforesaid cooperation and planned common course of action, understanding or agreement, the Czechoslovakian government officials transmitted its current list of United States lighting glass product importers to the respondent Association for its approval. Since 1946, said Czechoslovakian officials have received numerous inquiries from importers located in the United States who were not members of respondent Association in regard to the pur-

chase of lighting glass products. These inquiries have been consistently referred to respondent Association which, acting through its members, have advised said Czechoslovakian officials as to whether or not said importers should be allowed to purchase said products directly from Czechoslovakia. Respondent Association has also kept the Czechoslovakian government officials apprised of its membership and of competitive activities in the industry. During the same period of time respondent members have refrained from purchasing lighting glass products from sources outside of Czechoslovakia.

7. Respondents further implemented and insured a successful continuation of the unlawful cooperation, planned common course of action, combination and conspiracy, through an agreement entered into on or about August 29, 1949, with the Czechoslovak Glass Export Co. Ltd., in the following terms:

“(1) New prices of Chandelier Trimmings will be put into force as of August 1st 1949 as per the Price List attached.

“(2) New Price-Lists for Chandeliers are to be in force as of August 1st and the members of the Association will receive their new prices promptly.

“(3) The sales of Trimmings and complete Crystal Chandeliers Crystal Breakets, Baskets and Ceiling Pieces will be sold only to the members of the Association and in addition to the following firms:

Halcolite, Brooklyn,  
Crystal Import, Los Angeles,  
Lawson, St. Louis,  
Sol Horn Inc., New York 1.

“(4) As stated before, this selling policy will concern complete Crystal Chandeliers, Crystal Breakets, Baskets and Ceiling pieces. Regarding Chandeliers Glass Parts for the purpose of making Chandeliers except Chandelier Trimmings it has been agreed that the selling policy for these items will be discussed and organized at a later date.

“(5) Mr. Sanford on behalf of the Association agreed we supply Chandelier Trimmings a. Crystal Chandeliers to the following clients:

Halcolite, Brooklyn,  
Crystal Import, Los Angeles,  
Lawson, St. Louis,  
Sol Horn, Inc. New York 1.

“(6) All members of the Association as well as the clients as per Par. (5) will buy Chandelier Trimmings and Crystal Chandeliers exclusively in Czechoslovakia. All orders placed with our competitors



1475

## Complaint

prior to this agreement are to be cancelled if possible and on the other side all orders of non-members of the Association accepted and confirmed by the Czechoslovak Glass Export Co. Ltd. prior to this agreement will be delivered under the old conditions and prices. Such orders are not in excess of \$10,000.00 and will be shipped before October 1st 1949.

"(7) Czechoslovak Glass Export Co. Ltd. is at all times prepared to quote competitive prices against all other suppliers. The Importers Association agree to make available proof of lower prices being quoted by competitors and engage themselves to cooperate closely in this regards with Centroglass.

"(8) The Glasseport expects in view of the lower prices and of this agreement that the members will support them promptly with substantial orders.

"(9) This agreement will be in force until July 1st 1950 and will be renewed automatically for a further year unless either party has given two months written notice that they desire to renegotiate a new contract."

At a later date the last three named firms in paragraph three of said agreement were admitted into membership in respondent Association.

Notwithstanding the fact that Czechoslovak Glass Export Co., Ltd. in April 1950 notified the respondents that the foregoing agreement would not be renewed respondents and Czechoslovak Glass Export Co., Ltd. still adhere to its terms.

PAR. 8. The capacity, tendency, and effect of the aforesaid agreement, understanding, combination, and conspiracy hereinbefore described and the acts and practices of the respondents, and each of them, done and performed pursuant thereto and in furtherance thereof, are now and have been to substantially lessen, restrain and eliminate competition among and between said respondent members and between said members and others in the importation of lighting glass products and in the sale and distribution of said products and lighting fixtures manufactured therefrom in commerce; have empowered and enabled the respondent members to control the market for said products and fixtures; have enhanced the prices paid for said products and fixtures by competitors and consumers; have a dangerous tendency to create a monopoly in respondent members in the importation of lighting glass products and in the sale and distribution of said products and fixtures in commerce; and are, and have been, all to the injury and prejudice of the public and competitors of respondent mem-

bers, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

CONSENT SETTLEMENT <sup>1</sup>

Pursuant to the provisions of the Federal Trade Commission Act (15 U. S. C. A., Sec. 45), the Federal Trade Commission on May 12, 1952, issued and subsequently served its complaint on the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said Federal Trade Commission Act.

The respondents, desiring that this proceeding be disposed of by the consent settlement procedure provided for 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 the answer to said complaint heretofore filed by Lewis J. Smith, an individual, and which, upon acceptance by the Commission of this settlement, shall be deemed to have been withdrawn from the record, and in lieu of answers to said complaint by all other respondents herein, hereby:

1. Admit all the jurisdictional allegations set forth in the complaint, and state that the name of the respondent Czecho-Slovak Crystal Importers Association, Inc., a corporation, was officially changed in accordance with the laws of the State of New York to Imported Crystal Association, Inc., a corporation, as of May 19, 1952.

2. Consent that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist. It is understood that the respondents, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specially refrain from admitting or denying that they have engaged in any of the acts or practices stated therein to be in violation of law.

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

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

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on June 25, 1953, and ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

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

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

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Imported Crystal Association, Inc., (formerly Czecho-Slovak Crystal Importers Association, Inc.), hereinafter referred to as respondent "Association," is a New York corporation, incorporated in 1946, with its principal office and place of business presently located at 48 West 37th Street, New York, New York, which is the business office of its Secretary, Irvin G. Nelson. The membership of the respondent Association is composed of corporations and individuals trading as partnerships or sole proprietors who are generally engaged in the business of importing glass crystals, prisms, drops, chandeliers and other similar or related products (sometimes hereinafter referred to as "lighting glass products") for sale and distribution in commerce and for use in the construction of lighting fixtures for sale and distribution in commerce among and between the various States of the United States.

The constitution and by-laws of the respondent Association declares its purpose to be:

#### ARTICLE II—PURPOSES

Section 1. The general purposes of the Association shall be to foster, encourage and generally to advance the business of importers of crystal chandeliers and of all chandelier parts from Czechoslovakia, and to deal with problems concerning or affecting them and of allied and kindred businesses; to secure freedom from unjust and unlawful exactions; to unite for appropriate study and action, the said importers and allied or kindred businesses who are interested in the tariff law and in the administration of the Customs in general; to secure for said businesses the fair and administrative treatment to which they are entitled and to discourage ill-considered tariff legislation which might result not only in unfair discrimination in the United States but also in adverse effects on our international trade in general; to reform abuses relating to said businesses, and to promote and encourage sound, ethical and progressive business methods among them; to collect and disseminate accurate and reliable information relating to matters of said businesses and also the standing of persons and corporations engaged therein; to procure uniformity and certainty of practices and usages of said businesses; to settle differences between its members and those with whom they do business; to insure united action wherever else the interests of its members are concerned; and to do all such things as may be necessary and proper for the carrying out of the foregoing purposes.

## ARTICLE IV—MEMBERSHIP, DUES, VOTING, COMPLAINTS

Section 1. Any American citizen or a partnership, or a corporation, consisting of American citizens, or of whom American citizens shall be controlling or managing members or directors, who import merchandise into the United States or its territories, or who deal in imported merchandise or who are interested in the tariff laws, shall be eligible to membership in the Association.

PAR. 2. The following is a description of the corporate and individual respondents (sometimes hereinafter referred to as "respondent members"), all of whom are members of respondent Association:

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Lewis J. Smith is an individual trading and doing business under the firm name and style of Crystal Import Co., with his principal office and place of business located at 7201 Melrose Avenue, Los Angeles, California.

PAR. 3. The respondent Association is not engaged in the business of importing, selling, or distributing lighting glass products, as herein described, but said respondent has aided, abetted, guided, and assisted its respondent members in the performance of unlawful acts and practices hereinafter set forth.

PAR. 4. The respondent members are now, and since October 1946 have been, engaged in the business of importing lighting glass products from Czechoslovakia and other foreign countries for sale and distribution throughout the United States and for use in the manufacture of lighting fixtures for sale and distribution throughout the United States. Said respondents cause such products, when sold, to be shipped to purchasers thereof, many of whom are located in the several States of the United States other than the States of origin of said shipments and in the District of Columbia; and there has been, and now is, a constant current and course of trade in said lighting glass products and lighting fixtures in commerce, as "commerce" is defined in the Federal Trade Commission Act, among and between the several States of the United States and in the District of Columbia.

PAR. 5. Except for the unlawful cooperation, planned common course of action, understanding, agreement, combination and conspiracy hereinafter alleged, respondent members would be in competition with one another in the import of lighting glass products. Said re-

spondent members have been, and are now, in competition with others engaged in the import of lighting glass products. Said respondents are also in competition with their customers and with importers who are not members of respondent Association in the offering for sale, sale and distribution of lighting glass products and lighting fixtures manufactured from such products throughout the several States of the United States and in the District of Columbia.

PAR. 6. Prior to World War II, and for several years thereafter, substantially all of the lighting glass products used in the United States in the manufacture of chandeliers and other similar or related lighting fixtures were obtainable only from Czechoslovakia. A small percentage of the lighting glass products manufactured for use in the United States is presently manufactured in Japan, Germany, Austria, and other foreign countries as well as in the United States. Such glass products have generally been deemed to be of inferior quality to Czechoslovakian lighting glass products and have not enjoyed the acceptance in the United States accorded to said Czechoslovakian glass products. Respondent members have for several years past imported, and still do import, approximately 90 percent of the volume of lighting glass products manufactured in Czechoslovakia for sale and distribution in the United States, and by reason of this fact possess the ability and the means of dominating and controlling, and have actually, for several years past, dominated and controlled, the lighting glass products industry in the United States.

PAR. 7. For more than five years last past, the respondent members, together with the respondent Association, have been and are engaged in unfair methods of competition and unfair acts and practices in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that they have acted and are still acting unlawfully to thwart, hinder, frustrate and suppress competition by cooperating, combining, conspiring, agreeing and entering into and carrying out an understanding and planned common course of action between and among themselves and others to prevent competing purchasers from importing lighting glass products directly from the suppliers thereof; to fix and establish prices, terms and conditions of purchase in connection with the purchase and importation of lighting glass products; and to monopolize within themselves the import, sale, and distribution of said products in said commerce. As a part and parcel thereof they have committed acts and promulgated used policies, methods and practices hereinafter more particularly set forth in subparagraphs 1 to 7, inclusive, of this Paragraph 7:

1. Respondents restricted the membership of respondent Association and obtained an agreement or understanding from the Czechoslovakian glass export authorities, which were in control of the shipment of lighting glass products from Czechoslovakia, whereby the sale of said lighting glass products was restricted to respondent members and other importers approved by respondents.

2. Respondents caused the Czechoslovakian glass export authorities to enjoin glass exporters from selling lighting glass products to importers in the United States who were not members of respondent association.

3. Respondents agreed with Czechoslovak Glass Export Co., Ltd. that that export agency would lower its price to enable respondent members to meet the competition of lighting glass products of other origin; that the sale of Czechoslovakian lighting glass products would be made exclusively to the respondent members and other importers approved by respondents; and that respondents would confine their purchases of such lighting glass products to the said export agency to the exclusion of other sources of supply.

4. Respondents agreed among themselves and with their source of supply in Czechoslovakia that the purchase price paid by any respondent member for any lighting glass product would be identical to that paid by any other respondent member for the same product.

5. Respondents organized and used, and are now using, respondent Association as an unlawful medium of effectuating and carrying out the agreement, understanding, and practices herein alleged.

6. In compliance with the aforesaid cooperation and planned common course of action, understanding or agreement, the Czechoslovakian government officials transmitted its current list of United States lighting glass product importers to the respondent Association for its approval. Since 1946, said Czechoslovakian officials have received numerous inquiries from importers located in the United States who were not members of respondent Association in regard to the purchase of lighting glass products. These inquiries have been consistently referred to respondent Association which, acting through its members, have advised said Czechoslovakian officials as to whether or not said importers should be allowed to purchase said products directly from Czechoslovakia. Respondent Association has also kept the Czechoslovakian government officials apprised of its membership and of competitive activities in the industry. During the same period of time respondent members have refrained from purchasing lighting glass products from sources outside of Czechoslovakia.

7. Respondents further implemented and insured a successful continuation of the unlawful cooperation, planned common course of action, combination and conspiracy, through an agreement entered into on or about August 29, 1949, with the Czechoslovak Glass Export Co. Ltd., in the following terms:

"(1) New prices of Chandelier Trimmings will be put into force as of August 1st 1949 as per the Price List attached.

(2) New Price-Lists for Chandeliers are to be in force as of August 1st and the members of the Association will receive their new prices promptly.

(3) The sales of Trimmings and complete Crystal Chandeliers Crystal, Breakets, Baskets and Ceiling Pieces will be sold only to the members of the Association and in addition to the following firms:

Halcolite, Brooklyn,  
Crystal Import, Los Angeles,  
Lawson, St. Louis,  
Sol Horn Inc., New York 1.

(4) As stated before, this selling policy will concern complete Crystal Chandeliers, Crystal Breakets, Baskets and Ceiling pieces. Regarding Chandeliers Glass Parts for the purpose of making Chandeliers except Chandelier Trimmings it has been agreed that the selling policy for these items will be discussed and organized at a later date.

(5) Mr. Sanford on behalf of the Association agreed we supply Chandelier Trimmings a. Crystal Chandeliers to the following clients:

Halcolite, Brooklyn,  
Crystal Import, Los Angeles,  
Lawson, St. Louis,  
Sol Horn, Inc., New York 1.

(6) All members of the Association as well as the clients as per Par. (5) will buy Chandelier Trimmings and Crystal Chandeliers exclusively in Czechoslovakia. All orders placed with our competitors prior to this agreement are to be cancelled if possible and on the other side all orders of non-members of the Association accepted and confirmed by the Czechoslovak Glass Export Co. Ltd. prior to this agreement will be delivered under the old conditions and prices. Such orders are not in excess of \$10,000.00 and will be shipped before October 1st 1949.



1475

## Findings

(7) Czechoslovak Glass Export Co. Ltd. is at all times prepared to quote competitive prices against all other suppliers. The Importers Association agree to make available proof of lower prices being quoted by competitors and engage themselves to cooperate closely in this regards with Centroglass.

(8) The Glassexport expects in view of the lower prices and of this agreement that the members will support them promptly with substantial orders.

(9) This agreement will be in force until July 1st 1950 and will be renewed automatically for a further year unless either party has given two months written notice that they desire to renegotiate a new contract."

At a later date the last three named firms in paragraph three of said agreement were admitted into membership in respondent Association.

Notwithstanding the fact that Czechoslovak Glass Export Co., Ltd. in April 1950 notified the respondents that the foregoing agreement would not be renewed respondents and Czechoslovak Glass Export Co., Ltd. continued to adhere to its terms and conditions until on or about October 1951 when circumstances beyond their control precluded respondents' further importation of lighting glass products from Czechoslovakia.

PAR. 8. The capacity, tendency, and effect of the aforesaid agreement, understanding, combination, and conspiracy hereinbefore described and the acts and practices of the respondents, and each of them, done and performed pursuant thereto and in furtherance thereof, are now and have been to substantially lessen, restrain and eliminate competition among and between said respondent members and between said members and others in the importation of lighting glass products and in the sale and distribution of said products and lighting fixtures manufactured therefrom in commerce; have empowered and enabled the respondent members to control the market for said products and fixtures; have enhanced the prices paid for said products and fixtures by competitors and consumers; have a dangerous tendency to create a monopoly in respondent members in the importation of lighting glass products and in the sale and distribution of said products and fixtures in commerce; and are, and have been, all to the injury and prejudice of the public and competitors of respondent members, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Order

49 F. T. C.

## CONCLUSION

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

## ORDER TO CEASE AND DESIST

*It is ordered,* That respondents Imported Crystal Association, Inc. (formerly Czecho-Slovak Crystal Importers Association, Inc.); Bohemia Import Co., Inc.; Crystal Mart, Incorporated; Elite Glass Co., Inc.; Nelson Bead Co., Inc.; Weiss & Biheller Merchandise Corporation; Lightolier Co., Inc.; Rialto Import Corporation; Gregory Sales Company, Inc.; Charles J. Winston & Co., Inc.; Lawson Crystal, Inc.; Sol Horn, Inc.; and Warren Kessler, Inc.; corporations, their officers, agents, representatives and employees; Isaac Albert, Louis Albert, and Charles Albert, as individuals and copartners trading under the name and style of I. Albert Co.; Sol Goodman and Edith Goodman, as individuals and copartners trading under the name and style of Goody Lamp Co.; and Lewis J. Smith, as an individual trading under the name and style of Crystal Import Co., directly or through any corporate or other device, in connection with the purchase, sale or distribution of lighting glass products or lighting fixtures in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination, or conspiracy between any two or more of said respondents, or between any one or more of said respondents and others not parties hereto engaged in competition with any of said respondents, to do or perform any of the following things:

1. Inducing, coercing, compelling, or attempting to induce, coerce, or compel manufacturers of Czechoslovakian lighting glass products or any other manufacturers or suppliers of lighting glass products to restrict their sales of such products only to respondents.

2. Hindering, preventing, or attempting to hinder or prevent purchasers, or potential purchasers, of lighting glass products who are not members of the Czecho-Slovak Crystal Importers Association, Inc., from obtaining such products from Czechoslovakia or any other source of supply.

1475

## Order

3. Fixing or attempting to fix prices, discounts, terms or conditions of purchase of lighting glass products from Czechoslovakia or any other source of supply or maintaining any prices, terms or condition of sales so fixed.

4. Confining, restricting, limiting, or attempting to confine, restrict, or limit their purchases of lighting glass products to Czechoslovak Glass Export Co., Ltd., or any other source or sources of supply.

*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.

IMPORTED CRYSTAL ASSOCIATION, NELSON BEAD CO., INC.  
Inc.,

Imported Crystal Association, By [S] HERMAN NELSON  
Inc., Title, President  
(formerly Czecho - Slovak Date: Sept. 17, 1952  
Crystal Importers Associa-  
tion, Inc.)

By [S] GORDON W. SANFORD  
Title, President  
Date: Sept. 17, 1952

BOHEMIA IMPORT CO., INC.  
Bohemia Import Co., Inc.

By [S] JOSEPH GUTTMANN  
Title, Vice President  
Date: Sept. 16, 1952

CRYSTAL MART INCORPORATED  
Crystal Mart, Incorporated

By [S] CHARLES GOTTESMAN  
Title, President  
Date: Sept. 17, 1952

ELITE GLASS CO., INC.  
Elite Glass Co., Inc.

By [S] IRVING LEVIN  
Title, President  
Date: Sept. 17, 1952

Nelson Bead Co., Inc.

Nelson Bead Co., Inc.

By [S] HERMAN NELSON

Title, President

Date: Sept. 17, 1952

WEISS & BIHELLER MERCHANDISE  
CORP.

Weiss & Biheller Merchandise  
Corp.

By [S] GORDON W. SANFORD

Title, Secretary-treasurer

Date: Sept. 17, 1952

LIGHTOLIER Co., INC.

Lightolier Co., Inc.

By [S] M. PHURNAUER

Title, Secretary

Date: Sept. 24, 1952

RIALTO IMPORT CORPORATION

Rialto Import Corporation

By [S] JOSEPH L. WEISS

Title, President

Date: Sept. 22, 1952

## Order

49 F. T. C.

GREGORY SALES COMPANY, INC. Gregory Sales Company, Inc. By [S] CHARLES ALBERT Title, President Date: Sept. 19, 1952	LOUIS ALBERT Louis Albert (one of three partners trading as I. Albert Co.) By [S] LOUIS ALBERT Title, Partner Date: Sept. 19, 1952
CHARLES J. WINSTON & Co., INC. Charles J. Winston & Co., Inc. By [S] STANLEY WINSTON Title, President Date: Sept. 24, 1952	CHARLES ALBERT Charles Albert (one of three partners trading as I. Albert Co.) By [S] CHARLES ALBERT Title, Partner Date: Sept. 19, 1952
LAWSON CRYSTAL, INC. Lawson Crystal, Inc. By [S] PAUL S. LANSMAN Title, President Date: Sept. 18, 1952	SOL GOODMAN Sol Goodman (one of two partners trading as Goody Lamp Co.) By [S] SOL GOODMAN Title, Partner Date: Sept. 24, 1952
SOL HORN, INC. Sol Horn, Inc. By [S] SOL HORN Title, President Date: Sept. 23, 1952	EDITH GOODMAN Edith Goodman (one of two partners trading as Goody Lamp Co.) By [S] EDITH GOODMAN Title, Partner Date: Sept. 24, 1952
WARREN KESSLER, INC. Warren Kessler, Inc. By [S] WARREN L. KESSLER Title, President Date: Sept. 22, 1952	LEWIS J. SMITH Lewis J. Smith (an individual trad- ing as Crystal Import Co.) By [S] L. J. SMITH Title, Owner Date: 9/19/52
ISAAC ALBERT Isaac Albert (one of three partners trading as I. Albert Co.) By [S] ISAAC ALBERT Title, Partner Per I. A. Date: Sept. 19, 1952	

The foregoing Consent Settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this the 25th day of June, 1953.

## Complaint

## IN THE MATTER OF

## JAN-WARREN CORPORATION ET AL.

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

*Docket 6073. Complaint, Dec. 15, 1952—Decision, June 25, 1953*

Where three corporations with a common address and the four individuals who were their officers and owned their outstanding stock, engaged in the purchase, sale, and distribution of frozen food, frozen juices, and other food products—

- (a) Received and accepted, directly and indirectly, commissions, brokerage, or allowances, or discounts in lieu thereof, in substantial amounts from interstate sellers on purchases made by the aforesaid corporations, and by said individuals through said corporations, on food products purchased for their respective accounts for resale; and

Where said corporations and individuals—

- (b) Received and accepted directly or indirectly commissions, brokerage, or allowances or discounts in lieu thereof in substantial amounts from interstate sellers on food products purchased by said individuals and one of said corporations for the account of the other two for resale:

*Held*, That such acts and practices of said corporations and individuals, and each of them, individually and collectively, in receiving and accepting commissions, broker's fees, or other compensation, allowances, or discounts in lieu thereof on purchases of food products in commerce made directly or indirectly for their own accounts were in violation of subsec. (c) of Sec. 2 of the Clayton Act as amended.

Before *Mr. John Lewis*, hearing examiner.

*Mr. Austin H. Forkner* and *Mr. Edward S. Ragsdale* for the Commission.

*Abelove, Myers & Rosenblum*, of Utica, N. Y., for respondents.

## COMPLAINT

The Federal Trade Commission, having reason to believe that the corporations and individuals named in the caption hereof (hereinafter designated respondents, and more particularly described), individually and collectively, since June 19, 1936 have violated and are now violating the provisions of subsection (c) of Section 2 of the Clayton Act (U. S. C. Title 15, Sec. 13) as amended by the Robin-

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

PARAGRAPH 1. Respondent Jan-Warren Corporation, is a corporation organized, existing and doing business under the laws of the State of New York, with its principle office and place of business located at 215 North Genesee Street, Utica, New York. Respondent is engaged in the business of buying, selling and distributing frozen foods, frozen juices and other food products, all of which are hereinafter designated as food products.

PAR. 2. Respondent Oneida Frozen Food Corporation, is a corporation organized, existing and doing business under the laws of the State of New York, with its principal office and place of business located at 215 North Genesee Street, Utica, New York. Respondent is engaged in the business of buying, selling and distributing frozen foods, frozen juices and other food products, all of which are hereinafter designated as food products.

PAR. 3. Respondent Minute Maid Representatives of New York State, Inc., is a corporation organized under the laws of the State of New York, with its principal office and place of business located at 215 North Genesee Street, Utica, New York.

Respondent is engaged in the business of buying, selling and distributing frozen juices, which are hereinafter designated as food products.

PAR. 4. Respondent, Maurice S. Levinson, is an individual residing at 105 Arlington Road, Utica, New York. He is now president of Jan-Warren Corporation and of Minute Maid Representatives of New York State, Inc., and Treasurer of Oneida Frozen Food Corporation. After becoming an officer, and at the present time, and for some time past as President and Treasurer of above named respondent corporations, said respondent together with respondent Mrs. Harriet (Maurice S.) Levinson, Earl Copeland, and Warren E. Copeland, has exercised and still exercises complete control over the business conducted by said respondent corporations, including the direction of their buying, selling and distribution policies.

PAR. 5. Respondent Mr. Harriet (Maurice S.) Levinson, is an individual residing at 105 Arlington Road, Utica, New York, and is the wife of respondent Maurice S. Levinson.

Said respondent is Vice President of Jan-Warren Corporation, and Secretary of Oneida Frozen Food Corporation. After becoming an officer, and at the present time and for some time past as President and Secretary of respective respondent corporations, respondent together with respondents Maurice S. Levinson, Earl Copeland

and Warren E. Copeland, has exercised, and still exercises, complete control over the business conducted by said respondent corporations, including the direction of their buying and selling, and distributing policies.

PAR. 6. Respondent Earl Copeland is an individual residing at 47 Emerson Avenue, Utica, New York. He is now President of Oneida Frozen Food Corporation and Treasurer of Jan-Warren Corporation and Minute Maid Representatives of New York State, Inc.

After becoming an officer, and at the present time, and for some time past as President and Treasurer of the respective respondent corporations, said respondent together with respondents Warren E. Copeland, Maurice S. Levinson, and Mrs. Harriet (Maurice S.) Levinson, has exercised and still exercises, complete control over the business conducted by said respondent corporations, including the direction of their buying, selling and distributing policies.

PAR. 7. Respondent Warren E. Copeland, is an individual residing at One Allen Road, Utica, New York, and is a son of respondent Earl Copeland. Said respondent is now Vice President of Oneida Frozen Food Corporation; and Secretary of Jan-Warren Corporation and Minute Maid Representatives of New York State, Inc.

After becoming an officer and at the present time, and for some time past, as Vice President and Secretary, of the respective respondent corporations, said respondent together with respondents Earl Copeland, Maurice S. Levinson and Mrs. Harriet (Maurice S.) Levinson has exercised and still exercises complete control over the business conducted by said respondent corporations, including the direction of their buying, selling and distribution policies.

PAR. 8. All of the capital stock of each of the three respondent corporations is wholly owned by four individual respondents, the two individual Levinson respondents owning 50% of the capital stock of each of the three respondent corporations, while the remaining 50% of the capital stock of each of said respondent corporations is owned by the two individual Copeland respondents.

A summary of the corporate organization of each of the three respondent corporations, together with their respective stockholders, is set out herewith:

## Complaint

49 F. T. C.

Officers	Jan-Warren Corporation	Oneida Frozen Food Corporation	Minute Maid Representatives of New York State, Inc.
President.....	Maurice S. Levinson.....	Earl Copeland.....	Maurice S. Levinson.
Vice President.....	Harriet Levinson.....	Warren E. Copeland.....	Warren E. Copeland.
Secretary.....	Warren E. Copeland.....	Mrs. Harriet Levinson.....	Warren E. Copeland.
Treasurer.....	Earl Copeland.....	Maurice S. Levinson.....	Earl Copeland.
Number of Shares Owned			
By:			
Maurice S. Levinson.....	50	54	750
Harriet (Maurice S.) Levinson.....		1	
Earl Copeland.....	50	54	750
Warren E. Copeland.....		1	
Total number of shares outstanding..	100	110	1,500

Respondent Jan-Warren Corporation has issued and outstanding, 100 shares of capital stock, 50 shares of which is owned by respondent Maurice S. Levinson, and the remaining 50 shares by respondent Earl Copeland.

Respondent Oneida Frozen Food Corporation, has issued and outstanding 110 shares of capital stock, 54 shares of which is owned by respondent Maurice S. Levinson and 1 share by his wife, respondent Harriet Levinson. 54 shares is owned by respondent Earl Copeland and one share by his son, respondent Warren E. Copeland.

Respondent Minute Maid Representatives of New York State, Inc., has issued and outstanding 1,500 shares of capital stock, 750 shares of which is owned by Maurice S. Levinson, and the remaining 750 shares is owned by Earl Copeland.

Thus, there is a complete interlocking stock ownership, of each of the three respondent corporations. The income received by each of the three respondent corporations is for the benefit of the respective stockholders.

PAR. 9. In the course and conduct of their business, said corporate and individual respondents, and each of them, continuously since June 19, 1936, or more particularly since January 1, 1947, made purchases of food products from sellers with places of business located in several States of the United States, other than the State where said respondents are located, and respondents, and each of them, corporate and individual, directly or indirectly caused such food products so purchased to be transported from said States to destinations in other States. There is and has been at all times mentioned herein a continuous course of trade and commerce as "commerce" is defined in the Clayton Act, as amended, in said food products, across State lines between said respondents and each of them and the sellers of said food



products. Said food products are sold and distributed for use, consumption or resale within the various States of the United States.

PAR. 10. Respondents Jan-Warren Corporation, Oneida Frozen Food Corporation, and Minute Maid Representatives of New York State, Inc., and individual respondents, and each of them through said corporate respondents, since June 19, 1936, and more particularly since January 1, 1947 have purchased food products for their own account for resale and said respondents, corporate and individual, and each of them, received and accepted, directly or indirectly, commissions, brokerage, or allowances or discounts in lieu thereof, in substantial amounts from interstate sellers on such purchases.

Respondent Jan-Warren Corporation and individual respondents and each of them through said corporate respondent since June 19, 1936, and more particularly since January 1, 1947 have purchased food products for the account of respondents Oneida Frozen Food Corporation and Minute Maid Representatives of New York State, Inc., for resale and said respondents, corporate and individual, and each of them received and accepted, directly or indirectly, commissions, brokerage, or allowances or discounts in lieu thereof in substantial amounts from interstate sellers on such purchases.

PAR. 11. The Acts and practices of respondents corporate and individual, and each of them, individually and collectively since June 19, 1936, or more particularly since January 1, 1947, in receiving and accepting commissions, brokerage fees or other compensation, allowances or discounts in lieu thereof on purchases of food products in commerce made directly or indirectly for their own account as above alleged, are in violation of subsection (c) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

#### CONSENT SETTLEMENT<sup>1</sup>

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. A. Section 13) the Federal Trade

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

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on June 25, 1953, and ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

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

Commission on December 15, 1952, issued and subsequently served its complaint on the respondents, and each of them, named in the caption hereof, charging them, and each of them, with receiving and accepting commissions, brokerage fees or other compensation, allowances or discounts in lieu thereof on purchases of food products in commerce made directly or indirectly for their own account in violation of subsection (c) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

The respondents, and each of them, 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, and review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of the answer to said complaint heretofore filed and which, upon acceptance by the Commission of this settlement, are to be withdrawn from the record, hereby:

1. Admit all the jurisdictional allegations set forth in the complaint.

2. Consent that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist. It is understood that the respondents, and each of them, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrain from admitting or denying that they have engaged in any of the acts or practices stated therein to be in violation of law.

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

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

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. That respondent Jan-Warren Corporation, is a corporation organized, existing and doing business under the laws of the State of New York, with its principal office and place of business located at 215 North Genesee Street, Utica, New York. Respondent is engaged in the business of buying, selling and distributing frozen

foods, frozen juices and other food products, all of which are hereinafter designated as food products.

PAR. 2. That respondent Oneida Frozen Food Corporation, is a corporation organized, existing and doing business under the laws of the State of New York, with its principal office and place of business located at 215 North Genesee Street, Utica, New York. Respondent is engaged in the business of buying, selling and distributing frozen foods, frozen juices and other food products, all of which are hereinafter designated as food products.

PAR. 3. That respondent Minute Maid Representatives of New York State, Inc., is a corporation organized under the laws of the State of New York, with its principal office and place of business located at 215 North Genesee Street, Utica, New York. Respondent is engaged in the business of buying, selling and distributing frozen juices, which are hereinafter designated as food products.

PAR. 4. That respondent Maurice S. Levinson is an individual residing at 105 Arlington Road, Utica, New York. He is now President of Jan-Warren Corporation and, as of the date of the complaint herein, he was also Treasurer of Oneida Frozen Food Corporation. After becoming an officer, and for some time prior to the date of the complaint, as President and Treasurer of above named respondent corporations, said respondent, together with respondents Mrs. Harriet (Maurice S.) Levinson, Earl Copeland, and Warren E. Copeland, exercised complete control over the business conducted by said respondent corporations, including the direction of their buying, selling and distribution policies. At the present time, said respondent still exercises such control over the business conducted by Jan-Warren Corporation and Minute Maid Representatives of New York State, Inc.

PAR. 5. That respondent Mrs. Harriet (Maurice S.) Levinson, is an individual residing at 105 Arlington Road, Utica, New York, and is the wife of respondent Maurice S. Levinson.

That said respondent is Vice President of Jan-Warren Corporation, and, as of the date of the complaint, she was Secretary of Oneida Frozen Food Corporation. After becoming an officer, and for some time prior to the date of the complaint, as Vice President and Secretary of the respective respondent corporations, said respondent, together with respondents Maurice S. Levinson, Earl Copeland and Warren E. Copeland, exercised complete control over the business conducted by said respondent corporations, including the direction of their buying, selling and distributing policies. At the present time, said

respondent still exercises such control over the business conducted by Jan-Warren Corporation.

PAR. 6. That respondent Earl Copeland is an individual residing at 47 Emerson Avenue, Utica, New York. He is now President of Oneida Frozen Food Corporation and as of the date of the complaint, he was Treasurer of Jan-Warren Corporation and Minute Maid Representatives of New York State, Inc.

That after becoming an officer, and for some time prior to the date of the complaint, as President and Treasurer of the respective respondent corporations, said respondent, together with respondents Warren E. Copeland, Maurice S. Levinson, and Mrs. Harriet (Maurice S.) Levinson, exercised complete control over the business conducted by said respondent corporations, including the direction of their buying, selling and distributing policies. At the present time, said respondent still exercises such control over the business conducted by Oneida Frozen Food Corporation.

PAR. 7. That respondent Warren E. Copeland is an individual residing at One Allen Road, Utica, New York, and is a son of respondent Earl Copeland. Said respondent is now Vice President of Oneida Frozen Food Corporation, and, as of the date of the complaint, he was Vice President of Minute Maid Representatives of New York State, Inc. and Secretary of Jan-Warren Corporation and Minute Maid Representatives of New York State, Inc.

That after becoming an officer, and for some time prior to the date of the complaint, as Vice President and Secretary of the respective respondent corporations, said respondent, together with respondents Earl Copeland, Maurice S. Levinson and Mrs. Harriet (Maurice S.) Levinson, exercised complete control over the business conducted by said respondent corporations, including the direction of their buying, selling and distribution policies. At the present time, said respondent still exercises such control over the business conducted by Oneida Frozen Food Corporation.

PAR. 8. That as of the date of the complaint all of the capital stock of each of the three respondent corporations was wholly owned by the four individual respondents, the two individual Levinson respondents owning 50 percent of the capital stock of each of the three respondent corporations, while the remaining 50 percent of the capital stock of each of said respondent corporations was owned by the two individual Copeland respondents.

That a summary of the corporate organization of each of the three respondent corporations, together with their respective stockholders, as of the date of the complaint, is set out herewith :

1495

## Findings

Officers	Jan-Warren Corporation	Oneida Frozen Food Corporation	Minute Maid Representatives of New York State, Inc.
President.....	Maurice S. Levinson.....	Earl Copeland.....	Maurice S. Levinson.
Vice President.....	Harriet Levinson.....	Warren E. Copeland.....	Warren E. Copeland.
Secretary.....	Warren E. Copeland.....	Mrs. Harriet Levinson.....	Warren E. Copeland.
Treasurer.....	Earl Copeland.....	Maurice S. Levinson.....	Earl Copeland.
Number of Shares Owned By:			
Maurice S. Levinson.....	100	54	750
Harriet (Maurice S.) Levinson.....		1	
Earl Copeland.....	100	54	750
Warren E. Copeland.....		1	
Total number of shares outstanding.	200	110	1,500

That as of the date of the complaint respondent Jan-Warren Corporation had issued and outstanding 200 shares of capital stock, 100 shares of which were owned by respondent Maurice S. Levinson, and the remaining 100 shares by respondent Earl Copeland.

That respondent Oneida Frozen Food Corporation had issued and outstanding 110 shares of capital stock, 54 shares of which were owned by respondent Maurice S. Levinson and 1 share by his wife, respondent Harriet Levinson. 54 shares were owned by respondent Earl Copeland and one share by his son, respondent Warren E. Copeland.

That as of said date respondent Minute Maid Representatives of New York State, Inc., had issued and outstanding 1,500 shares of capital stock, 750 shares of which were owned by Maurice S. Levinson, and the remaining 750 shares were owned by Earl Copeland.

That thus, as of said date, there was a complete interlocking stock ownership of each of the three respondent corporations. The income received by each of the three respondent corporations was for the benefit of the respective stockholders.

PAR. 9. That subsequent to the date of the complaint the respondents Maurice S. and Harriet Levinson did assign all of their common stock and interest in Oneida Frozen Food Corporation to the respondents Earl and Warren E. Copeland. That subsequent to the date of the complaint the respondents Earl and Warren E. Copeland did assign all of their common stock and interest in Jan-Warren Corporation and Minute Maid Representatives of New York State, Inc., to the respondents Maurice S. and Harriet Levinson.

That as of the date hereof the respondents Maurice S. and Harriet Levinson have no interest in nor are they officers of the respondent Oneida Frozen Food Corporation.

That as of the date hereof the respondents Earl and Warren E. Copeland have no interest in nor are they officers of the respondents Jan-Warren Corporation and Minute Maid Representatives of New York State, Inc.

PAR. 10. That in the course and conduct of their business, said corporate and individual respondents, and each of them, continuously since June 19, 1936, or more particularly since January 1, 1947, made purchases of food products from sellers with places of business located in several States of the United States, other than the State where said respondents are located, and respondents, and each of them, corporate and individual, directly or indirectly caused such food products so purchased to be transported from said States to destinations in other States. There is and has been at all times mentioned herein a continuous course of trade and commerce, as "commerce" is defined in the Clayton Act, in said food products, across State lines between said respondents and each of them and the sellers of said food products. Said food products are sold and distributed for use, consumption or resale within the various States of the United States.

PAR. 11. That respondents Jan-Warren Corporation, Oneida Frozen Food Corporation, and Minute Maid Representatives of New York State, Inc., and the individual respondents, and each of them through said corporate respondents, subsequent to June 19, 1936, and more particularly between January 1, 1947 and the date of the complaint, purchased food products for their respective accounts for resale, and said respondents, corporate and individual, and each of them, received and accepted, directly or indirectly, commissions, brokerage, or allowances or discounts in lieu thereof, in substantial amounts, from interstate sellers on such purchases.

That respondent Jan-Warren Corporation and the individual respondents, and each of them through said corporate respondent, subsequent to June 19, 1936, and more particularly between January 1, 1947 and the date of the complaint, purchased food products for the account of respondents Oneida Frozen Food Corporation and Minute Maid Representatives of New York State, Inc., for resale, and said respondents, corporate and individual, and each of them, received and accepted, directly or indirectly, commissions, brokerage, or allowances or discounts in lieu thereof, in substantial amounts from interstate sellers on such purchases.

PAR. 12. That the acts and practices of respondents, corporate and individual, and each of them, individually and collectively, subsequent to June 19, 1936, or more particularly between January 1, 1947

1495

## Order

and the date of the complaint, in receiving and accepting commissions, brokerage fees or other compensation, allowances or discounts in lieu thereof on purchases of food products in commerce made directly or indirectly for their own accounts as above found, were in violation of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

## CONCLUSION

In receiving and accepting commissions, brokerage fees, or other compensation, allowances or discounts in lieu thereof on purchases of food products in commerce as set forth in paragraph eleven hereof, the respondents, and each of them, have violated the provisions of Section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act.

## ORDER TO CEASE AND DESIST

*It is ordered,* That the respondents, Jan-Warren Corporation and Minute Maid Representatives of New York State, Inc., corporations, and their officers, and the individual respondents Maurice S. Levinson and Mrs. Harriet (Maurice S.) Levinson, individually and as officers of said corporations, and their respective representatives, agents and employees, directly or through any corporate or other device, in connection with the purchase of food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon any purchase of food products by or for the accounts of Jan-Warren Corporation or Minute Maid Representatives of New York State, Inc., or where the respondents Maurice S. Levinson or Mrs. Harriet (Maurice S.) Levinson, or both, are the agents, representatives or other intermediaries acting for, or in behalf of, or subject to the direct or indirect control of any buyer.

*It is further ordered,* That the respondent Oneida Frozen Food Corporation, a corporation, its officers, and the individual respondents Earl Copeland and Warren E. Copeland, individually and as officers of said corporation, and their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the purchase of food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from receiving or accepting, directly or indirectly, from any

Order

49 F. T. C.

seller anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon any purchase of food products by or for the account of Oneida Frozen Food Corporation, or where the respondents Earl Copeland or Warren E. Copeland, or both, are the agents, representatives, or other intermediaries acting for, or in behalf of, or subject to the direct or indirect control of any buyer.

*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.

JAN-WARREN CORPORATION,  
a corporation.

By [S] MAURICE S. LEVINSON, *Pres.*

ONEIDA FROZEN FOOD CORPORATION,  
a corporation.

By [S] EARL COPELAND

*Pres.*, MINUTE MAID REPRESENTATIVES OF NEW YORK STATE, INC.,  
a corporation.

By [S] MAURICE S. LEVINSON

*Pres.*, MAURICE S. LEVINSON, individually and as *President* of Jan-Warren Corporation, and Minute Maid Representatives of New York State, Inc., and formerly Treasurer of Oneida Frozen Food Corporation.

[S] MAURICE S. LEVINSON

Maurice S. Levinson

MRS. HARRIET (MAURICE S.) LEVINSON,  
individually and as *Vice President* of Jan-Warren Corporation, and formerly Secretary of Oneida Frozen Food Corporation.

[S] HARRIET C. LEVINSON

Mrs. Harriet (Maurice S.) Levinson

EARL COPELAND

individually and as *President* of Oneida Frozen Food Corporation, and formerly Treasurer of Jan-Warren Corporation and Minute Maid Representatives of New York State, Inc.



1495

Order

[S] EARL COPELAND  
Earl Copeland

WARREN E. COPELAND

individually and as *Vice President* of On-  
eida Frozen Food Corporation, and form-  
erly Vice President and Secretary of  
Minute Maid Representatives of New  
York State, Inc., and formerly Secretary  
of Jan- Warren-Corporation.

[S] WARREN E. COPELAND  
Warren E. Copeland

Date:

The foregoing consent settlement is hereby accepted by the Federal  
Trade Commission and entered of record on this the 25th day of  
June, 1953.

IN THE MATTER OF  
SIMMONDS UPHOLSTERY CO., INC. ET AL.

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

*Docket 6080. Complaint, Feb. 6, 1953—Decision, June 25, 1953*

Where two corporations and their three officers, engaged in the business of reupholstering furniture and in the sale of materials therefor, in competition with others similarly engaged, under a plan whereby one of the two, with principal office in Massachusetts and with branch offices in New York, New Hampshire, Connecticut, Vermont, Rhode Island, and New Jersey, granted franchise to local upholsters in various states pursuant to which they were allowed to use the name of the other; said local upholsterers had full responsibility for production, financing, pick up and delivery, and servicing of sales of upholstering; and said granting corporation furnished them with a schedule of minimum fees, and collected from said dealers 20% of the minimum fee, and all of the amount charged over said minimum, plus a \$30.00 management fee on each upholstering job; in advertisements in newspapers, radio continuities, and other advertising media—

- (a) Represented that their business was established in 1899; when in fact it was not established until many years thereafter;
- (b) Represented that a featured price of \$59.00 for completely reupholstering a sofa and a chair was a special price and offered for a limited time only, and that a sofa and chair reupholstered for said price would be covered with beautiful fabrics with floral designs;

When in fact the offer was not limited but was continuous; it was made only to arouse interest of prospective purchasers; their salesmen were instructed not to consummate sales at such a price, and in the rare instance where it was done, the customer's furniture was not covered with beautiful fabric with floral designs, but instead with cheap denim;

- (c) Represented that regardless of the style or condition of the furniture, they would remodel or custom build the frames; the facts being that in many instances they and their franchise representatives did not thus remodel or custom build old frames accepted by them, and in some instances replaced the old frame with an inexpensive one;
- (d) Misleadingly represented that their reupholstery work was fully guaranteed for a period of ten years, which guarantee might reasonably be interpreted as covering both workmanship and materials; when in fact it did not extend to the latter, and in many instances they did not conform thereunder even as to workmanship;
- (e) Represented that they owned and operated a seven-story factory in which the work would be done, through depiction of a large, seven-story factory building bearing their corporate name and the statement "Our 7-story fac-

1508

## Complaint

tory contains the largest reupholstering plant in America"; when in fact much of the upholstery and other work was actually done by local holders of their franchise agreements;

With tendency and capacity to mislead and deceive members of the purchasing public into the erroneous belief that such representations were true and thereby induce substantial numbers thereof to enter into contracts with them to purchase reupholstering and the materials used therein:

*Held*, That such acts and practices and methods, 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. James A. Purcell*, hearing examiner.

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

*Ford, Bergson, Adams & Borkland*, of Washington, D. C., for respondents.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Simmonds Upholstery Co., Inc., a corporation, Simmonds Sales System, Inc., a corporation, and Abe Baker, Edward Williams, and Sidney Rubin, individually and as officers of said corporations; and Abe Baker, trading as Simmonds Upholstery Co., 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. Corporate respondent Simmonds Upholstery Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 599 Canal Street, Lawrence, Massachusetts, with branch factories located in the States of New York, New Hampshire, Connecticut, Vermont, Rhode Island, and New Jersey. Corporate respondent Simmonds Sales System, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its office and principal place of business located at 599 Canal Street, Lawrence, Massachusetts. Respondents Abe Baker, Edward Williams, and Sidney Rubin are officers of the corporate respondents and, as such officers, formulate, direct, and control the policies, acts, and practices of said corporate respondents. The addresses of the individual respondents are the same as that of the corporate respondents.

Prior to the incorporation of Simmonds Upholstery Co., Inc., in October 1951, the business now carried on by it was carried on by respondent Abe Baker, doing business as Simmonds Upholstery Co.

PAR. 2. Corporate respondent Simmonds Sales System, Inc., grants franchises to local upholsterers in various States whereby they are allowed to use the name, Simmonds Upholstery Co. The local upholsterers have full responsibility for production, financing, pick-up, and delivery and servicing of sales of upholstering. Corporate respondent Simmonds Sales System, Inc., is responsible for securing orders for upholstering, management and budgeting of the advertising campaign. This corporate respondent furnishes its franchise representatives with a schedule of minimum fees and collects from said dealers 20% of the minimum fee, all of the amount charged over the minimum fee plus a \$30.00 management fee on each upholstering job. Simmonds Sales System, Inc., and Simmonds Upholstery Co., Inc., cooperate in the practices hereinafter set forth.

PAR. 3. The respondents are now, and for more than one year last past have been, engaged in the business of selling materials for upholstering and in reupholstering furniture. In the course and conduct of their business, customers of respondents ship furniture from their points of location in various States to respondents' places of business and to the places of business of their franchise representatives in other States; and when the upholstering materials sold by respondents have been applied to the furniture and the reupholstering completed, said furniture is reshipped to customers located in various States other than those in which said reshipments originate.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said business in commerce among and between the various States of the United States and in the District of Columbia. Their volume of trade in said business in such commerce is and has been substantial.

PAR. 4. In the course and conduct of the aforesaid business and for the purpose of inducing the sale of their reupholstering and the materials therefor, respondents have made and are now making certain statements and representations concerning the quality, value and nature of their said work and materials by means of advertisements in newspapers, radio continuities and other advertising media of general circulation in various States of the United States. Among and typical of said advertisements and representations, but not all-inclusive thereof, are the following:

1508

Complaint

AMERICA'S LARGEST REUPHOLSTERERS . . .

ESTABLISHED 1899

FOR A LIMITED TIME

SOFA AND CHAIR

COMPLETELY REUPHOLSTERED

ONLY

\$59 (in large type)

Single Chairs \$24.50

Single Sofas 42.50

and up according to style and fabric

LADIES HERE'S AN AMAZING BARGAIN SALE ON REUPHOLSTERING YOUR LIVING ROOM FURNITURE. WHILE THIS SENSATIONAL SALE LASTS—IF YOU ACT FAST—SIMMONDS WILL REBUILD, RESTYLE AND REUPHOLSTER YOUR LIVING ROOM FURNITURE FOR AS LITTLE AS FIFTY NINE DOLLARS. SIMMONDS ARE AMERICA'S OLDEST AND LARGEST REUPHOLSTERER, IN BUSINESS SINCE 1899. FOR JUST FIFTY NINE DOLLARS YOUR LIVING ROOM FURNITURE WILL BE COMPLETELY REBUILT, RESTYLED, REUPHOLSTERED, LOOK AND WEAR BETTER THAN NEW FOR JUST FIFTY NINE DOLLARS.

10-YEAR WRITTEN GUARANTEE ON ALL OUR WORKMANSHIP.

REGARDLESS OF THE STYLE OR CONDITION OF YOUR FURNITURE, SIMMONDS WILL REMODEL OR CUSTOM BUILD THE FRAMES AND REUPHOLSTER IN TRADITIONAL SIMMONDS QUALITY AT AMAZINGLY LOW PRICES.

As a part of respondents' newspaper advertisements featuring their two-piece reupholstering service for \$59 appear pictures of sofas and chairs, both before and after the reupholstering work. The "after" pictures, which are represented as actual photos of the pieces as they left the factory, are of sofas and chairs covered with beautiful fabrics with floral designs.

Respondents' newspaper advertisements also carry the picture of a large seven-story factory building, immediately underneath which is the following statement:

Our 7-story factory contains the largest re-upholstering plant in America.

Photographs of a seven-story factory building bearing three large signs reading: "SIMMONDS UPHOLSTERING CO., DIRECT FACTORY TO YOU REUPHOLSTERERS and MASTER CRAFTSMEN SINCE 1899" are also exhibited to customers and prospective customers by salesmen of respondents.

PAR. 5. Through the use of their aforesaid statements and representations and others of the same or similar import, not specifically set out herein, respondents have represented and now represent:

That they are America's largest reupholsterers;

That their business was established in 1899;

That their featured price of \$59 for completely reupholstering a sofa and a chair is a special price and offered for a limited time only;

That regardless of the style or condition of the furniture they will remodel or custom build the frames;

That their reupholstery work is fully guaranteed for a period of ten years;

That a sofa and a chair reupholstered for the price of \$59 will be covered with beautiful fabrics with floral designs;

That they own and operate a seven-story factory which is the largest upholstery plant in America.

PAR. 6. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact, respondents are not America's largest reupholsterers. Their reupholstery business was not established in 1899, but many years thereafter. Respondents' offer to reupholster two pieces of furniture for \$59 is not a special or bona fide offer in good faith but is made only for the purpose of arousing the interest of prospective purchasers thereby enabling respondents to attempt to sell reupholstering to such prospective purchasers at much greater prices. As a matter of fact, respondents' salesmen are instructed not to consummate sales at such price and extremely few sales are actually made at such price. Their said offer is not for a limited time but is a continuous offer. In many instances respondents and their franchise representatives do not remodel or custom build old frames of furniture accepted by them for reupholstering. In some instances the old frame is replaced with an inexpensive frame. The statement concerning respondents' guarantee may reasonably be interpreted as a representation that they guarantee both workmanship and materials. As a matter of fact such guarantee does not extend to materials. In addition, the customer is required to pay transportation costs, which fact is not disclosed in the advertisement. In many instances respondents do not perform under their guarantee even as to workmanship. In the rare instances where the respondents agree to reupholster a sofa and a chair for the advertised price of \$59, the customer's furniture is not covered with beautiful fabric with floral designs as portrayed in newspaper advertisements, but instead with cheap denim. Respondents do not own or control the seven-story factory in which they perform their reupholstery work as represented. They rent a portion of the space in a seven-story building in Lawrence, Massachusetts, which they utilize in connection with their reupholstery work. The portion of this building occupied by respondents is not the largest upholstering plant in America.

PAR. 7. Respondents in the conduct of their said businesses are in substantial competition in commerce with other corporations and with individuals and firms also engaged in the business of reupholstering furniture and in the sale of materials therefor.

PAR. 8. All of the aforesaid acts and practices of the respondents are misleading and deceptive and have had and now have the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true and to induce substantial numbers of the purchasing public, because of such erroneous and mistaken belief, to enter into contracts with respondents for the purchase of and to purchase reupholstering and the materials used therein.

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

#### CONSENT SETTLEMENT <sup>1</sup>

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 6, 1953, issued and subsequently served its complaint on the respondents named in the caption hereof, charging them with unfair and deceptive acts and practices in commerce and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act. The respondents Simmonds Upholstery Co., Inc., a corporation, Simmonds Sales System, Inc., a corporation, Abe Baker, Edward Williams and Sidney Rubin, individually and as officers of said corporations; and Abe Baker, trading as Simmonds Upholstery Co. desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purpose of this proceeding, any review thereof and the enforcement of the order consented to and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth and in lieu of answer to said complaint filed April 6, 1953, hereby :

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

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on June 25, 1953, and ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

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

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

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 respondents, in consenting to the Commission's entry of said findings as to the facts, conclusions and order to cease and desist, specifically refrain from admitting or denying that they have engaged in any of the acts or practices stated therein to be in violation of law.

3. 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 has reason to believe are unlawful, the conclusion based thereon, and the order to cease and desist, all of which the respondents consent, may be entered herein in final disposition of this proceeding, are as follows:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Corporate respondent Simmonds Upholstery Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal place of business at 745 Fifth Avenue, New York, New York. Corporate respondent Simmonds Sales System, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its office and principal place of business located at 599 Canal Street, Lawrence, Massachusetts, with branch offices located in the States of New York, New Hampshire, Connecticut, Vermont, Rhode Island and New Jersey. Respondents Abe Baker, Edward Williams, and Sidney Rubin are officers of the corporate respondents and, as such officers, formulate, direct, and control the policies, acts, and practices of said corporate respondents. The addresses of the individual respondents are the same as that of the corporate respondents. Prior to the incorporation of Simmonds Upholstery Co., Inc., in October, 1951, the business now carried on by it was carried on by respondent Abe Baker, doing business as Simmonds Upholstery Co.

PAR. 2. Corporate respondent Simmonds Sales System, Inc., grants franchises to local upholsterers in various States whereby they are allowed to use the name, Simmonds Upholstery Co. The local upholsterers have full responsibility for production, financing, pick-up, and delivery and servicing of sales of upholstering. Corporate re-



1508

## Findings

spondent Simmonds Sales System, Inc., is responsible for securing orders for upholstering, management and budgeting of the advertising campaign. This corporate respondent furnishes its franchise representatives with a schedule of minimum fees and collects from said dealers 20 percent of the minimum fee, all of the amount charged over the minimum fee plus a \$30.00 management fee on each upholstering job. Simmonds Sales System, Inc., and Simmonds Upholstery Co., Inc., cooperate in the practices hereinafter set forth.

PAR. 3. The respondents are now, and for more than one year last past have been, engaged in the business of reupholstering furniture. In the course and conduct of their business, furniture of customers is picked up or shipped from their points of location in various States to respondents' places of business and to the places of their franchise representatives in other States and when reupholstering has been completed, said furniture is reshipped or delivered to customers located in various States other than those in which said pickups or reshipments originate.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said business in commerce among and between the various States of the United States. Their volume of trade in said business in such commerce is and has been substantial.

PAR. 4. In the course and conduct of the aforesaid business and for the purpose of inducing the sale of their reupholstering and the materials therefor, respondents have made and are now making certain statements and representations concerning the quality, value and nature of their said work and materials by means of advertisements in newspapers, radio continuities and other advertising media of general circulation in various States of the United States. Among and typical of said advertisements and representations, but not all-inclusive thereof, are the following:

AMERICA'S LARGEST REUPHOLSTERERS . . .  
ESTABLISHED 1899  
FOR A LIMITED TIME  
SOFA AND CHAIR  
COMPLETELY REUPHOLSTERED  
ONLY  
\$59 (in large type)  
Single Chairs \$24.50  
Single Sofas 42.50

and up according to style and fabric

LADIES HERE'S AN AMAZING BARGAIN SALE ON REUPHOLSTERING  
YOUR LIVING ROOM FURNITURE. WHILE THIS SENSATIONAL SALE  
LASTS—IF YOU ACT FAST—SIMMONDS WILL REBUILD, RESTYLE AND  
REUPHOLSTER YOUR LIVING ROOM FURNITURE FOR AS LITTLE AS

FIFTY NINE DOLLARS. SIMMONDS ARE AMERICA'S OLDEST AND LARGEST REUPHOLSTERER, IN BUSINESS SINCE 1899. FOR JUST FIFTY NINE DOLLARS YOUR LIVING ROOM FURNITURE WILL BE COMPLETELY REBUILT, RESTYLED, REUPHOLSTERED, LOOK AND WEAR BETTER THAN NEW FOR JUST FIFTY NINE DOLLARS.

10-YEAR WRITTEN GUARANTEE ON ALL OUR WORKMANSHIP.

REGARDLESS OF THE STYLE OR CONDITION OF YOUR FURNITURE, SIMMONDS WILL REMODEL OR CUSTOM BUILD THE FRAMES AND REUPHOLSTER IN TRADITIONAL SIMMONDS QUALITY AT AMAZINGLY LOW PRICES.

As a part of respondents' newspaper advertisements featuring their two-piece reupholstering service for \$59 appear pictures of sofas and chairs, both before and after the reupholstering work. The "after" pictures, which are represented as actual photos of the pieces as they left the factory, are of sofas and chairs covered with beautiful fabrics with floral designs.

Respondents' newspaper advertisements also carry the picture of a large seven-story factory building, immediately underneath which is the following statement:

Our 7-story factory contains the largest re-upholstering plant in America.

Photographs of a seven-story factory building bearing three large signs reading: "SIMMONDS UPHOLSTERING CO., DIRECT FACTORY TO YOUR REUPHOLSTERERS and MASTER CRAFTSMEN SINCE 1899" are also exhibited to customers and prospective customers by salesmen of respondents.

PAR. 5. Through the use of their aforesaid statements and representations and others of the same or similar import, not specifically set out herein, respondents have represented and now represent:

That their business was established in 1899:

That their featured price of \$59 for completely reupholstering a sofa and a chair is a special price and offered for a limited time only:

That regardless of the style or condition of the furniture they will remodel or custom build the frames;

That their reupholstery work is fully guaranteed for a period of ten years;

That a sofa and a chair reupholstered for the price of \$59 will be covered with beautiful fabrics with floral designs;

That they own and operate a seven-story factory in which the work of persons replying to the advertisement will be done.

PAR. 6. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact, respondents' upholstery business was not established in 1899 but many years thereafter. Respondents' offer to reupholster two pieces of furniture for \$59 is

not a special or bona fide offer in good faith but is made only for the purpose of arousing the interest of prospective purchasers thereby enabling respondents to attempt to sell reupholstering to such prospective purchasers at much greater prices. As a matter of fact, respondents' salesmen are instructed not to consummate sales at such price and extremely few sales are actually made at such price. Their said offer is not for a limited time but is a continuous offer. In many instances respondents and their franchise representatives do not remodel or custom build old frames of furniture accepted by them for reupholstering. In some instances the old frame is replaced with an inexpensive frame. The statement concerning respondents' guarantee may reasonably be interpreted as a representation that they guarantee both workmanship and materials. As a matter of fact such guarantee does not extend to materials. In many instances respondents do not perform under their guarantee even as to workmanship. In the rare instances where the respondents agree to reupholster a sofa and a chair for the advertised price of \$59, the customer's furniture is not covered with beautiful fabric with floral designs as portrayed in newspaper advertisements, but instead with cheap denim. Much of the upholstery and other work is actually done by local upholsterers who are holders of respondents' franchise agreements and is not done in the pictured seven-story building.

PAR. 7. Respondents in the conduct of their said businesses are in substantial competition in commerce with other corporations and with individuals and firms also engaged in the business of reupholstering furniture and in the sale of materials therefor.

PAR. 8. All of the aforesaid acts and practices of the respondents are misleading and deceptive and have had and now have the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true and to induce substantial numbers of the purchasing public, because of such erroneous and mistaken belief, to enter into contracts with respondents for the purpose of and to purchase reupholstering and the materials used therein.

#### CONCLUSION

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

Order

49 F. T. C.

## ORDER TO CEASE AND DESIST

*It is ordered,* That the respondents, Simmonds Upholstery Co., Inc., a corporation, and Simmonds Sales System, Inc., a corporation, and their officers, and the respondents, Abe Baker, Edward Williams and Sidney Rubin, individually and as officers of said corporations, and respondent Abe Baker, trading as Simmonds Upholstery Co., or trading under any other name, and said respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or delivery of upholstering materials, whether sold separately or as part of a charge for reupholstering furniture, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication:

1. That reupholstering will be done in a larger or different plant than is the fact.

2. That their business was established in 1899 or in any other year contrary to the fact.

3. That any price regularly or customarily offered is a special price or that any offer is for a limited time when such offer is a continuous one.

4. That furniture will be reupholstered at a price at which their salesmen have been instructed not to make sales, or at prices which are not listed in good faith.

5. That the frames of furniture delivered for reupholstering will be remodeled or rebuilt without further indicating that the customers' frames may be replaced with new frames.

6. That the quality or value of the materials used in reupholstering is superior to what it is in fact.

7. That the reupholstering is guaranteed in any manner unless the guarantee is in fact performed, and unless, where the guarantee is limited to workmanship, it is clearly, conspicuously and explicitly stated in immediate conjunction with the representation of guarantee that the guarantee is a guarantee of workmanship.

*It is further ordered,* That the respondents shall, within sixty (60) days after service upon them of this order, file with the Commission

1508

Order

a report in writing setting forth in detail the manner and form in which they have complied with this order.

Dated May 26, 1953.

SIMMONDS UPHOLSTERY Co., INC.,  
a corporation.

By [s] ABE BAKER  
ABE BAKER, individually and as officer of  
said corporation

By [s] EDWARD WILLIAMS  
EDWARD WILLIAMS, individually and as  
officer of said corporation.

By [s] SIDNEY RUBIN  
SIDNEY RUBIN, individually and as officer  
of said corporation.

SIMMONDS SALES SYSTEM, INC.,  
a corporation.

By [s] ABE BAKER  
ABE BAKER, individually and as officer of  
said corporation.

By [s] EDWARD WILLIAMS  
EDWARD WILLIAMS, individually and as  
officer of said corporation.

By [s] SIDNEY RUBIN  
SIDNEY RUBIN, individually and as officer  
of said corporation.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this 25th day of June, 1953.

IN THE MATTER OF  
A. C. LIEPE PHARMACY, INC. ET AL.

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

*Docket 5873. Complaint, Apr. 17, 1931—Decision, June 29, 1953*

The basic cause of varicose conditions is impaired circulation due to a dilated thickened vein condition known as a varicose vein; and varicose ulcers—sometimes referred to as leg sores, open legs, or discharging wounds—are ulcerated areas of the epidermis of the leg due to poor circulation caused by such a vein.

Proper treatment of a leg ulcer requires a careful diagnosis as the treatment is dictated by the underlying cause, there being many conditions which might result in an ulcer which would be indistinguishable by the layman from a varicose ulcer, proper treatment of which consists of treatment of the varicose vein and other measures, including, possibly, X-ray or ultra-violet therapy, use of antibiotics, and surgical treatment.

Eczema is a catarrhal inflammation of the skin characterized by redness and itching, among other things; there are many types of said ailment, and many causes; and it is necessary to diagnose carefully the conditions thereof before treatment, since the latter varies greatly depending upon the cause of the condition and its state at the time.

It is extremely difficult to distinguish between ulcers, inflamed areas around veins, and eczema, due to varicose conditions and those due to other causes such as tuberculosis, diabetes, syphilis and many others, and the ordinary layman patient is not able to make such a determination.

Early determination of the cause of such conditions is extremely important as what appears to the layman to be a condition due to a varicose vein may be in reality due to a very serious underlying cause; and certain of such conditions—for which the proper treatment is entirely different from that appropriate where the condition is due to varicose veins—may, if allowed to develop, endanger the patient's life.

Where a corporation and its two officers, engaged in the interstate sale and distribution of several preparations sold in combination and sometimes referred to as "The Liepe Methods," which included their "Liepe Cleansing Oil," "Bland Oil," "Dusting Powder Soothing," "Dusting Powder Protective," "Special Ointment No. 1," "Special Ointment No. 2" and their "Liepe Special Bandage";

In magazine and newspaper advertisements which invited persons suffering from varicose ulcers and open leg sores to write for their booklet "The Liepe Methods for Home Use," together with which they sent a "Question Blank" for use in the purchase of their said products; and through reproductions in said booklet and in folders and circulars, of excerpts from testimonials—

- (a) Falsely represented, directly or by implication that the use of their said products as directed constituted a competent and effective treatment for, and would cure, varicose ulcers, leg sores, open legs, discharging wounds and inflamed areas around the veins; and
- (b) Represented that their said preparation would permanently relieve the pain, itching, burning, and swelling accompanying the aforesaid conditions, promote better circulation, prevent infection and ulcer formation, aid healing and eliminate pus and other discharges from leg sores;

The facts being that in cases of said leg ailments they would not relieve swelling in excess of preventing it while the bandage was applied; prevent any other than surface infections; aid healing other than by providing an anti-septic protective covering for the affected area; or relieve pain, itching, or burning in excess of providing relief while the preparations were in such area;

- (c) Represented that their said preparations would cure eczema and constituted a competent and effective treatment therefor;

The facts being that while their method, used as directed, would temporarily relieve itching and burning while their preparation, including the ointments with their content of zinc oxide—commonly used in such cases—were applied, it would not cure eczema or have any beneficial effect on its underlying causes;

- (d) Falsely represented that they would be able properly to diagnose the ailments of persons concerned and determine and supply the medicaments which would successfully treat them; and ascertain the condition of the particular person after using their said products and determine and supply proper medicaments for his continued treatment; through the use of and answers to said "Question Blank", with its questions concerning the general health and the symptoms of those who had "inflamed areas around the veins in legs due to varicose conditions", etc., or "symptoms of eczema", through the order blank upon which the person was instructed to check the nature of his afflictions and remit the amount set out, and through the accompanying "Report Blank" on which, along with order for additional preparations, the purchaser was to answer a list of questions as to the effect of the use of said preparation on his symptoms;

Notwithstanding the fact that the ordinary layman patient is not able to distinguish between ulcers, inflamed areas around veins, and eczema due to various conditions and those due to such causes as tuberculosis, diabetes, syphilis, and many others; nor to furnish sufficient information as to his condition by means of the "Question Blank" or "Report Blank" to enable even a very skilled reader to determine his true condition and the proper treatment therefor, including certain very serious conditions for which respondents' methods would not provide a successful treatment; and

- (e) Represented through the use of the heading "Prescription Laboratory" on form letters which they sent to purchasers in the solicitation of additional sales of their said preparations, that their medicaments were especially prepared for each person on the basis of information furnished;

Notwithstanding the fact that all orders were filled by one of said officers, a pharmacist, from their stock preparations;

Complaint

49 F. T. C.

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

*Held*, That said representations constituted false advertisements within the intent and meaning of the Federal Trade Commission Act, and that their said acts and practices were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

As respects respondents' use of the term "Prescription Laboratory" on their letters to prospective purchasers, as above set forth—which use, considered alone, under other circumstances, might appear innocuous—such a heading, employed in conjunction with respondents' "Question Blanks" and "Report Blanks", heightened the false implication that respondents were compounding the preparations for each purchaser individually on the basis of the information he furnished on said blanks as to his symptoms, and thus used, was admitted by respondents to have a misleading effect.

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

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

*Mr. Charles H. Rowan*, of Milwaukee, Wis., 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 A. C. Liepe Pharmacy, Inc., a corporation, and William F. Lambeck, Warren G. Gehrs and Anne C. Gehrs, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof, would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent A. C. Liepe Pharmacy, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin. The corporation trades under the name of "Liepe Methods." Respondent William F. Lambeck is President, Warren G. Gehrs is Secretary-Treasurer, and Anne C. Gehrs is Vice-President of the corporate respondent. The individual respondents formulate, direct and control the policies, acts and practices of the corporate respondent. The office and principal place of business of both corporate respondent and individual respondents is located at 3250 North Green Bay Avenue, Milwaukee 12, Wisconsin.

PAR. 2. The respondents are now and for several years last past have been engaged in the business of selling and distributing various



1520

## Complaint

preparations containing drugs as "drug" is defined in the Federal Trade Commission Act. These preparations are sometimes referred to as "The Liepe Method" and "The Liepe Methods."

The designations used by respondents for their preparations, the formula and directions for use are as follows:

*Designation:* "Liepe Cleansing Oil."

*Formula:*

Olive Oil—oz.  $\frac{1}{2}$   
Mineral Oil—gr. oz. 4

*Directions for use:*

Liepe Cleansing Oil may be used as a bland cleansing agent preparatory to applications of Liepe Special Ointment. It should be "daubed on gently without rubbing."

*Designation:* "Liepe Bland Oil."

*Formula:*

Zinc Oxide Z VI  
Olive Oil—oz. 3  
Lime Water qs. oz. 4

*Directions for use:*

Liepe Bland Oil is intended for use in connection with Liepe Special Ointment No. 2. Shake the bottle thoroughly so that no sediment can be seen at the bottom. Then apply a thin layer of Liepe Bland Oil on top of the ointment.

*Designation:* "Liepe Dusting Powder Soothing."

*Formula:*

Thymol Iodide—gr. 2  
Benzocaine—dr. 1  
 $\frac{1}{8}$  oz.

*Directions for use:*

Liepe Dusting Powder Soothing is intended for use in conjunction with Liepe Special Ointment No. 2. Dust a little of the powder over the surface with a small brush as follows: After dipping the brush into the box of powder, hold it about an inch away from the surface and tap it gently with the index finger of the other hand. Then apply a thin layer of Liepe Special Ointment No. 2 over the powder.

*Designation:*

"Liepe Dusting Powder Protective."

*Formula:*

Zinc Oxide—dr.  $2\frac{1}{2}$   
Zinc Stearate—dr.  $2\frac{1}{2}$   
Starch—dr. 7  
Carbolic Acid—gr. 22  
 $1\frac{1}{2}$  oz.

Complaint

49 F. T. C.

*Directions for use:*

Liepe Dusting Powder Protective is intended for use in conjunction with Liepe Special Ointment No. 1. After applying the ointment, dust a thin layer of powder over it. Take a piece of cotton in the left hand, dip it in the box of dusting powder, and hold your hand directly above the spot where you wish the powder to fall. Then gently tap your left hand with the right hand, and the powder will fall where desired. Be careful that the cotton does not touch the ointment.

*Designation:* "Liepe Special Ointment No. 1."

*Formula:*

Zinc Oxide—8½ lbs.  
 Starch—6 lbs.  
 Mineral Oil—32 oz.  
 Prepared Ointment—2½ lbs.  
 Yellow Wax—½ lb.  
 Acid Salicylic—½ lb.  
 Carbolio Acid—oz. 2½  
 Liq. Carbonis Detergens—oz. 5  
 Oil Wintergreen—oz. 2½  
 White Petrolatum—32 lbs.

*Directions for use:*

Apply ointment to the skin as often as may be required to relieve itching and burning.

*Designation:* "Liepe Special Ointment No. 2."

*Formula:*

Carbolio Acid—oz. 8  
 Zinc Oxide—5 lbs.  
 Prepared Ointment—5 lbs.  
 Mineral Oil—½ gal.  
 Yellow Wax—1½ lbs.  
 White Petrolatum—qs.—50 lbs.

*Directions for use:*

First, clean skin with Liepe Cleansing Oil. Then apply a thin layer of Liepe Special Ointment No. 2 covering the same with a thin layer of Liepe Bland Oil, and protect with soft, white muslin. Repeat application daily.

PAR. 3. Respondents cause their said preparations, when sold, to be transported from their place of business in the State of Wisconsin to the purchasers thereof located in various States of the United States and maintain, and at all times mentioned herein have maintained, a course of trade in said preparations between and among the various States of the United States. Their volume of business in said trade has been and is substantial.

PAR. 4. It is the practice of respondents to insert advertisements in magazines and newspapers of general circulation inviting persons

suffering from leg troubles, such as varicose ulcers and other leg sores, to write for the booklet "The Liepe Methods for Home Use." Upon receipt of a request for this booklet, it is sent, together with a "Question Blank" for use in case respondents' preparations are ordered. This blank consists of a list of questions concerning the general health of the person and specific questions with respect to "inflamed areas around veins in legs," "varicose ulcers or wounds" and "eczema." A part of the "Question Blank" consists of an order upon which the person is to check the nature of his affliction and remit the amount set out in connection therewith. Upon receipt of the completed "Question Blank" and order respondents forward the preparations to be used and detailed directions for use. These directions provide that Liepe Cleaning Oil, Liepe Special Ointment No. 2, Liepe Bland Oil and bandage be used for inflamed areas around veins; that Liepe Cleansing Oil, Liepe Dusting Powder Soothing, Liepe Special Ointment No. 2 and bandage be used for varicose ulcers (leg sores or open legs) and Liepe Cleansing Oil, Liepe Special Ointment No. 1, Liepe Bland Oil and Liepe Dusting Powder Protective and bandage be used for eczema. The letter acknowledging receipt of orders and other letters used in connection with the business bear a picture of a mortar and pestle and the words "Prescription Laboratory." Respondents' "Methods" also include "Report" blanks upon which the users of their preparations are supposed to report their progress from time to time.

PAR. 5. Through the use of the "Question Blank," respondents represent that by means of the answers to the various questions enumerated thereon, they are able to properly diagnose the ailments of the person furnishing the information and to supply the medicaments which will successfully treat such ailments and, through the use of the "Report" blanks, respondents represent that they are able to ascertain the condition of the person after using the medicaments and to supply proper medicaments for the continued treatment of their afflictions. Further, respondents, through the use of the depiction of a mortar and pestle and also the words "Prescription Laboratory," represent that the medicaments sold by respondents are especially prepared for each person according to the information obtained from the "Question Blank" and "Report" blank.

PAR. 6. The aforesaid representations are false, misleading and deceptive. In truth and in fact, respondents are not able by means of the answers supplied on the "Question Blank," or otherwise, to diagnose the ailments of persons or to supply medicaments for the successful treatment thereof nor can they ascertain, by the use of the information furnished on the "Report" blanks, the condition of the

person after using the medicaments nor supply proper medicaments for the continued treatment of their afflictions. The preparations supplied to purchasers are not especially prepared for each person in accordance with information obtained by use of the "Question Blank" and "Report" blank, or otherwise, but are the stock preparations heretofore described in Paragraph Two.

PAR. 7. In the course and conduct of their aforesaid business, respondents, subsequent to March 21, 1938, have disseminated and caused the dissemination of, certain advertisements concerning their said preparations by the United States mails, and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including a booklet entitled "The Liepe Methods for Home Use," circulars, circular letters and other advertising matter, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of their said preparations; and respondents have disseminated and caused the dissemination of advertisements concerning their said preparations, including, but not limited to the advertising matter referred to above, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of their said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical, but not inclusive, of the statements and representations contained in said advertisements, disseminated as aforesaid, are the following:

*Testimonials respecting leg sores and inflamed areas around veins:*

The Liepe Methods has done me lots of good. I am no longer bothered with ulcers on my leg \* \* \*.

I am so pleased that I can write you that my leg sores appear to be gone now. \* \* \*

\* \* \* I had two big ulcers on the right leg and one on the left leg. I am so happy and thankful to say the flesh seems solid and has been like that for one year.

After using Liepe Methods for a short time both my legs returned to their apparently normal condition \* \* \*

I am happy to say that not even a scar remains of my Varicose Ulcers.

*Other representations with respect to leg sores and inflamed areas around veins:*

A condition which has taken years to develop may require more than a month of medication.

Originated in Europe, it was brought here to America where for almost fifty years it has helped put multitudes of leg sufferers back upon their feet.

**A NEW HOPE FOR LEG SUFFERERS**

Due to Varicose Conditions

1520

## Complaint

Very likely you, like thousands of others, suffer in silence. The agonies, dull aches and pains of Varicose Ulcers, Leg sores or other leg ailments due to a varicose condition may have caused you to become discouraged.

A LIEPE METHOD usually brings prompt relief of pain and distress to those who conscientiously follow instructions. It soothes pain, burning, itching, and swelling, thus bringing peaceful rest to mind and body . . .

It is indeed sad to think of the number of people who live a life of tormenting pain and discomfort, simply because they neglect a small, harmless looking sore. It is a pity to see these sores, due to varicose veins, gradually grow into horrible appearing, painful and obnoxious smelling ulcers.

The LIEPE METHOD eases pain, itching and burning, and helps nature to promote the growth of health flesh and skin.

## INFLAMED AREAS AROUND VEINS

. . . when caused by impeded circulation due to Varicose Veins, or the result of injury, . . . red hard spots are noticed on the leg,—hardness and pain increase . . . leg is swollen and very tender . . . pain is almost unbearable. . . . The LIEPE METHOD helps to promote better circulation, aids in lessening the swelling and soothes the pain.

*Testimonials and other representations respecting eczema:*

I want to tell you my leg feels fine now and has been for over a year.

My leg is O. K. Your medicine works good and I will tell everyone who needs help about your good Methods.

Symptoms of Eczema— \* \* \* The Liepe Method for the Symptoms of Eczema.

PAR. 8. Respondents, through the use of the statements appearing in the advertising matter above referred to, represent that the use of their said preparations, as directed, will cure various kinds of leg troubles due to varicose conditions and inflamed areas around veins. Respondents further represent, by means of the advertisements aforesaid, that the use of their said preparations, as directed, constitute competent and effective treatments for varicose ulcers, leg sores, open legs, discharging wounds and inflamed areas around veins; will completely relieve the pain and distress accompanying such conditions; will relieve swelling, promote better circulation, prevent infection and ulcer formation, aid healing and help nature promote the growth of healthy flesh and skin; will eliminate puss and other discharges from leg sores; that the use of said preparations, as directed, will cure eczema and is a competent and effective treatment for all of the symptoms of eczema.

PAR. 9. The aforesaid representations are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, respondents' preparations, used as directed or otherwise, will not cure leg troubles due to varicose conditions or inflamed areas around veins and do not constitute competent or effective treatments for varicose

ulcers, leg sores, open legs, discharging wounds or inflamed areas around veins. Their use will not relieve swelling, promote better circulation, prevent infection or ulcer formation, aid healing or help nature promote the growth of healthy flesh and skin and cannot be relied upon to eliminate pus or other discharges from leg sores. The use of respondents' preparations may temporarily relieve pain, itching and burning in some, but not all, cases of leg sores. The location, size, extent, depth and condition of some ulcers are such that even temporary relief will not be afforded. While respondents' preparations may temporarily relieve such symptoms of eczema as itching and burning, it will not relieve even temporarily all of the symptoms of eczema and will not cure or have any beneficial effect upon the underlying cause, course or duration of eczema.

PAR. 10. The use by the respondents of the foregoing false, deceptive and misleading statements and representations disseminated as aforesaid has had and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all such statements and representations are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' said preparations.

PAR. 11. 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 AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 17, 1951, issued its complaint in this proceeding naming as respondents therein the A. C. Liepe Pharmacy, Inc., a corporation, and William F. Lambeck, Warren G. Gehrs, and Anne C. Gehrs, individually and as officers of said corporation. The complaint was subsequently served on each of the named respondents with the exception of William F. Lambeck who died on February 16, 1951, prior to the issuance of the complaint. After the filing of an answer to the complaint by the surviving 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 duly designated by it, and such testimony and other evidence were duly filed in the office of the Commission. Proposed findings as to the facts were filed by counsel for respondents and counsel supporting the complaint. Thereafter, on

1520

## Findings

April 10, 1952, the hearing examiner filed his initial decision which was duly served on the parties.

Within the time permitted by the Commission's rules of practice, counsel for respondents filed with the Commission an appeal from said initial decision. Thereafter, this proceeding regularly came on for hearing by the Commission upon the record herein, including briefs in support of and in opposition to the appeal and oral argument of counsel, and the Commission issued its order granting said appeal in part and denying it in part.

The Commission is also of the opinion that the hearing examiner's decision is deficient in certain other respects including that the form of order therein does not in all ways provide appropriate relief from the practices shown by the record to be illegal. Therefore, the Commission, being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion and order to cease and desist, the same to be in lieu of the initial decision of the hearing examiner.

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent A. C. Liepe Pharmacy, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin. This corporation trades under the name of "Liepe Methods." Respondent William F. Lambeck, President of the corporate respondent, died on February 16, 1951. Therefore, the term "respondents" as used hereinafter will not include William F. Lambeck. Respondent Warren G. Gehrs is Secretary-Treasurer, and respondent Anne C. Gehrs is Vice-President of the corporate respondent. These individual respondents formulate, direct and control the policies, acts and practices of the corporate respondent. The office and principal place of business of both corporate respondent and individual respondents are located at 3250 North Green Bay Avenue, Milwaukee 12, Wisconsin.

PAR. 2. The respondents are now and for several years last past have been engaged in the business of selling and distributing various preparations containing drugs as "drug" is defined in the Federal Trade Commission Act, and in selling in connection therewith elastic bandages, referred to as "Liepe Special Bandage," which product is a device as "device" is defined in the said Act. These preparations and products, sold by respondents in various combinations, are sometimes referred to as "The Liepe Method" and "The Liepe Methods."

The designations used by respondents for their preparations, the formula and directions for use are as follows:

## Findings

49 F. T. C.

*Designation:* "Liepe Cleansing Oil."

*Formula:*

Olive Oil—oz.  $\frac{1}{2}$   
Mineral Oil—gr. oz. 4

*Directions for use:*

Liepe Cleansing Oil may be used as a bland cleansing agent preparatory to applications of Liepe Special Ointment. It should be "daubed on gently without rubbing."

*Designation:* "Liepe Bland Oil."

*Formula:*

Zinc Oxide Z VI  
Olive Oil—oz. 3  
Lime Water qs. oz. 4

*Directions for use:*

Liepe Bland Oil is intended for use in connection with Liepe Special Ointment No. 2. Shake the bottle thoroughly so that no sediment can be seen at the bottom. Then apply a thin layer of Liepe Bland Oil on top of the ointment.

*Designation:* "Liepe Dusting Powder Soothing."

*Formula:*

Thymol Iodide—gr. 2  
Benzocaine—dr. 1  
 $\frac{1}{8}$  oz.

*Directions for use:*

Liepe Dusting Powder Soothing is intended for use in conjunction with Liepe Special Ointment No. 2. Dust a little of the powder over the surface with a small brush as follows: After dipping the brush into the box of powder, hold it about an inch away from the surface and tap it gently with the index finger of the other hand. Then apply a thin layer of Liepe Special Ointment No. 2 over the powder.

*Designation:* "Liepe Dusting Powder Protective."

*Formula:*

Zinc Oxide—dr.  $2\frac{1}{2}$   
Zinc Stearate—dr.  $2\frac{1}{2}$   
Starch—dr. 7  
Carbolic Acid—gr. 22  
 $1\frac{1}{2}$  oz.

*Directions for use:*

Liepe Dusting Powder Protective is intended for use in conjunction with Liepe Special Ointment No. 1. After applying the ointment, dust a thin layer of powder over it. Take a piece of cotton in the left hand, dip it in the box of dusting powder, and hold your hand directly above the spot where you wish



1520

## Findings

the powder to fall. Then gently tap your left hand with the right hand, and the powder will fall where desired. Be careful that the cotton does not touch the ointment.

*Designation:* "Liepe Special Ointment No. 1."

*Formula:*

Zinc Oxide—8½ lbs.  
 Starch—6 lbs.  
 Mineral Oil—32 oz.  
 Prepared Ointment—2½ lbs.  
 Yellow Wax—½ lb.  
 Acid Salicylic—½ lb.  
 Carbohc Acid—oz. 2½  
 Liq. Carbonis Detergens—oz. 5  
 Oil Wintergreen—oz. 2½  
 White Petrolatum—32 lbs.

*Directions for use:*

Apply ointment to the skin as often as may be required to relieve itching and burning.

*Designation:* "Liepe Special Ointment No. 2."

*Formula:*

Carbohc Acid—oz. 8  
 Zinc Oxide—5 lbs.  
 Prepared Ointment—5 lbs.  
 Mineral Oil—½ gal.  
 Yellow Wax—1½ lbs.  
 White Petrolatum—qs. 50 lbs.

*Directions for use:*

First, clean skin with Liepe Cleansing Oil. Then apply a thin layer of Liepe Special Ointment No. 2 covering the same with a thin layer of Liepe Bland Oil, and protect with soft, white muslin. Repeat application daily.

The ingredient in the above formulae for "Liepe Special Ointment No. 1" and "Liepe Special Ointment No. 2" which is referred to as "Prepared Ointment" contains the following ingredients:

1 percent carbohc acid crystals—1.38 percent zinc oxide—16 percent aluminum acetate (basic powder), 1 percent of a mixture containing thymol, camphor, spirits of turpentine, oil of pine, Ugenol, Terpineol in Base of Oleo Stearin and Petrolatum.

The general directions for use of the Liepe Method provide that Liepe's Cleansing Oil, Special Ointment No. 2, Bland Oil, and Special Bandage be used in cases of inflamed area around veins; that Liepe's Cleansing Oil, Dusting Powder Soothing, Special Ointment No. 2, and Special Bandage be used in cases of varicose ulcers (sometimes called Leg Sore or Open Leg); and that Liepe's Cleansing Oil, Special Ointment No. 1, Bland Oil, and Dusting Powder Protective, in some cases with and in some cases without Liepe Special Bandage, be used in cases of eczema.

PAR. 3. Respondents cause their said preparations and products, when sold, to be transported from their place of business in the State of Wisconsin to the purchasers thereof located in various States of the United States and maintain, and at all times mentioned herein have maintained, a course of trade in said preparations and products between and among the various States of the United States. Their volume of business in said trade has been and is substantial.

PAR. 4. In the course and conduct of said business, respondents for many years last past have advertised their preparations and products by inserting in magazines and newspapers of general circulation advertisements inviting persons suffering from varicose ulcers and open leg sores to write for their booklet "The Liepe Methods for Home Use." Upon receipt of a request said booklet is sent together with a blank entitled "Question Blank" for use in case respondents' preparations or products are purchased. Respondents have disseminated and caused the dissemination of said booklet, advertising circulars, circular letters, and other advertising matter concerning their said preparations and products by the United States mails, and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertising matter was likely to induce, directly or indirectly, the purchase of their said preparations and products, and respondents have disseminated and caused the dissemination of advertisements concerning their said preparations and products, including, but not limited to the advertising matter referred to above, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of their said preparations and products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Respondents' booklet "The Liepe Methods for Home Use," under the heading "A New Hope For Leg Sufferers Due to Varicose Conditions," describes in detail the symptoms of varicose ulcers, old leg sores, open legs, discharging wounds, and inflamed areas around veins due to varicose conditions, and eczema. Among the described symptoms are pain, burning, itching, swelling, open sores, discharging wounds, infection, poor circulation, inflamed areas around veins and reddened, rough or scaly skin. The claims for respondents' Liepe Methods in the narrative portion of this booklet are restricted to claims of soothing or easing pain, burning, itching or swelling, promotion of better circulation, helping nature promote the growth of healthy flesh and skin and relieving certain of the symptoms of eczema. However, at the bottom of practically every page and on several pages at the back of the booklet are quotations that purport to be excerpts from

testimonials of users of respondents' said Methods which state or imply that the users' leg troubles of the type referred to in the narrative portion of the folder have been eliminated through the use of respondents' said Methods. Examples of said excerpts from the testimonials are as follows:

*Relating to varicose ulcers:*

In regard to Liepe Method which I used on my varicose ulcer—It hasn't troubled me and I never think of it except when I notice the scar.

Just a few lines to let you know that I am no longer troubled with my leg ulcer. I used Liepe Methods for only 3 months.

The Liepe Methods has done me lots of good. I am no longer bothered with the ulcers on my leg, and work every day on the farm.

*Relating to leg sores:*

I am so pleased that I can write you that my leg sores appear to be gone now. I am thankful for what you have done for me, and hope that other leg sufferers will get the same relief from your Methods as I did.

*Relating to leg troubles generally:*

I am thankful to you for your Method. My leg is now O. K. I can't praise Liepe Methods too much and I will recommend it.

My leg is fine and has been for some time. I suffered with my leg for 9 years before I found out about Liepe Methods.

My leg is entirely satisfactory. In fact, I did not have to use all the medicine. I am glad indeed that I answered your advertisement and gave your Method a trial. I have been telling my friends about Liepe Methods. With many thanks and assuring you of my gratitude.

I want to tell you my leg feels fine now and has been for over a year. \* \* \*

Similarly in a folder containing respondents' directions for use of certain of their preparations in cases of eczema, disseminated as aforesaid, respondents have set out excerpts from testimonials which represent or imply that permanent relief from the symptoms of eczema has been secured through the use of respondents' preparations. An example of such an excerpt is as follows:

*I Have Not Had Any Trouble for the Last Year*

I wish I were as well as my legs now feel. I had skin trouble which caused terrible itching. I have not had any for the last year. I have told many people about your method. I gave your last letter to a friend of mine and advised her to write you for particulars.

In a like manner advertising circulars entitled "Users Praise," containing similar excerpts from testimonials of users, have been disseminated as aforesaid by respondents.

PAR. 6. By means of the above-quoted testimonials and others of similar import as used in said booklets, folders, circulars, and other advertising matter disseminated as aforesaid, respondents have repre-

sented, directly or by implication, that the use of their said preparations and products as directed constitutes a competent and effective treatment for and will cure varicose ulcers, leg sores, open legs, discharging wounds and inflamed areas around the veins, will permanently relieve the pain, itching, burning and swelling accompanying such conditions, promote better circulation, prevent infection and ulcer formation, aid healing, eliminate pus and other discharges from leg sores, cure eczema and constitute a competent and effective treatment for eczema.

PAR. 7. The record shows that the basic cause of the above-described varicose conditions is impaired circulation due to a dilated thickened vein condition known as a varicose vein. The inhibited circulation through this vein results in swelling and edema of the tissues and impaired nutrition of the skin. Such a condition of the leg may result in any of the above referred to varicose leg troubles. The use of respondents' methods will not cure leg trouble due to varicose conditions.

PAR. 8. Varicose ulcers, sometimes referred to as leg sores, open legs or discharging wounds, are ulcerated areas of the epidermis of the leg, due to poor circulation caused by a varicose vein. Swelling and edema occur as a result of this condition, and trauma or infection sets in, causing a breakdown of the tissue and an ulcer develops. Proper treatment of a leg ulcer requires a careful diagnosis, as the treatment is dictated by the underlying cause. There are many conditions which may result in an ulcer which would be indistinguishable by the layman from a varicose ulcer, for example, tuberculosis, diabetes, syphilis, cancer, fungus, etc.

Proper treatment of a varicose ulcer consists of treatment of the varicose vein, local application of mild, soothing and antiseptic applications to the ulcer, perhaps supplemented by X-ray or ultraviolet therapy of the ulcer to stimulate the healing process, and in severe cases use of antibiotics coupled with complete rest in bed and elevation of the affected part. The varicose vein must frequently be treated surgically to prevent recurrence of the ulcerated condition.

Respondents' method used as directed in cases of varicose ulcers, leg sores, open leg or discharging wounds may have a soothing effect, may temporarily relieve pain, itching and burning in some cases while the preparations are on the affected area, may prevent some surface infection and prevent swelling while the elastic bandage is applied. Said method is harmless in cases of varicose ulcers but does not have any effect on the cause of the condition. It will not cure and does not constitute an effective treatment for such conditions.

Respondents' method used in such cases or as used in cases of eczema or inflamed areas around veins due to a varicose condition will not completely relieve all pain and distress, permanently relieve swelling, pain, itching or burning or prevent or clear up any deep infection, will not prevent ulcer formation, aid healing other than to provide an antiseptic protective covering for the affected area, eliminate pus or other discharges, or promote better circulation.

PAR. 9. Respondents' method used as directed in cases of inflamed area around veins due to a varicose condition might have a temporary soothing effect, temporarily lessen any surface pain or irritation somewhat, and temporarily lessen the swelling while the elastic bandage is applied. Such a condition, however, should have internal as well as local treatment. Respondents' method will not cure and does not constitute a competent or effective treatment for this condition. Nothing in respondents' preparations would penetrate deeply enough to reach the source of the trouble. If the inflamed area is due to phlebitis, this treatment, including the application of pressure through the use of the elastic bandage as directed, would be contra-indicated.

PAR. 10. Eczema is a catarrhal inflammation of the skin characterized by the appearance of redness, scaling, vesicles, weeping and itching. There are many types of eczema and many causes. It is necessary to carefully diagnose the conditions of eczema before treatment as the type of treatment varies tremendously depending upon its cause and upon the state of the eczema at the time of treatment.

Respondents' method, used as directed in cases of eczema, will relieve itching and burning temporarily while its prescribed preparations are applied to the affected area. Preparations containing zinc oxide, like respondents' special ointments, are commonly used as a palliative in some cases of eczema (i. e., sub-acute chronic). However, the use of this method will not cure eczema or have any beneficial effect on its underlying cause. It does not have any beneficial effect on the symptoms of eczema in excess of relieving itching and burning while said preparations are applied to the affected area as directed.

PAR. 11. In the course and conduct of their aforesaid business, respondents upon receipt of a request for their booklet "The Liepe Methods for Home Use" in addition to sending said booklet to the person requesting it also send a blank entitled "Question Blank" for use in case respondents' preparations or products are ordered. This blank consists of a list of questions concerning the general health of the person and specific questions with respect to the symptoms of those persons who have "inflamed areas around the veins in legs due to

varicosed conditions," "symptoms of varicose ulcers or wounds sometimes called leg sores or open legs" or "symptoms of eczema." Part of the Question Blank consists of an order blank upon which the person is instructed to check the nature of his affliction and to remit the amount set out in connection therewith. Upon receipt of the "Question Blank" and order, respondents forward those of its said preparations and products to be used in cases of the affliction indicated, together with detailed directions for use. These directions instruct the purchaser to send in an accompanying "Report Blank" when the preparations are almost used up. Said report blank consists of an order for additional preparations together with a list of questions as to the effects of the purchaser's use of said preparations on the purchaser's symptoms.

Respondents send various form letters to purchasers and prospective purchasers in the solicitation of additional sales of their said preparations. These letters bear the heading "Prescription Laboratory."

PAR. 12. Through the use of the "Question Blank" respondents represent that by means of the answers to the various questions they will be able to properly diagnose the ailments of the person furnishing the information and that they will be able to determine and to supply the medicaments which will successfully treat such ailments; and through the use of the "Report Blanks" respondents represent that they are able to ascertain the condition of the person after using their medicaments and to determine and to supply proper medicaments for the continued treatment of their afflictions.

Further, respondents, through the use of the heading "Prescription Laboratory" on their form letters to prospective purchasers, represent that the medicaments sold by respondents are especially prepared for each person on the basis of information furnished.

PAR. 13. In fact, it is extremely difficult to distinguish between ulcers, inflamed areas around veins, and eczema, due to varicose conditions, and those due to other causes such as tuberculosis, diabetes, syphilis, and many others. The ordinary layman patient is not able to make this determination. Also, he is not able to furnish sufficient information as to his condition by means of the "Question Blank" or "Report Blank" to enable even a very skilled reader to determine his true condition and the proper treatment therefor. Early determination of the cause of such conditions is extremely important as what appears to the layman to be a condition due to a varicose vein may be in reality due to a very serious underlying cause. Certain such conditions, if allowed to develop, may endanger the patient's life. The

1520

## Order

proper treatment for such conditions is entirely different from that appropriate where the condition is due to varicose veins. Respondents' methods certainly would not provide a successful treatment for such serious conditions.

Respondents do not prepare the medicaments on an individual basis for each purchaser. All orders are filled by respondent Warren G. Gehrs, a pharmacist, from the stock preparations, the formulae for which are set out in Paragraph Two hereof. Respondents' use of the term "Prescription Laboratory" as a part of the heading on their letters to prospective purchasers, which implies that the medicaments sold are prepared on an individual basis, considered alone, under other circumstances might appear to be innocuous. But as used here in conjunction with their "Question Blanks" and "Report Blanks," this heading heightens the false implication that respondents are compounding the preparations for each purchaser individually on the basis of the information furnished on said blanks by the purchaser as to his symptoms. Respondents admit that their use of this term in connection with their sale of these preparations has a misleading effect.

PAR. 14. Respondents' representations concerning their preparations and products, as hereinabove found, are false and misleading in material respects; have the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations are true, and into the purchase of substantial quantities of said preparations and products; and constitute false advertisements within the intent and meaning of the Federal Trade Commission Act.

## CONCLUSION

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

## ORDER

*It is ordered,* That A. C. Liepe Pharmacy, Inc., a corporation, and its officers, Warren G. Gehrs and Anne C. Gehrs, individually and as officers of said corporation, their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of "Liepe Cleansing Oil," "Liepe Bland Oil," "Liepe Dusting Powder Soothing,"

Order

49 F. T. C.

"Liepe Dusting Powder Protective," "Liepe Special Ointment No. 1," "Liepe Special Ointment No. 2," or "Liepe Special Bandage" or any product or preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from directly or indirectly:

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

(a) Constitutes a competent or effective treatment for or will cure varicose ulcers, leg sores, open legs, discharging wounds inflamed areas around a vein, or any leg trouble, ailment or disorder due to varicose conditions.

(b) Promotes better circulation, prevents ulcer formation, eliminates discharge, completely relieves all pain and distress, relieves swelling in excess of preventing swelling while the bandage is applied, prevents any infection other than surface infection, aids healing other than by providing an antiseptic protective covering for the affected area, or relieves pain, itching or burning in excess of providing relief while the prescribed preparations are on the affected area, in cases of varicose ulcers, leg sores, open legs, discharging wounds, inflamed areas around a vein, eczema or any leg trouble, ailment or disorder due to a varicose condition.

(c) Cures eczema or has any beneficial effect upon its underlying causes.

(d) Has any beneficial effect in cases of eczema in excess of relieving itching and burning while the prescribed preparations are on the affected area.

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

*It is further ordered,* That the respondents A. C. Liepe Pharmacy, Inc., a corporation, and its officers, Warren G. Gehrs and Anne C. Gehrs, individually and as officers of said corporation, their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade



1520

Order

Commission Act, of "Liepe Cleansing Oil," "Liepe Bland Oil," "Liepe Dusting Powder Soothing," "Liepe Dusting Powder Protective," "Liepe Special Ointment No. 1," "Liepe Special Ointment No. 2," or "Liepe Special Bandage" or any product or preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondents can diagnose or determine a proper treatment in cases of ulcers, leg sores, open legs, discharging wounds, inflamed areas around a vein or eczema on the basis of written information as to their symptoms submitted by purchasers or prospective purchasers.

2. Using the term "Prescription Laboratory" in the heading of letters sent to purchasers or prospective purchasers; or otherwise representing that said preparations are especially prepared to order in each case individually.

*It is further ordered,* That the complaint be, and it hereby is, dismissed as to respondent William F. Lambeck.

*It is further ordered,* That respondents, A. C. Liepe Pharmacy, Inc., Warren G. Gehrs and Anne C. Gehrs, 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.

Commissioner Howrey not participating for the reason that oral argument on respondents' appeal from the initial decision was heard prior to his appointment to the Commission.

Complaint

49 F. T. C.

## IN THE MATTER OF

MME. C. J. WALKER MANUFACTURING COMPANY, INC.  
ET AL.COMPLAINT, DECISION, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED  
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 6031. Complaint, Aug. 18, 1952—Decision, June 30, 1953*

Where a corporation and three officers thereof, engaged in the interstate sale and distribution of their "Madam C. J. Walker's" hair preparations, namely, their "Wonderful Hair and Scalp Preparation," "Wonderful Scalp Ointment" and "Wonderful Temple Salve"; in advertising in newspapers and periodicals and radio continuities, directly and by implication—

Represented falsely that their said "Hair and Scalp Preparation" contained penetrating oils that made the scalp healthy and put an end to short, thin, brittle, or falling hair, when the scalp was massaged therewith; that their "Double-Strength Scalp Ointment" was a competent and effective treatment for itchy scalp, dandruff, dandruff flakes, and tetter; and that massaging the temple areas with their "Wonderful Temple Salve" stopped hair falling out, and made the hair soft and silky with long-lasting texture and lustre;

With capacity and tendency to mislead a substantial portion of the purchasing public into the erroneous belief that such representations were true and thereby induce its purchase of substantial quantities 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. Webster Ballinger*, hearing examiner.

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

*Mr. Robert Lee Brokenburr* and *Mr. Willard B. Ransom*, of Indianapolis, Ind., 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 Mme. C. J. Walker Manufacturing Company, Inc., a corporation, and A'Lelia R. Nelson, Violet D. Reynolds, and Marie Overstreet, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission

1540

## Complaint

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, Mme. C. J. Walker Manufacturing Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 617 Indiana Avenue, Indianapolis, Indiana. Respondents A'Leia R. Nelson, Violet D. Reynolds, and Marie Overstreet are president, secretary and treasurer, respectively, of the corporate respondent, and formulate, direct and control the policies, acts and practices of said corporation. The address of these individual respondents is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for more than one year last past have been engaged in the sale and distribution in commerce of drugs and cosmetic products, as "drugs" and "cosmetics" are defined in the Federal Trade Commission Act. Designations used by respondents for said products and the formula and directions for use thereof are as follows:

Designation: Madam C. J. Walker's Wonderful Hair and Scalp Preparation.

Formula :	Pounds
Petrolatum.....	100.00
Beeswax.....	1.00
Copper Sulphate.....	5.00
Precipitate sulphur.....	3.00
Coconut oil.....	3.00
Perfume.....	1.00

Directions for use: "After hair has been shampooed with Madam C. J. Walker's Shampoo or Shampoo Soap, apply Madam C. J. Walker's Wonderful Hair and Scalp Preparation to the scalp with the finger tips and massage well into the scalp three times per week."

Designation: Madam C. J. Walker's Wonderful Scalp Ointment (also known as Double-Strength Scalp Ointment; also known as Tetter Salve).

Formula :	Pounds
Petrolatum.....	100.00
Beeswax.....	1.00
Copper Sulphate.....	10.00
Precipitate Sulphur.....	3.00
Coconut Oil.....	1.00
Perfume.....	1.00

Directions for use: "After hair has been shampooed with Madam C. J. Walker's Shampoo or Shampoo Soap, apply Madam C. J. Walker's Scalp Ointment to the scalp with the finger tips and massage well into the scalp three times per week."

Designation: Madam C. J. Walker's Wonderful Temple Salve.

Complaint

49 F. T. C.

Formula :	Pounds
Petrolatum -----	100.00
Beeswax -----	1.00
Coconut Oil -----	1.00
Precipitate Sulphur -----	3.50
Perfume -----	1.00

Directions for use: "Apply Madam C. J. Walker's Wonderful Temple Salve into the thin parts three times per week."

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

PAR. 4. In the course and conduct of their said business, respondents have disseminated and have caused the dissemination of advertisements concerning their said products by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for, the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said products, including, but not limited to advertisements inserted in nationally distributed newspapers and periodicals, circulars and by means of radio continuities transmitted across State lines; and respondents have disseminated and have caused the dissemination of advertisements concerning their said products by various means, including, but not limited to those aforesaid for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of their said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical, but not all inclusive, of the statements and representations contained in said advertisements disseminated, and caused to be disseminated, as hereinabove set forth, are the following:

Shhh!

Don't tell a soul!

Before using Glossine next time, remember this: it gives your hair *twice* the radiant luster if you massage your scalp with the penetrating oils of WONDERFUL HAIR & SCALP PREPARATION *first!* That's because hair beauty is scalp-deep!

It's the world's top beauty secret!

Don't tell a soul!

\* \* \*

1540

## Complaint

Most women don't yet know the No. 1 rule of *Hair Beauty*.

**HAIR BEAUTY IS SCALP-DEEP!** (When mere hair-dressings only cover up deep-down causes of shabby hair, it really gets worse and worse and WORSE!)

BEFORE using a dressing, treat an itchy or flaking scalp, dandruff or tetter with Madam Walker's **DOUBLE-STRENGTH SCALP OINTMENT** . . . and before using a dressing, treat short, thin, brittle or falling hair by massaging your scalp with Madam Walker's **HAIR & SCALP PREPARATION**—and massaging thinning temple areas with her so-important **TEMPLE SALVE**.

NOT 'TILL THEN can you be sure of the silkiest, softest, longest-lasting texture and luster which have made **GLOSSINE** the famous queen of *all* the light-bodied pressing oils and hair dressings.

\* \* \*

**Hair Beauty is scalp deep!**

Wise women have learned through the years that it takes more than a superficial hair dressing to have lovely hair. That's why, this year, they're massaging their scalps with the penetrating oils of **MME. C. J. WALKER'S WONDERFUL HAIR & SCALP PREPARATION**. It's a **HEALTHY** scalp which puts an end to short, thin, brittle, falling hair. So why put off this surest way to gorgeously **NATURAL** hair beauty . . . so thrillingly successful for thousands of women for nearly 50 years?

At drug and cosmetic counters and Walker beauty shoppes—or direct from us **MME. C. J. WALKER MFG. CO., DEPARTMENT N-3, INDIANAPOLIS 2, INDIANA**.

PAR. 6. By and through the use of the foregoing statements and representations and others similar thereto, not specifically set out herein, respondents have represented, directly and by implication, that their preparation designated as Madam C. J. Walker's Wonderful Hair & Scalp Preparation contains penetrating oils that make the scalp healthy and put an end to short, thin, brittle and falling hair, when the scalp is massaged with that preparation; that their preparation designated as Madam C. J. Walker's Double-Strength Scalp Ointment is a competent and effective treatment for itchy scalp, dandruff, dandruff flakes and tetter; that massaging the temples with their preparation designated as Madam C. J. Walker's Wonderful Temple Salve causes hair to grow thicker in the thinning temple areas.

PAR. 7. The said statements are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact neither respondents' preparation designated as Madam C. J. Walker's Wonderful Hair & Scalp Preparation nor any of respondents' other said preparations are capable of contributing in any manner to the health of the scalp, nor do any of them have any therapeutic value in relieving the condition of short, thin or brittle hair or preventing falling hair. Neither respondents' preparation designated as Madam C. J. Walker's Double-Strength Scalp Ointment nor any of respondents' other said prepara-

tions is a competent or effective treatment for dandruff or tetter. Said preparations will only temporarily relieve an itching scalp and only temporarily cause the disappearance of dandruff flakes. Neither the application of respondents' preparation designated as Madam C. J. Walker's Wonderful Temple Salve, or the application of any of respondents' other said preparations, by massage or otherwise, causes hair to grow thicker where it is thin.

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

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

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

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 18, 1952, issued and subsequently served its complaint in this proceeding upon the respondents, Mme. C. J. Walker Manufacturing Company, Inc., a corporation, and A'Lelia R. Nelson, Violet D. Reynolds, and Marie Overstreet, individually and as officers of said corporation, charging them with unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the filing of respondents' answer to the complaint, hearings were 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 (no evidence being offered for or on behalf of the respondents), and such testimony and other evidence were duly filed and recorded in the office of the Commission. Thereafter, the proceeding came on for consideration by the hearing examiner on the complaint, answer thereto, testimony and other evidence, and proposed findings as to the facts and conclusions presented by respective counsel, and said hearing examiner, on December 10, 1952, filed his initial decision.

1540

Findings

The Commission, having reason to believe that said initial decision did not constitute an adequate disposition of this matter, subsequently placed this case on its own docket for review, and on May 4, 1953, it issued, and thereafter served upon the parties, its order setting time within which objections to a tentative decision of the Commission attached to said order, and reply thereto, might be filed. No objections having been filed within the time permitted, the proceeding regularly came on for final consideration by the Commission upon the record herein on review; 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, conclusion drawn therefrom, and order, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Mme. C. J. Walker Manufacturing Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 617 Indiana Avenue, Indianapolis, Indiana. Respondents A'Lelia R. Nelson, Violet D. Reynolds, and Marie Overstreet are president, secretary, and treasurer, respectively, of the corporate respondent and with others formulate, direct, and control the policies, acts and practices of said corporation. The address of these individual respondents is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the sale and distribution in commerce of drugs and cosmetic products, as "drugs" and "cosmetics" are defined in the Federal Trade Commission Act. Designations used by respondents for said products and the formula and directions for use thereof are as follows:

Designation: Madam C. J. Walker's Wonderful Hair and Scalp Preparation.  
Formula:

	<i>Pounds</i>
Petrolatum -----	100.00
Beeswax-----	1.00
Copper Sulphate -----	5.00
Precipitate Sulphur -----	3.00
Coconut Oil-----	3.00
Perfume -----	1.00

Directions for use: "After hair has been shampooed with Madam C. J. Walker's Shampoo or Shampoo Soap, apply Madam C. J. Walker's Wonderful Hair and

## Findings

49 F. T. C.

Scalp Preparation to the scalp with the finger tips and massage well into the scalp three times per week."

Designation: Madam C. J. Walker's Wonderful Scalp Ointment (also known as Double-Strength Scalp Ointment; also known as Tetter Salve).

Formula:	Pounds
Petrolatum -----	100.00
Beeswax -----	1.00
Copper Sulphate -----	10.00
Precipitate Sulphur -----	3.00
Coconut Oil -----	1.00
Perfume -----	1.00

Directions for use: "After hair has been shampooed with Madam C. J. Walker's Shampoo or Shampoo Soap, apply Madam C. J. Walker's Scalp Ointment to the scalp with the finger tips and massage well into the scalp three times per week."

Designation: Madam C. J. Walker's Wonderful Temple Salve.

Formula:	Pounds
Petrolatum -----	100.00
Beeswax -----	1.00
Coconut Oil -----	1.00
Precipitate Sulphur -----	3.50
Perfume -----	1.00

Directions for use: "Apply Madam C. J. Walker's Wonderful Temple Salve into the thin parts three times per week."

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

PAR. 4. In the course and conduct of their said business, respondents have disseminated and have caused the dissemination of advertisements concerning their said products by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said products, including advertisements inserted in nationally distributed newspapers and periodicals, circulars, and by means of radio continuities transmitted across state lines; and respondents have also disseminated and have caused the dissemination of advertisements concerning their said products by various means, including, but not limited to, those aforesaid, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of their said



1540

## Findings

products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements and representations contained in said advertisements disseminated, and caused to be disseminated, are the following:

Shhh!

Don't tell a soul!

Before using Glossine next time, remember this: it gives your hair *twice* the radiant luster if you massage your scalp with the penetrating oils of WONDERFUL HAIR & SCALP PREPARATION *first!* That's because hair beauty is scalp-deep!

It's the world's top beauty secret!

Don't tell a soul!

\* \* \*

Most women don't yet know the No. 1 rule of *Hair Beauty* HAIR BEAUTY IS SCALP-DEEP! (When mere hair-dressings only cover up deep-down causes of shabby hair, it really gets worse and worse and WORSE!)

BEFORE using a dressing, treat an itchy or flaking scalp, dandruff or tetter with Madam Walker's DOUBLE-STRENGTH SCALP OINTMENT . . . and before using a dressing, treat short, thin, brittle or falling hair by massaging your scalp with Madam Walker's HAIR & SCALP PREPARATION—and massaging thinning temple areas with her so-important TEMPLE SALVE.

NOT 'TILL THEN can you be sure of the silkiest, softest, longest-lasting texture and luster which have made GLOSSINE the famous queen of *all* the light-bodied pressing oils and hair dressings.

\* \* \*

Hair Beauty is scalp-deep!

Wise women have learned through the years that it takes more than a superficial hair dressing to have lovely hair. That's why, this year, they're massaging their scalps with the penetrating oils of MME. C. J. WALKER'S WONDERFUL HAIR & SCALP PREPARATION. It's a HEALTHY scalp which puts an end to short, thin, brittle, falling hair. So why put off this surest way to gorgeously NATURAL hair beauty . . . so thrillingly successful for thousands of women for nearly 50 years?

At drug and cosmetic counters and Walker beauty shoppes—or direct from us MME. C. J. WALKER MFG. CO., DEPARTMENT N-3, INDIANAPOLIS 2, INDIANA.

\* \* \*

PAR. 5. By and through the use of the foregoing statements and representations, respondents have represented, directly and by implication, that their preparation designated as Madam C. J. Walker's Wonderful Hair & Scalp Preparation contains penetrating oils that make the scalp healthy and put an end to short, thin, brittle, or falling hair, when the scalp is massaged with that preparation; that their preparation designated as Madam C. J. Walker's Double-Strength Scalp Ointment is a competent and effective treatment for itchy scalp, dandruff, dandruff flakes, and tetter; that massaging the temple areas

Order

49 F. T. C.

with their preparation designated as Madam C. J. Walker's Wonderful Temple Salve will stop hair falling out, and make the hair soft and silky with long-lasting texture and lustre.

PAR. 6. Said statements are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact neither respondents' preparation designated as Madam C. J. Walker's Wonderful Hair & Scalp Preparation nor any of respondents' other said preparations have any therapeutic value in relieving the condition of short, thin, or brittle hair or preventing falling hair. Neither respondents' preparation designated as Madam C. J. Walker's Double-Strength Scalp Ointment nor any of respondents' other said preparations is a competent or effective treatment for dandruff or tetter. Said preparations will only temporarily relieve an itching scalp and only temporarily cause the disappearance of dandruff flakes. Neither the application of respondents' preparation designated as Madam C. J. Walker's Wonderful Temple Salve, nor the application of any of respondents' other said preparations, by massage or otherwise, will stop hair falling out or make the hair soft and silky with long-lasting texture and lustre.

PAR. 7. The use by the respondents of the foregoing false, misleading, and deceptive statements and representations, disseminated as aforesaid, has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations and statements are true and to induce the purchase of substantial quantities of said products as a result of such mistaken and erroneous belief.

#### CONCLUSION

The aforesaid acts and practices of respondents, as set forth in the findings as to the facts, 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 Mme. C. J. Walker Manufacturing Company, Inc., a corporation, and its officers, and A'Lelia R. Nelson, Violet D. Reynolds, and Marie Overstreet, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of

1540

Order

their products designated as Madam C. J. Walker's Wonderful Hair and Scalp Preparation, Madam C. J. Walker's Wonderful Scalp Ointment (also known as Double-Strength Scalp Ointment and Tetter Salve) and Madam C. J. Walker's Wonderful Temple Salve, or of any other product or products containing substantially similar ingredients or possessing substantially similar properties, whether sold under the same names or any other names, do forthwith cease and desist from:

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

(a) That any of said preparations will improve the health of the scalp, or be of any therapeutic value in relieving the condition of short, thin, or brittle hair, or prevent hair from falling;

(b) That any of said preparations is a competent or effective treatment for dandruff or tetter, or that it will be of any value in the treatment of dandruff, tetter, or an itching scalp in excess of temporarily relieving the itching or dissolving loose dandruff flakes so that they may be removed; or

(c) That the use of any of said preparations accompanied by the massage of the temple areas, or otherwise, will stop hair from falling out or make the hair soft and silky with long-lasting texture and lustre.

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

*It is further ordered,* That 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.

## ORDERS OF DISMISSAL, OR CLOSING CASE, ETC.

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BEMIS BRO. BAG Co., St. Louis, Mo., Docket 4994. Complaint, July 8, 1943. Order, July 8, 1952.

Charge: Misbranding or mislabeling as to unit size of product; in connection with the manufacture and interstate sale and distribution of tarpaulins, upon the labels of which, following the word "SIZE", there appeared figures purporting to show the dimensions, such as "12 x 14", "8 x 10", and "4 x 6", when in fact the actual dimensions were substantially less.

Dismissed without prejudice, upon motion filed by counsel supporting the complaint and assented to by counsel for respondent, for the reason that respondent has executed and filed an affidavit which sets out that it is observing the rules for the canvas cover industry and has done so at all times since their promulgation on April 18, 1951; that it has particularly been observing rule 2 which "contains specific provisions relative to the size of canvas, both as to the finished and cut size," and intends "to continue to observe and abide by all the provisions of said rule"; that "the failure to properly mark such materials as to cut size is the sole basis of the charge in the complaint"; and that "the Commission is of the opinion that under the circumstances the public interest does not require further proceedings in this matter".

The Commission dismissed four other similar complaints, also issued on July 8, 1943, for the same reason, the first three on July 8, 1952, and the last on July 21, 1952, as follows:

THE HETTRICK MANUFACTURING Co., Toledo, Ohio, Docket 4996; FRANK M., DAVID W., and THOMAS C., POWERS TRADING AS POWERS & Co., Chicago, Ill., Docket 4997; H. WENZEL TENT & DUCK Co., St. Louis, Mo., Docket 4998; and CANVAS PRODUCTS Co., St. Louis, Mo., Docket 4995.

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

*Mr. Spencer M. Thomas*, of St. Louis, Mo., for Bemis Bro. Bag Co.

*Marshall, Melhorn, Wall & Block*, of Toledo, Ohio, for The Hettrick Manufacturing Co.

*White, Williams & Scott*, of Philadelphia, Pa., for Powers & Co.

*Anderson, Gilbert, Wolfort, Allen & Bierman*, of St. Louis, Mo., for H. Wenzel Tent & Duck Co.

*Dunbar & Curby*, of St. Louis, Mo., for Canvas Products Co.

BOND STORES, INC., and LOUIS A. GOOD, New York, N. Y., Docket 5650. Complaint, April 25, 1949. Order, July 9, 1952.

Charge: Misrepresenting business status and identity, and offering deceptive inducements to deal, in connection with the securing of information as to current addresses and employment of persons delinquent in their payments to respondent Bond Stores, clothing manufacturers with stores in principal cities in various states; on the part of said corporation and respondent Good, its vice president in charge of its credit department, through the use of certain letters and cards mailed to those believed to have information concerning the alleged delinquent debtor or mailed directly to the debtor.

Said letters and cards, as parts of the scheme for obtaining information by subterfuge, purported to be requests for information from the "Surety Investigating Company," purportedly engaged in issuing "surety," "employment," or other bonds; from the "Research Bureau, Reclassification Department," Washington, D. C., as a Government agency or branch inquiring into the qualifications of the addressee for employment; from the "Goodwin-Roberts System," a business enterprise engaged in the business of locating heirs to estates and supervising the same; and from the "National Inheritance Bureau", engaged in examining titles, locating missing heirs, etc., and rendering "expert estate advisory service"; the facts being that said supposed enterprises were mere names used as a lure to solicit the desired information.

Dismissed without prejudice, following the approval and acceptance of a proposed stipulation and agreement executed on February 8, 1952, "it appearing that the Chief, Division of Litigation, on behalf of counsel supporting the complaint, and respondents" "have reached an accord upon the terms of a proposed informal stipulation and agreement"; "that negotiations therefor were instituted prior to the date upon which specific procedures looking to the disposition of cases by consent settlement were provided by amendment to the Commission's Rules of Practice";

That under said terms respondents agree, without admitting that they have violated the Federal Trade Commission Act, not to use certain of the acts and practices complained of, as therein set forth; that Commission approval of the stipulation and agreement does not in any way prejudice its right to resume formal proceedings against respondents in the future should it deem such action warranted; and that the public interest would be best served by the settlement of the proceedings through such approval.

Commissioner Carretta not participating for the reason that oral argument on the merits was heard prior to his appointment to the Commission.

Before *Mr. Webster Ballinger*, hearing examiner.  
*Mr. Charles S. Cox* and *Mr. L. J. Fransworth* for the Commission.  
*Mr. Louis B. Arnold*, of Washington, D. C., for respondents.

AMERICAN CIGARETTE & CIGAR CO., INC., New York, N. Y., Docket 4826. Complaint, August 28, 1942. Order, July 12, 1952.

Charge: Advertising falsely or misleadingly, and misbranding or mislabeling, in that respondent falsely advertised, through periodicals, newspapers, radio broadcasts, and otherwise, that finger stains of persons using its Pall Mall cigarettes become much lighter or disappear completely, when Pall Malls are smoked exclusively, and made other similar misrepresentations, and also represented that its said cigarettes filtered the smoke in such a way as to get rid of throat irritations; and in that it represented, through the use of a coat of arms resembling that of the British royal family and other distinctive English coats of arms, and through the legends on containers of its Pall Mall "Georges" cigarettes that its said products had received the indorsement or seal of approval of the royal family of Great Britain, were of English origin and manufacture, and were made in London, where it had a factory or store.

Dismissed without prejudice, upon order to show cause why the proceeding should not be dismissed for want of prosecution, it appearing that the only hearing, held on May 20, 1943, for the purpose of receiving testimony in support of the complaint, was limited to the identification and introduction into evidence of certain advertising exhibits; and that "the answer filed by the attorney in support of the complaint" to said order, "admits that all but two charges of the complaint are moot" and that as to the said two charges he had made no showing of justification for the long delay in the proceeding and had made no request for the taking of further testimony.

Before *Mr. W. W. Sheppard* and *Mr. Earl J. Kolb*, hearing examiners.

*Mr. J. R. Phillips, Jr.* and *Mr. Frederick McManus* for the Commission.

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

IRVING A. GRUBMAN trading as EVER-CHARGE PRODUCTS, Los Angeles, Calif., Docket 5419. Complaint, February 4, 1946. Order, August 12, 1952.

Charge: Advertising falsely or misleadingly as to qualities or properties of products, and assuming or using misleading trade or product names in said respect, in connection with the sale and distribution

of a powdered preparation designed for use in storage batteries and designated Ever-Charge, through falsely representing that said product charges batteries, ends battery troubles, prolongs life of batteries, etc.

Dismissed without prejudice, upon motion filed by counsel supporting the complaint, and without objections on behalf of the respondent, it appearing therefrom that respondent had discontinued and abandoned the business involved; that there was no reason to believe that he would resume same; and that a proceeding against respondent by the Post Office Department involving substantially the same matters was settled by its acceptance of an affidavit of discontinuance in which respondent stated that his enterprise had been discontinued and abandoned; and the Commission being of the opinion, after duly considering the motion and the record, that under the circumstances the public interest did not require further corrective action at that time in this matter.

Before *Mr. Charles B. Bayly*, hearing examiner.

*Mr. E. L. Smith* and *Mr. Jesse D. Kash* for the Commission.

*Mr. Noah Roark*, of Dallas, Tex., and *Mr. Bert M. Keating*, of Denver, Colo., for respondent.

YOUNGS RUBBER CORP., New York, N. Y., Docket 5277. Complaint, February 12, 1945. Order, August 19, 1952.

Charge: Dealing on exclusive and tying basis, in violation of section 3 of the Clayton Act, in connection with the manufacture and sale by respondent, 1 of the 2 largest producers and distributors of rubber prophylactics in the United States, with a potentially dominant position in said industry and competitively engaged therein, of its first-grade prophylactics.

As alleged, said respondent, engaged in the sale of its said products principally to corporate chain wholesale drug organizations, retailer owned wholesale drug organizations, "short line wholesalers, and corporate chain retail drug organizations throughout the several States, competitively engaged in the resale of the aforesaid and allied products, sells the same on condition that purchasers will not deal in competitive products, and that its wholesaler customers will sell its products to retail drugstores only; effect of which sales and contracts and of said conditions, etc., had been or might be to substantially lessen competition or tend to create a monopoly in the line of commerce involved.

Dismissed without prejudice, Commissioner Carretta not participating for the reason that oral argument on the merits was heard prior to his appointment, upon the Commission's complaint, respondent's answer, testimony and other evidence, hearing examiner's

recommended decision and exceptions thereto, and briefs and oral arguments; and following the disposition by the Commission of the exceptions to the recommended decision, the Commission being of the opinion that the allegations of the complaint had not been sustained by the greater weight of the evidence.

Before *Mr. Charles B. Bayly*, hearing examiner.

*Mr. James I. Rooney* for the Commission.

*Poppenhusen, Johnston, Thompson & Raymond*, of Chicago, Ill., and *Mr. Meyer Cohen*, of New York City, for respondent.

JULIUS SCHMIDT, INC., New York, N. Y., Docket 5278. Complaint, February 12, 1945. Order, August 19, 1952.

Charge: Dealing on exclusive and tying basis in violation of section 3 of the Clayton Act, in connection with the manufacture and sale by respondent, 1 of the 2 largest producers and distributors of rubber prophylactics in the United States, the allegations of the complaint being similar to those in the *Youngs Rubber Corporation case*.

Dismissed without prejudice, Commissioner Carretta not participating for the reason that oral argument on the merits was heard prior to his appointment, upon the Commission's complaint, respondent's answers, testimony and other evidence, the hearing examiner's recommended decision, briefs and oral argument of counsel, the Commission being of the opinion that the allegations of the complaint had not been sustained by the greater weight of the evidence.

Before *Mr. Charles B. Bayly*, hearing examiner.

*Mr. James I. Rooney* for the Commission.

*Sullivan & Cromwell*, of New York City, for respondent.

THE PRINTWELL Co., also trading as U. S. NAME-PLATE Co., and NATION-WIDE WHOLESALERS, and MAURICE WILLINS ET AL., Chicago, Ill., Docket 5166. Complaint, May 25, 1944. Order, September 5, 1952.

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to business status, composition and manufacture of product, special price, free product, source or origin of product, quality, and pretended lifetime guarantee; in connection with the offer and sale by respondents, engaged in a retail mail-order business, of billfolds, nameplates, identification tags, and "Waltham push button" fountain pens, in that, as alleged, among other things, respondents are not wholesalers, the billfolds are not made of "genuine leather," the pens are not "fine deluxe" quality, equipped with penpoints made of gold, nor made by the Waltham Watch Co., and the so-called "guarantee of lifetime service" is not a guarantee at all, but merely a contract whereby the manufacturer agrees for the life of the purchaser



to make necessary repairs and adjustments at a flat rate of 25 cents each time the pen is sent in, which amount is more than that charged respondents for the pen by the manufacturer.

Dismissed without prejudice, for the reason that the Commission was of the opinion, from the facts of record, that respondents were no longer carrying on the complained-of practices and there was no reason to believe they would renew them and that the public interest would not be served by further proceedings in the matter at the time; it appearing, among other things, following complaint, answer, testimony and other evidence, and stipulation of counsel agreeing that the Commission might finally dispose of the matter without further intervening procedure, and a letter from counsel for respondents, that many of the representations alleged to have been illegal "were made by these respondents in reliance upon prior representations of the seller or manufacturer of the product misrepresented," "that the Commission has taken appropriate action to prevent the continuation of said representations by the sellers and manufacturers of said products in those cases wherein such action was deemed to be required in the public interest," and that respondents have not been engaged for several years in the sale of any of the merchandise involved in these proceedings.

Before *Mr. George Biddle*, hearing examiner.

*Mr. William L. Pencke* for the Commission.

*Messrs. Arthur and Edward Goldblatt*, of Chicago, Ill., for respondents.

THE NUTRI-VAC Co., Milwaukee, Wis., Docket 5314. Complaint, March 10, 1949.<sup>1</sup> Order, September 29, 1952.

Charge: Advertising falsely or misleadingly as to scientific or relevant facts, and medicinal and therapeutic qualities of product; in that respondent, in connection with the offer and sale of its "Nutri-Vac," falsely and misleadingly represents, among other things, through advertisements in newspapers and magazines, and in cards, leaflets, folders, circulars, and radio continuities, that a lack of vitamin A leads to lowering of resistance to certain infections, and causes certain eye diseases and inflammations; that vitamin C improves the central nervous system, that an adequate intake of vitamin D insures good bones and teeth; and that use of its preparation will prevent underweight and other conditions arising from vitamin and mineral deficiencies, etc.; the facts being that vitamin A deficiency of such a degree as to result in lowering bodily resistance to infectious diseases rarely exists in this country; many diseases and inflammations are not caused by a lack thereof; and that other representations made

<sup>1</sup> Amended.

above as to the need of such vitamins and minerals and the efficacy of their said product were false and misleading.

Dismissed without prejudice, the Commission being of the opinion, with the case before it upon the complaint, answer, testimony and other evidence, the hearing examiner's recommended decision, and exceptions, and briefs, "that of the misrepresentations alleged in the complaint some were not made as alleged, others were discontinued a substantial time prior to the issuance of the complaint, and others not sustained by the proof, and that no corrective action by it is necessary in other respects."

Before *Mr. John P. Bramhall*, hearing examiner.

*Mr. William L. Pencke* for the Commission.

*Frank and Arthur Gettleman*, of Chicago, Ill., for respondent.

HARRY SACHNOFF doing business as PARK ROW PEN Co. and ARGO PEN-PENCIL Co., INC., New York, N. Y., Docket 3975. Complaint, June 14, 1945.<sup>1</sup> Order, October 6, 1952.

Charge: Misbranding or mislabeling and furnishing means of misrepresentation in connection with the interstate sale of fountain pens and combination pen-pencils in that respondent, engaged in the assembling and competitive sale of such products at wholesale—

Stamped penpoints with the symbol "14K" or "14Kt." in large and conspicuous letters, and the words "gold plate" or "gold plated" in such small or faint letters as to be practically illegible; when in fact they were made of steel thinly electroplated with soft gold of about 22 karats fineness which, while cheaper for electroplating than 14 karat, does not result in penpoints with the hardness and wearing qualities produced by 14 karat gold;

Stamped certain penpoints with the word "Durium", although there is no metal or substance known as "Durium"; and stamped penpoints thinly plated with gold as foresaid with the words "Warranted Duripoint" or "Iridium Tipped"; thereby causing the belief that they possessed special qualities;

Furnished to the retail dealer with each fountain pen a so-called "Lifetime guarantee" which recited that in the event of dissatisfaction and the return of the pen and 25 cents in stamps, they would supply new parts; and thereby falsely represented that their products were of such superior quality and durability that they would last a lifetime and were guaranteed for life, when in fact they regularly sold the pens at wholesale at from \$18 to about \$72 per gross and the so-called "Lifetime Guarantee" was merely a contract whereby respondents agreed for the life of the purchaser to make repairs and adjustments at a flat rate of 25 cents each time, which was more than

<sup>1</sup> Amended.

the price at which they sold some of the products to dealers in the regular course of business;

With the result of furnishing retail dealers with a means of deceiving the purchaser with respect to the price, value and quality of said pens; whereby trade was unfairly diverted to respondents from their competitors who did not falsely represent their products, to the injury of competition in commerce.

Dismissed for the reason, as set forth in the Commission's order, that it appeared from a memorandum submitted for the record that respondent corporation was dissolved pursuant to the laws of New York State on February 27, 1945, and that the individual respondent, Mr. Sachnoff, "departed this life on December 10, 1950," under which circumstances, the Commission was of the opinion that the proceedings should be terminated.

Before *Mr. Lewis C. Russell* and *Mr. Andrew B. Duvall*, hearing examiners.

*Mr. Karl Stecher* and *Mr. William L. Pencke* for the Commission.

*Mr. Henry J. Easton* and *Mr. Abbey L. Warshauer*, of New York City, for respondents.

MOUNT VERNON UNIVERSITY, INC., also operating and trading as MOUNT VERNON UNIVERSITY, CHRIST COLLEGE, and CHRIST SEMINARY; ET AL., Washington, D. C., Docket 5512. Complaint, October 14, 1947. Order, October 17, 1952.

Charge: Advertising falsely or misleadingly as to business status and operations, in that respondents, located on two floors of a four-story building in Washington, engaged in the sale and distribution of courses in various subjects of higher learning, in residence and by correspondence—

Falsely represented through newspaper advertisements, catalogs, and letterheads that they conducted and operated a university, college, and seminary, as generally understood, with a competent faculty of qualified professional men, adequate classrooms, dormitories and libraries, which was recognized by standard accrediting organizations and in turn recognized credits from all accredited colleges, was approved for G. I. training by the Government, offered work leading to a number of recognized academic degrees, and furnished complete outlines of study in the respective subjects offered under the supervision of a qualified and experienced dean or administrative officer.

The facts, among others, as alleged, were that—

Its "board of trustees," "board of administration," and "board of directors" did not function so as to administer the affairs of an educational institution, their school was not equipped to teach the numerous subjects offered, their educational standards were wholly insufficient

to satisfy minimum requirements of any standards in the educational field, their degrees, so-called, were not earned and conferred, did not constitute degrees in the accepted meaning of the term and were of no meaning or effect whatever, and honorary degrees issued by them were conferred upon persons who merited no such distinction; and that

Use by them of such terms as "College," "University" and "Seminary" and the placing of academic degrees after the names of numerous individuals listed by them, and of such designations as "Dean," "Registrar," etc., falsely implied the existence of a substantial institution of higher learning, with a qualified faculty and experienced administrators; the school had no authority to confer the degrees and diplomas, which often were sold for \$50; and the representation, along with various others, that the school was accredited by the National Association of Christian Schools—which had no standing among recognized associations of schools or accreditation—was grossly misleading.

Dismissed by order which, after sustaining the hearing examiner's conclusions that the participation of respondent Leas in the affairs of respondent corporation, Mount Vernon University, Inc., was of such a nature that he should be included in any order to cease and desist which might be issued, dismissed the complaint as to all respondents since it appeared that the receipts of the corporate respondent for tuition were trivial, its financial backing was negligible, some of the individual respondents were no longer connected with it, others did not participate in the practices alleged, there was no present likelihood that the practices concerned would be continued or resumed, and there was no present public interest in carrying the proceeding further.

Commissioner Carretta did not participate for the reason that oral argument on the merits was heard prior to his appointment to the Commission.

Before *Mr. John P. Bramhall* and *Mr. William L. Pack*, hearing examiners.

*Mr. William L. Pencke* for the Commission.

*McNeill & Fuller* and *Mr. P. W. Seward*, of Washington, D. C., for respondents.

M. B. WATERMAN PEN CO. ET AL., Chicago, Ill., Docket 5381. Complaint, September 14, 1945. Order, October 31, 1952.

Charge: Advertising falsely and misleadingly, and misbranding as to maker, composition, prices, special offers, durability, guarantees, and free goods; in connection with the sale and distribution of fountain pen and pencil sets, stamped with the name "Waltham."

Dismissed without prejudice, for the reason that respondents have not been engaged in the sale of the products involved for many years;

and that the Commission is of the opinion that the public interest would not be served by further proceedings in the matter.

Before *Mr. George Biddle*, hearing examiner.

*Mr. Karl Stecher* and *Mr. William L. Pencke* for the Commission.

*Mr. Charles L. Schwartz*, of Chicago, Ill., for respondents.

JOSEPH L. MORSE ET AL., doing business as BOOK GIVE-AWAY PLAN, Brooklyn, New York, Docket 4913. Complaint, December 23, 1946.<sup>1</sup> Order, November 3, 1952.

Charge: Falsely advertising private business as making surveys for business enterprises and maintaining a huge staff of experts; misrepresenting special offers, prices, history, composition, and free goods; in connection with the sale and distribution of sets of medical and encyclopedic books.

Closed without prejudice, for the reason that certain of respondents' complained-of practices had been discontinued for many years, and those which were continued were prohibited by the Commission's order of October 16, 1950, 47 F. T. C. 258, in *Unicorn Press et al.*, Docket 5488; and the Commission was of the opinion that the public interest involved would not be served by further proceedings.

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

*Mr. Carrell F. Rhodes* and *Mr. Jesse D. Kash* for the Commission.

*Mr. Marcus Miller*, of New York City, for respondents.

LO-WELL PENCIL Co., New York, N. Y., Docket 5407. Complaint, November 29, 1945. Order, November 4, 1952.

Charge: Falsely advertising merchandise as "free" when price thereof is included in the price of other merchandise required to be purchased; in connection with the sale and distribution of pencils.

Closed without prejudice, for the reason that the evidence presented was restricted to respondent's practices prior to the sole hearing, which was 6 years prior to the hearing examiner's recommended decision, and that it appeared respondent was not in any way responsible for the delay; that the Commission had no knowledge as to respondent's present practices and was "of the opinion that the public interest would be adequately protected by closing this matter without prejudice," and was further "of the opinion that there is great public interest in ending litigation".

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

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

*Mr. Charles J. Hyman*, of New York City, for respondent.

HERNARD MFG. Co., INC. ET AL., Mount Vernon, N. Y., Docket 5774. Complaint, May 4, 1950. Order, November 19, 1952.

<sup>1</sup> Amended.

**Charge:** Appropriating competitor's product and process; passing off; and furnishing means of misleading purchasers; in connection with the manufacture and sale of plastic-ceramic three-dimensional display letters.

Dismissed for the reason that the matter is essentially a private controversy; the Federal Trade Commission Act does not provide private persons an administrative remedy for private wrongs; and the record failed to establish sufficient public interest.

Before *Mr. John W. Addison* and *Mr. J. Earl Cox*, hearing examiners.

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

*Mr. Sam Eisenberg*, of Mount Vernon, N. Y., for respondents.

THE CONKLIN PEN CO., ET AL., Chicago, Ill., Docket 5208. Complaint, August 28, 1944. Order, December 22, 1952.

**Charge:** Falsely advertising identity and history of business; foreign branches; maker, quality, composition, durability of product; and dealer as manufacturer; in connection with the sale and distribution of fountain pens and pencils.

Closed without prejudice for the reason that respondents were shown to be fully entitled to use their trade and brand name, that all evidence relating to respondents' practices was received five and a half years ago, that the Commission is of the opinion that "respondents are no longer carrying on the complained-of practices" and that "the public interest does not require any further action".

Before *Mr. George Biddle*, hearing examiner.

*Mr. Karl Stecher* and *Mr. William L. Pencke* for the Commission.

*Gottlieb & Schwartz* and *Mr. Jack H. Oppenheim*, of Chicago, Ill., for respondents.

JOSEPH STARR ET AL., trading as STARR PEN CO., ETC., Chicago, Ill., Docket 5209. Complaint, August 28, 1944. Order, December 22, 1952.

**Charge:** Advertising falsely, and misbranding as to maker, composition, manufacture, prices, and guarantees of product; assuming misleading trade names; misrepresenting dealer as manufacturer; and furnishing fictitious price tags; in connection with the assembling, sale and distribution of fountain pens.

Closed without prejudice, for the reason that respondents had abandoned most of the practices complained of over two years prior to issuance of the complaint, that all of the evidence was received prior to date of the last hearing—some 5½ years past; that respondents have not manufactured fountain pens for a number of years;

and that the Commission is of the opinion that the public interest does not require any further action at this time.

Before *Mr. George Biddle*, hearing examiner.

*Mr. Karl Stecher* and *Mr. William L. Pencke* for the Commission.  
*Gottlieb & Schwartz* and *Mr. Jack H. Oppenheim*, of Chicago, Ill., for respondents.

STERLING DRUG, INC. ET AL., New York, N. Y., Docket 5237. Complaint, October 19, 1944. Order, December 24, 1952.

Charge: Advertising falsely and misleadingly as to ailments, therapeutic properties of product, and testimonials; and failing to reveal relevant facts; in connection with the sale and distribution to wholesale drug dealers of "Ironized Yeast Tablets."

Dismissed without prejudice, for the reason that the allegations of the complaint were directed to practices engaged in in a situation existing more than 8 years past; that continuation of the proceeding looking to a decision on the merits of issue presented by pleadings prepared so long ago might serve no present useful purpose; and that there is no assurance that the expenditure of additional time in the trial of such issues would be in the public interest.

*Mr. E. L. Smith* and *Mr. George M. Martin* for the Commission.

*Rogers, Hoge & Hills* and *Mr. L. B. Stoughton*, of New York City, for respondents.

RICHARD HUDNUT ET AL., New York, N. Y., Docket 2973. Complaint, November 6, 1936. Amended, May 25, 1939. Order, January 9, 1953.

Charge: Discriminating in price, etc., in violation of sections 2 (a) and 2 (e) of the Clayton Act, as amended, in the allowance of more favorable discounts to certain purchasers than to others including, respectively, (a) individual retail stores not furnished facilities and services of paid demonstrators, (b) those furnished such facilities and services, (c) chain-store organization operating less than 20 stores, treated as a unit, with a corresponding exception, and similar chain stores not thus excepted, (d) chain stores operating more than 20 stores and so treated, with a similar exception, and those not so excepted, and (e) wholesale distributors; and in the supplying of such facilities and services to some but not all of respondents' purchasers in connection with the manufacture, sale, and distribution in commerce of cosmetics and toilet preparations.<sup>2</sup>

<sup>2</sup> By order dated June 5, 1942, count II of the *original* complaint, which charged a violation of section 5 of the Federal Trade Commission Act in the assignment to certain of respondents' customers of the services of sales persons as demonstrators, and in the payment of a "push money" bonus of 5 percent on the sales made by the clerks handling respondents' products in the stores of certain of respondents' customers, as an inducement to push the merits of respondents' products over competing products, was dismissed; as

Dismissed for the reasons, as set forth in the Commission's order, that subsequent to the reception of evidence, the Commission promulgated Trade Practice Rules for the Cosmetic and Toilet Preparations Industry which evidence an interpretation by it of section 2 (e) under which that section would be violated only if "demonstrator service" was not accorded to all "competing" purchasers upon proportionally equal terms; that the rules specifically provide that one type of service may be offered to some customers and an alternate type to others, and set out some of the methods by which it might be determined whether a course of conduct resulted in "proportionally equal terms" to all customers—none of which provisions were in existence when the proceeding was tried; that the injustice of entering an order to cease and desist upon a state of facts permitted by the rules is apparent, and that a proceeding initiated in the light of the present rules would be so different in pleadings and evidence from those in this case, that the Commission could not in good conscience do other than enter its order of dismissal.

Commissioner Carretta did not participate for the reason that the oral argument was heard on November 8, 1950, prior to his appointment to the Commission.

Before *Mr. John W. Addison* and *Mr. John L. Hornor*, hearing examiners.

*Mr. Eldon P. Schrup*, *Mr. James I. Rooney*, *Mr. Frank Hier*, *Mr. Philip R. Layton* and *Mr. Fletcher G. Cohn* for the Commission.

*Baldwin, Todd & Lefferts*, of New York City, for respondents.

ELMO, INC., ET AL., Philadelphia, Pa., Docket 2974. Complaint, November 6, 1936. Amended, March 25, 1939. Order, January 9, 1953.

Charge: Discriminating in price, etc., in the supplying of "demonstrators," in violation of section 2 (e) of the Clayton Act as amended, in connection with the manufacture and sale and distribution in commerce of cosmetics and toilet preparations.<sup>3</sup>

was count III of the amended and supplemental complaint which similarly charged a violation of section 5 of the Federal Trade Commission Act through the furnishing of demonstrators whereby purchasers and prospective purchasers of the stores concerned were misled and deceived into believing the personnel in question were store sales personnel, working only in the interest and under the control of the respective stores concerned, and competitors and the public were otherwise prejudiced.

<sup>3</sup> By order dated June 5, 1942, count II of the *original* complaint which charged a violation of section 5 of the Federal Trade Commission Act in the assignment to certain of respondents' customers of the services of sales persons as demonstrators to sell to customers and prospective customers of the retail stores, they being required likewise to sell the products of such other manufacturers as were displayed and carried for sale by said retail stores, was dismissed; as was count II of the amended complaint which similarly charged a violation of section 5 of the aforesaid act through the furnishing of demonstrators whereby purchasers and prospective purchasers were misled and deceived into believing the personnel in question were store sales personnel, working only in the interest and under the control of the respective stores concerned, and competitors and the public were otherwise prejudiced.



Dismissed for the reasons set forth in the preceding dismissal, Richard Hudnut et al., D. 2973, p. 1562; Commissioner Carretta not participating for the reason that oral argument was heard on May 21, 1947, prior to his appointment to the Commission.

Before *Mr. John W. Addison* and *Mr. John L. Hornor*, hearing examiners.

*Mr. Eldon P. Schrup*, *Mr. James I. Rooney*, *Mr. Frank Hier*, *Mr. Philip R. Layton* and *Mr. Fletcher G. Cohn* for the Commission.

*Conlen, LaBrum & Beechwood*, of Philadelphia, Pa., for respondents.

CHARLES OF THE RITZ, INC., ET AL., New York, N. Y., Docket 3017. Complaint, December 19, 1936. Amended, May 8, 1939. Order, January 9, 1953.

Charge: Discriminating in price, etc., in supplying of "demonstrators," in violation of section 2 (e) of the Clayton Act as amended, in connection with the manufacture, sale, and distribution in commerce of cosmetics and toilet preparations.<sup>4</sup>

Dismissed for the reasons set forth in the preceding dismissal, Richard Hudnut et al., D. 2973, p. 1562; Commissioner Carretta not participating for the reason that the oral argument was heard on November 17, 1950, prior to his appointment to the Commission.

Before *Mr. John W. Addison* and *Mr. John L. Hornor*, hearing examiners.

*Mr. Eldon P. Schrup*, *Mr. James I. Rooney*, *Mr. Frank Hier*, *Mr. Philip R. Layton* and *Mr. Fletcher G. Cohn* for the Commission.

*Olvany, Eisner & Donnelly*, of New York City, for respondents.

PRIMROSE HOUSE, INC., New York, N. Y., Docket 3039. Complaint, January 26, 1937. Amended, May 3, 1939. Order, January 9, 1953.

Charge: Discriminating in price, etc., in the supplying of "demonstrators" and in the similar supplying to some, but not all, purchasers,

<sup>4</sup> By order dated June 5, 1942, count II of the *original* complaint which charged a violation of section 5 of the Federal Trade Commission Act in (a) the assignment by respondents to certain favored purchasers of the services of sales persons as demonstrators to sell to customers and prospective customers of the retail stores concerned respondents' preparations, they being likewise required to sell similar products of other sellers and distributors which might be carried for sale by the particular retail store, and in (b) the payment to the sales persons or clerks of certain favored purchasers of bonuses or "push money," in excess of the compensation otherwise received by them, to push the merits of respondents' products in opposition to or disregard of similar products sold and distributed by competitors and carried for sale by such purchasers in competition with respondents' own products, was dismissed; as was count II of the amended and supplemental complaint which similarly charged a violation of said section through the furnishing of demonstrators whereby purchasers and prospective purchasers of the stores concerned were misled and deceived into believing the personnel in question were store sales personnel, working only in the interest and under the control of the respective stores concerned, and competitors and the public were otherwise prejudiced.

of "give-away promotions" and "20% promotions" involving the consignment of certain of respondent's products to be given away or sold at a 20 percent discount, and the presence, in some instances, of so-called "beauty counselors," furnished by respondent, to assist in the conduct of such promotions, in violation of section 2 (e) of the Clayton Act; in connection with the manufacture, sale, and distribution in commerce of cosmetics and toilet preparations.<sup>5</sup>

Dismissed for the reasons set forth in the preceding dismissal, Richard Hudnut et al., D. 2973, p. 1562; Commissioner Carretta not participating for the reason that oral argument was heard on May 6, 1947, prior to his appointment to the Commission.

Before *Mr. John W. Addison* and *Mr. John L. Hornor*, hearing examiners.

*Mr. Eldon P. Schrup*, *Mr. James I. Rooney*, *Mr. Frank Hier*, *Mr. Philip R. Layton* and *Mr. Fletcher G. Cohn* for the Commission.

*Chadbourne, Hunt, Jaekel & Brown*, of New York City, for respondent.

COTY, INC., New York, N. Y., Docket 4435. Complaint, December 27, 1940. Order, January 9, 1953.

Charge: Discriminating in price, etc., in the supplying of "demonstrators" in violation of section 2 (e) of the Clayton Act as amended, in connection with the manufacture, sale, and distribution in commerce of cosmetics and toilet preparations.

Dismissed for the reasons set forth in the preceding dismissal, Richard Hudnut et al., D. 2973, p. 1562; Commissioner Carretta not participating for the reason that oral argument was heard on November 15, 1950, prior to his appointment to the Commission.

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

*Mr. Frank Hier*, *Mr. Fletcher G. Cohn* and *Mr. Philip R. Layton* for the Commission.

*Cowdert Brothers*, of New York City, for respondent.

BOURJOIS, INC., ET AL., New York, N. Y., Docket 4436. Complaint, December 27, 1940. Order, January 9, 1953.

Charge: Discriminating in price, etc., in the supplying of "demonstrators" in violation of section 2 (e) of the Clayton Act as amended, in connection with the manufacture, sale, and distribution in commerce, of cosmetic and toilet preparations.

<sup>5</sup> By order dated June 5, 1942, count II of the amended and supplemented complaint which charged a violation of section 5 of the Federal Trade Commission Act in the furnishing by respondent to certain favored purchasers of the services of sales persons as demonstrators, held out deceptively, as alleged, directly or indirectly, as part of the store sales personnel, and so considered by the public and as solely interested in store sales as a whole, was dismissed.

Dismissed for the reasons set forth in the preceding dismissal, Richard Hudnut et al., D. 2973, p. 1562; Commissioner Carretta not participating for the reason that oral argument was heard on November 9, 1950, prior to his appointment to the Commission.

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

*Mr. Frank Hier, Mr. Philip R. Layton and Mr. Fletcher G. Cohn* for the Commission.

*Ovany, Eisner & Donnelly*, of New York City, for respondents.

FREDERICK HERRSCHNER trading as VICTORY VITAMIN Co., Chicago, Ill., Docket 5442. Complaint, June 11, 1946. Order, January 9, 1953.

Charge: Advertising falsely or misleadingly as to medicinal, remedial, and healthful qualities of product, ailments, and symptoms, and scientific or relevant facts, in connection with the offer and sale of vitamin medicinal preparations by respondent, including his "Victory Vitamins," "Calcium Pantothenate Capsules," "Wheat Germ Oil, etc.," "Garlicaps," and "Liver, Iron, and B<sub>1</sub> Capsules"; in that respondent falsely and misleadingly represented, among many other things, significance of ailments, symptoms, and conditions as pointing to vitamin deficiencies, tests made in said connection, deficiencies in said respects in the ordinary diet, effects on health and physical function of various vitamins, and effect and qualities of his various preparations.

Dismissed without prejudice, on motion by counsel supporting the complaint, for the reason that the business concerned is no longer conducted by respondent but by a corporation which distributes numerous other products, and that the advertising practices complained of have been abandoned, revised, or modified, and the Commission's opinion that there was no present public interest in carrying the proceeding further.

Before *Mr. John P. Bramhall*, hearing examiner.

*Mr. William L. Pencke* for the Commission.

*Nash & Donnelly*, of Chicago, Ill., for respondent.

UNITED STATES TRAVEL AGENCY, INC., ET AL., Washington, D. C., Docket 5738. Complaint, January 25, 1950. Order, January 12, 1953.

Charge: Falsely representing Government connection through use of misleading corporate name (furthered by corporate respondent's failure to use the abbreviation "Inc.") in connection with solicitation and sale, as travel and tourist agents, of transportation, hotel accommodations and incidental services appertaining thereto.

Dismissed for the reason that, some months after complaint was issued, a new corporation was chartered in the name of "United Travel Agency, Inc." and subsequently conducted all respondent's former

business except that dealing with clubs or business organizations, which continues to be conducted under the name objected to but used in immediate conjunction with the words "Not a Government Agency" conspicuously displayed, and including the abbreviation "Inc.;" it appearing, therefore, that respondents have, in good faith, already taken all the corrective action which could be required by an order to cease and desist.

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

*Mr. R. P. Bellinger* and *Mr. Michael J. Vitale* for the Commission.

*Mr. Wilbur N. Baughman* and *Mr. Harry A. Bowen*, of Washington, D. C., for respondents.

*Mr. Harry A. Bowen*, of Washington, D. C., and *Hale, Stimson & Russell*, of New York City, for American Society of Travel Agents, Inc., intervenor.

NEW STANDARD PUBLISHING CO., INC., ET AL., Richmond, Va., Docket 4697. Complaint, February 4, 1942. Findings and order to cease and desist, May 25, 1951. Order dismissing complaint, January 19, 1953.

Charge and findings: Misrepresenting prices, terms, and conditions, including alleged special offers, etc., and making use of numerous deceptive practices; in connection with the sale by respondent corporation, and its President, through salesmen furnished with advertising literature and other material, of "Doubleday's Encyclopedia," Annual Supplements or Year Books therefor, and other publications such as "The New Century Dictionary," "Funk & Wagnall's Practical Standard Dictionary," "The Nature Library," sets of classics, and some other items such as bookcases and pencils; in that, among other things, they thus—

Falsely and misleadingly represented that the books were offered at a special price for a limited time only, were given away as an advertising plan to a limited number of selected persons; that the price of the books shown in the contract was the total price; that the salesmen were those of the publisher; that the books had been approved by educational authorities; and made various other false and misleading statements pertaining to their said offers; and

Made use of the misleading trade name "Commercial Finance" in the conduct of their business and made various misrepresentations pertaining to said supposed separate concern to enforce payments.

Dismissed, after hearing by the Commission, following the decision of the Court of Appeals for the Fourth Circuit in *New Standard Publishing Co., Inc., et al. v. Federal Trade Commission*, February 9, 1952, 194 F. (2d) 181, which, for the reasons therein set forth, vacated the Commission's order entered on May 25, 1951, 47 F. T. C. 1350,

without prejudice "to the entry of such order as may be appropriate under present circumstances, should the Commission see fit to pursue the case further."

Commissioner Carretta not participating.

Before *Mr. Randolph Preston*, hearing examiner.

*Mr. Clark Nichols*, *Mr. Randolph W. Branch* and *Mr. William L. Pencke* for the Commission.

*Mr. Henry Ward Beer*, of New York City, for New Standard Publishing Co., Inc. and Julius B. Lewis.

*Mr. J. Raymond Tiffany*, of Hoboken, N. J., for Doubleday-Doran & Co., Inc.

STEWART-ALLEN CO., INC., New York, N. Y., Docket 5931. Complaint, October 25, 1951. Order, February 7, 1953.

Charge: Advertising falsely or misleadingly, misbranding or mislabeling, and furnishing means of misrepresentation and deception, in connection with the sale and distribution of pipes made in the United States from imported briar root, in that respondent, competitively engaged as aforesaid, furnishes display and price cards for the use of retail dealers, which bear the words "Importer Briar," stamps said words upon the pipes, and distributes circulars to the trade upon which are printed the words "Finest Quality Imported Briar Pipes," falsely representing thereby that its said pipes were manufactured abroad and imported into the United States.

Dismissed for the reasons, among others, that the stamping of the words "Imported Briar" upon the bowls of pipes of domestic manufacture is a common trade practice and that such words signify to the trade and the public generally only that the wood of which the bowls and stems are made has been imported; that use of the words "Finest Quality Imported Briar Pipes," as aforesaid, was discontinued more than one year prior to the issuance of the complaint, and the words "Pipes Made of Imported Briar," substituted; and that the evidence is insufficient to support a finding of any substantial preference for pipes of foreign make.

Before *Mr. J. Earl Cox*, hearing examiner.

*Mr. Jesse D. Kash* and *Mr. J. J. McNally* for the Commission.

*Mr. Charles Bennet*, of New York City, for respondent.

EAGLE CONE CORP. ET AL., New York, N. Y., Docket 5935. Complaint, November 20, 1951. Order, February 9, 1953.

Charge: Entering into a planned common course of action, agreement or understanding to raise and maintain the price at which ice cream cones should be sold, on the part of respondent Eagle Cone Corp., three other corporations, and a partnership, which, engaged in

the manufacture and competitive interstate sale and distribution of ice-cream cones, including sugar cones, and cake cones, in various sizes, represented about 95 percent of the production of such products sold in and from the metropolitan area of New York and occupied a dominant position in said industry; with the effect of substantially hindering competition as to price between and among said respondents and others, and with a dangerous tendency so to do.

Initial decision dismissing the complaint for the reason that careful consideration of the entire record, including testimony and evidence as to prices, failed to establish that respondents did in fact, as alleged, enter into any such planned common course of action, agreement or understanding, was affirmed by order dated February 9, 1953, which ruled on and denied the appeal of counsel supporting the complaint from said initial decision.

Said order, in denying said appeal, considered the testimony of the attorney-examiners, which, as alleged by counsel, supported a finding that respondents did agree that at least certain prices of ice cream cones would be raised; reached the opinion that their testimony was not supported and supplemented to the extent necessary for the record to furnish substantial evidence sustaining the findings proposed by said counsel; and that there was no error in its rejection by the hearing examiner, necessitating in turn a dismissal of the complaint and a rejection of other findings and conclusions proposed by him either as immaterial or unwarranted.

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

*Mr. George W. Williams* for the Commission.

*Pariser & Pariser*, of New York City, for Eagle Cone Corp., S & S Cone Corp. and Consolidated Wafer & Cone Corp.

*Mr. Leonard Yohay*, of Brooklyn, N. Y., for Yohay Baking Co.

*Mr. Ned J. Parsekian*, of East Orange, N. J., for Hudson Cone Co., Inc.

RIPLEY MANUFACTURING CORP., New York, N. Y., Docket 5940.  
Complaint, December 26, 1951. Order, February 27, 1953.

Charge: Advertising falsely or misleadingly, misbranding or mislabeling and misrepresenting directly, in the use of the words "Tailor-Made Clothes" by respondent, engaged in the manufacture of men's clothing, and in the retail sale thereof directly to the consuming public through a number of retail stores operated by wholly owned subsidiary corporations, located in New York, Philadelphia, Jersey City, Newark, and Boston, in that—

Respondent, as alleged, made use of the aforesaid statement "Tailor-Made" in newspapers, on sales slips, on tags and labels affixed to the clothing, on signs appearing on the outside of some of its retail stores, on letterheads, and by commercial announcements on television, and

other advertising media, and thereby represented that its clothing was made to the order and measurement of the individual purchaser, when, in fact, it was made in large quantities in a series of stock or standard sizes, by production-line factory method, such as commonly employed in the manufacture of readymade apparel, whereby each of a large number of persons, most of whom are not tailors, performs an individual operation or a few operations on each garment in process of completion, with the stitching being done principally by machine.

The initial decision dismissing the complaint for the reason that the representation and practice were respectively so qualified and employed as not to be deceptive, as therein set forth, and that there was no evidence to show how the use of the phrase on respondent's letterhead could have induced the purchase of a suit from respondent in the mistaken belief that it was made to the individual measurements of the purchaser was affirmed by order dated February 27, 1953, which ruled on and denied appeal of counsel supporting the complaint from said initial decision.

Said order, in denying said appeal, noted that the words "tailor-made" mean, according to Webster's New International Dictionary, 1950 edition, "Made by a tailor or according to a tailor's fashion"; that the complaint did not allege that the clothes in question were not "tailormade" in such sense or in the equally correct sense by "tailors" working together; that while the evidence that "implicit in 'tailor-made' is the further meaning" of garments "made to the order and measurements of the individual" was persuasive, it was not established that such was the sole and exclusive meaning;

That the representation was not, therefore, totally false as in the *Heusner* case, 106 F. (2d) 596, 29 F. T. C. 1850, but must be taken as partially true, and that, accordingly, the respondents could not be required on the complaint to do more than make adequate disclosure that their clothes were not "made to the order and measurements of the individual"; and that, accordingly, counsel's appeal must be denied and an order dismissing the complaint by the hearing examiner affirmed.

Said decision, it was noted, is not to be taken as a holding of general application that factorymade clothes may be designated as "tailormade clothes," but only as based on the necessary assumption in the instant case that the respondents' clothes were "made by tailors." As to the question whether they were so made, such question was not presented by the complaint, and was, therefore, not decided.

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

*Mr. Edward F. Downs* and *Mr. George E. Steinmetz* for the Commission.

*Mr. Arthur A. Singer* and *Mr. Gilbert H. Weil*, of New York City, for respondent.

VITRIFIED CHINA ASSOCIATION, INC., ET AL., Washington, D. C., Docket 5719. Complaint, December 9, 1949. Order, March 6, 1953.

Charge: Entering into and carrying out an unlawful understanding and conspiracy to hinder and limit competition in price and otherwise in the manufacture, sale, and distribution of vitrified china hotel ware, and aiding and abetting said undertakings and practices through (a) cooperatively formulating, agreeing upon, and revising a list of base prices to be used; (b) agreeing upon amounts to be added to and deducted from such base list prices; and (c) agreeing upon terms and conditions upon which sales of said chinaware were to be made; on the part of respondent association (the members of which embrace substantially all manufacturers of vitrified chinaware in the United States and occupy a dominant and controlling position in the industry); 8 officers thereof; 12 manufacturer members; and 2 manufacturer nonmembers, who cooperated in said practices and activities; with the effect of substantially lessening and suppressing competition involved, and with other prejudicial effects and tendencies.

By decision of the Commission, appeals by respondents from initial decision of hearing examiner, which held that respondents, with the exception of one individual, had entered into agreements affecting the price of such hotel ware in violation of section 5 of the Federal Trade Commission Act, were granted without ruling individually on each appeal; appeal by counsel supporting the complaint from the initial decision on the ground that the order therein was too narrow in scope to provide effective relief, was denied; and the complaint was dismissed as not sustained by the evidence of record, for the reasons stated in the Commission's opinion by Commissioner Mead, as follows:

OPINION OF THE COMMISSION

By MEAD, *Commissioner*:

This proceeding is before the Federal Trade Commission upon appeals from an initial decision of a hearing examiner of the Commission holding that respondents, with exception of Frederic J. Grant, have entered into agreements affecting the price of a type of china known as hotel ware, in violation of section 5 of the Federal Trade Commission Act. These respondents have appealed to the Commission contending that this initial decision is not supported by the evidence of record. Counsel supporting the complaint in this proceeding also has appealed contending that the order, contained in the initial decision, is too narrow in scope to provide effective relief from respondents' practices found to be illegal.



This proceeding is limited to respondents' acts in connection with the manufacture, sale and distribution of hotel ware. Hotel ware is heavyweight vitrified china made for hotels, restaurants and other commercial establishments. There are approximately 1,700 different sizes and shapes of hotel ware, three different body colors, and a large number of different decorations available. Thus, there are practically innumerable items of hotel ware of different combinations of shape, color and decoration which can be purchased from respondents.

Respondents sell their hotel ware f. o. b. the place of manufacture. Shipping costs are paid by the purchaser. A respondent's f. o. b. price on a particular item can be determined by combining the amount set out for the item in respondent's "basic list" with his current discount or plusage for that item as set out in his latest "discount sheet" plus any price increase which may have been announced by respondent applicable to the item plus respondent's packing charge for the items ordered.

There are two "basic lists"—the "white list" and the "decorated list." The "white list" shows a dollar and cents figure for each item or shape of hotel ware which is to be sold without decoration. The "decorated list" shows a dollar and cents figure for each item or shape of hotel ware which is to be sold with a decoration on it. The amounts set out on these basic lists are, with a few exceptions, the same for each listed item for each respondent manufacturer.

Each respondent manufacturer of hotel ware publishes lists of discounts and plusages to be used in connection with the basic lists in calculating its current price on the items listed. These discounts and plusages are designed to allow for differences in cost between items with different decorations, etc.

In addition, respondent manufacturers have made general price changes from time to time. In certain cases a respondent manufacturer's price change has applied to all of the items of hotel ware sold by it. In other cases such a price change has been applied only to certain classes of hotel ware. Such price changes are made known to the customers by means of price announcements issued by the particular company making the change. General price changes are rarely, if ever, reflected in the "basic lists" which have remained unchanged since 1946. After the applicable discount or plusage and price change has been applied to the amount set out for the item in the basic list, the packing charge is computed and included in the bill. Hotel ware may be shipped in barrels, casks or cartons, and the charge made to the purchaser varies with the method of packing.

Thus, the total amount paid by a purchaser for a particular item of hotel ware can only be calculated by combining the applicable amount in the basic list with the applicable discount or plusage, plus the

amount of price increase announced, if any, plus the packing charge and the actual cost of shipping from the point of manufacture to the place of delivery. Only if all of these factors are the same for each respondent manufacturer will the total price paid by a purchaser of a particular item of hotel ware regularly be the same regardless of which respondent manufacturer he buys from.

The record shows that only in their basic lists are the factors used by the respondent manufacturers in calculating their prices substantially the same. Due to differences in the locations of respondents' potteries, the weight of the product and the absence of the absorption of any part of the shipping charges by respondents, there exists a substantial difference in the shipping charges paid by a purchaser on identical purchases of hotel ware from the various respondent manufacturers. There is little or no uniformity in packing charges among respondent manufacturers. The announced price increases have varied from respondent to respondent; and while there has been uniformity on certain items in respondents' published discounts and plusages, there has also been a great amount of nonuniformity. As a result the total price paid at any given location for the same item of hotel ware has varied greatly depending upon from which of the respondents the item was purchased.

The only evidence of record as to any concert of action among respondents as to any of these pricing factors is in connection with the basic lists. It shows that in 1946 the respondent association employed a cost accountant to make the necessary cost studies to enable him to submit new white and decorated lists based upon actual cost figures of members of the association. The purpose of the study was to bring up the items which were priced too low and to bring down the items too high in relation to the actual costs of production. A study of 76 standard items was made which showed a wide divergence in the cost of individual items as between the seven plants studied. However, a revision of the basic lists as to certain of the items manufactured was prepared on the basis of the average of the costs in these seven plants. This revision was approved unanimously by a vote of the members present at a meeting of the respondent Association held May 22, 1946. The same or substantially similar revisions were made by each of the respondent manufacturers in their own published basic lists shortly thereafter.

Thus, the principal issue raised in this matter is:

Do respondents' acts and practices, as above described, constitute a combination in unreasonable restraint of trade? It is well settled that any agreement between competitors to fix their prices is per se an unreasonable restraint of trade and is unlawful under the Sherman

Act. Respondents herein have cooperatively caused a cost study to be made for the purpose and with the effect of revising basic lists used as one of several factors in calculating their individual prices. However, the record does not show that there was any intent to establish or fix in any manner the price at which the products were to be sold; nor does the record show that any uniformity or any fixed relationship was established as to the prices at which respondents sold their products. Also, there is no indication that this cooperative action was the first step toward an arrangement fixing in any manner the prices at which the products were to be sold or could grow into such an arrangement. The Commission, therefore, is of the opinion that respondents' cooperative action in revising their basic lists, which, if carried on as a part of a price fixing plan, would constitute illegal tampering with their price structures, under the circumstances of this case does not constitute price fixing or a combination in unreasonable restraint of trade.

The Commission being of the opinion that no violation of law has been established by this record, there is no necessity for considering the contention of counsel supporting the complaint that the hearing examiner's order was not adequate. Similarly, it is not believed necessary to rule individually on each of respondent's exceptions to the hearing examiner's initial decision, as it is being set aside.

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

*Mr. Floyd O. Collins* for the Commission.

*Kittelle & Lamb*, of Washington, D. C., for Vitrified China Association, Inc., its officers, The Walker China Co., Mayer China Co., Sterling China Co., Wallace China Co., and along with—

*Mr. Lynne Anderson Warren*, of New York City, for The Shenango Pottery Co.;

*Mr. Martin A. Jacobs*, of New York City, for Jackson Vitrified Co., Inc.;

*Magavern, Magavern, Lowe & Gorman*, of Buffalo, N. Y., for Buffalo Pottery, Inc.;

*Estabrook, Estabrook, Burns & Hancock*, of Syracuse, N. Y., for Iroquois China Co.;

*Bond, Schoeneck & King*, of Syracuse, N. Y., for Onondaga Pottery Co.;

*Gerdes & Montgomery*, of New York City, for American Limoges China, Inc.; and

*Mr. John Scammell* and *Mr. John Hall Forbes*, of New York City, for Scammell China Co.

*Mr. John N. Sawyer*, of Beaver, Pa., for Wellsville China Co.

*Wyckoff & Wyckoff*, of Grafton, W. Va., for Carr China Co.

LEVER BROTHERS Co., New York, N. Y., Docket 6020. Complaint, July 31, 1952. Order, March 13, 1953.

Charge: Advertising falsely or misleadingly as to nature of product and competitive products, in connection with the sale and distribution of respondent's Good Luck Oleomargarine, through the use in advertising of such expressions as "country-fresh" and "dairy department", long associated in the minds of many members of the purchasing public with dairy products, and through the use of such expressions as "the *table* margarine," "expressly for the table," "only new Good Luck (margarine) is pressure blended for table flavor," whereby respondent falsely represented that oleomargarine manufactured by respondent's competitors was not suitable for table use.

Dismissed without prejudice, pursuant to the hearing examiner's recommendation and following the tender and acceptance by the Commission of a proposed stipulation of facts and agreement to cease and desist, whereby respondent agreed not to use or disseminate any advertisement of its product, "Good Luck Margarine," containing any statements representing directly or by implication: (a) that said product was a dairy product, and (b) that competitors' products were not suitable for table use, the Commission being of the opinion that in the circumstances the public interest did not require a continuation of the proceeding at that time.

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

*Mr. A. S. Scott, Jr.* for the Commission.

*Mr. Martin J. Pendergast*, of New York City, and *Arnold Fortas & Porter*, of Washington, D. C., for respondent.

D. PHILLIP ROBINSON and LARUE WRIGHT doing business as METROPOLITAN PASS BOOK Co., and HARRY SCHOOLER, GENERAL MANAGER, New York City, Docket 5996. Complaint, May 23, 1952. Order, April 3, 1953.

Charge: Advertising falsely or misleadingly as to offer involved, free product, money-back guarantee or refund, prices and value; in connection with the sale in commerce of pass books of coupons, as an advertising scheme designed to bring new customers into the business establishments of participating advertisers, mostly small businessmen, through the honoring by them of coupons with promised goods or services.

Proceeding closed without prejudice, pursuant to motion of counsel supporting complaint, which set forth that service of complaint upon respondent general manager, the real party in interest, had not been made in spite of every effort to do so, and that practices in question were short-lived promotions in various cities; and for lack of public interest in proceeding further at the time.

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

*Mr. J. J. McNally* for the Commission.

*Mr. Eugene L. Wolver*, of Los Angeles, Calif., for D. Phillip Robinson.

MASTER LABORATORIES, INC., Omaha, Nebr., Docket 4908. Complaint, February 12, 1943. Order, June 17, 1953.

Charge: Advertising falsely as to qualities or properties of product, in connection with the compounding, selling and distributing of hog and poultry medicinal preparations designated as "Master Liquid Hog Medicine," "One-Shot Hog Wormer," "Master Florescine," "Master Fluid," "Master Liquid Poultry Medicine," and "Masterol."

Dismissed without prejudice, it appearing from facts developed during a supplemental informal investigation that the present operators of the business formerly conducted by corporate respondent have not, for more than 2 years, used any of the representations challenged in the complaint, and there is no reason to believe that they will resume use thereof; and the Commission being of the opinion that in the circumstances the public interest does not require further corrective action at this time.

Before *Mr. J. Earl Cox*, hearing examiner.

*Mr. S. F. Rose*, *Mr. Edward L. Smith*, *Mr. George M. Martin* and *Mr. R. P. Bellinger* for the Commission.

*Mr. John E. von Dorn*, of Omaha, Nebr., for respondent.

HENRY A. DREER, INC., Philadelphia, Pa., Docket 6035. Complaint, August 29, 1952. Order, June 28, 1953.

Charge: Advertising falsely or misleadingly as to soil conditioning properties, comparative merits and cost, tests and use of product, and time in business, in connection with the interstate sale and distribution of a liquid soil conditioner—basically an aqueous sodium polyacrylate solution—designated "Fluffium."

Dismissed for the reason that, since issuance of the complaint, respondent upon its own petition was adjudged a bankrupt, and all stocks of "Fluffium," and its trade name, were acquired by the corporate intervenor herein, which has expressed its intention of avoiding and misrepresentation in the advertising of the product, and of participating in the pending trade practice conference for the chemical soil conditioner industry; it appearing, consequently, that trial of the issues raised by the complaint would serve no useful purpose and would not be in the public interest.

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

*Mr. William L. Pencke* for the Commission.

*Montgomery, McCracken, Walker & Rhoads*, of Philadelphia, Pa., and *Davies, Richberg, Tydings, Beebe & Landa*, of Washington, D. C., for respondent.

*Clark, Ladner, Fortenbaugh & Young*, of Philadelphia, Pa., for Supplee-Biddle-Steltz Co., intervenor.

MARINE TOBACCO CO. ET AL., New York, N. Y., Docket 5747. Complaint, March 1, 1950. Order, June 30, 1953.

Charge: Restraining and monopolizing trade and price fixing, in connection with the sale and distribution of tax-free cigarettes to sea stores or "slop chests" of merchant ships engaged in foreign trade, as well as certain limited coastal trade, and on the part of corporate respondent, which, with a dominant position in said activity in the port of New York for at least 10 years (and the only distributor in said port generally so engaged excepting the New Jersey sector, as compared with ports other than Boston, where there are generally two or more authorized distributors), sold about 95 percent of the tax-free cigarettes there sold.

Various means, methods, acts, and practices employed by corporate respondent, joined with three individuals, its officers, to effect such suppression of competition and maintain its virtual monopoly included the following:

(1) Exerting pressure on manufacturers of said cigarettes, based on its power and good will with the shipping trade and its potential power to injure them, to induce them to refrain from supplying competitors with their said products;

(2) Threatening to contact sources of supply of distributors in neighboring ports, such as Baltimore and Philadelphia, for the purpose of having their supplies cut off; or to enter their distribution territory with competition that would probably eventually eliminate them from business, if they sold directly in the port of New York or to competitors in said port;

(3) Securing from distributors in the ports of Baltimore and Philadelphia, through coercion and pressure, an understanding that they would not sell said products in the trading area of the port of New York, in consideration of which it agreed that it would not compete with them in their said trading areas; and

(4) Similarly securing from said distributors in the ports of Baltimore and Philadelphia agreements that sales of tax-free cigarettes to a ship in a particular port when that ship had usually been supplied in the trading area of another port, would be for the account of the distributor operating in the port in which the ship was usually supplied.

Dismissed without prejudice, following denial of appeal of counsel for respondents from an order of the hearing examiner rejecting an

"Amended Stipulation as to the Facts," taken also as including a motion that the Commission dismiss the complaint in the event that the appeal was denied; the Commission being of the opinion that the facts as set forth in said "Amended Stipulation," or if modified as suggested by respondents, did not sustain the allegations of the complaint, that it was highly unlikely that further facts could be elicited were hearings held for that purpose, and that the public interest did not require such hearings to be held; and vacating the order of the hearing examiner setting the matter down for trial.

Before *Mr. Frank Hier*, hearing examiner.

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

*Mr. Harold A. Taft*, of Brooklyn, N. Y., and *Mr. John J. Halpin*, of New York City, for respondents.

WILDROOT Co., INC., Buffalo, N. Y., Docket 5928. Complaint, October 9, 1951. Order and opinion, June 30, 1953.

Charge: Paying, or contracting to pay, money, goods, etc., in consideration for services and facilities furnished or contracted to be furnished by some customers, including chain and independent retail drug stores, while not making such payments available on proportionally equal terms, or on any terms at all, to other competing customers, in connection with the processing, handling, interstate offer and sale of "Wildroot" hair preparations, including hair tonic, shampoo and hair net, in violation of the provisions of section 2 (d) of the Clayton Act, as amended, through such practices as—

(1) Paying money amounting up to 5 percent of purchases of "Wildroot Cream-Oil Hair Tonic" and "Wildroot Liquid Cream Shampoo" in consideration of the customer paying said money to its sales clerks in the form of "push money" to promote the sale of said products;

(2) Paying an amount of money equal to 5 percent of net purchases in consideration of the customer maintaining a permanent daily counter and window display and a feature window display once each quarter of aforesaid "Hair Tonic" and/or "Cream Shampoo";

(3) Making available to some customers a cooperative newspaper advertising agreement under which the customer was reimbursed for the entire cost of newspaper advertising of "Wildroot Liquid Cream Shampoo," such advertising to be run as a listing with the customer's own advertisement, the customer being required to display the shampoo on its counters or in its windows, or both, when the advertising was running, and under said agreement paying different amounts

of money to competing purchasers, arbitrarily determined in negotiations with individual customers;

(4) Making available to some customers a cooperative newspaper advertising agreement under which the customer was reimbursed for the entire cost of newspaper advertising of said "Hair Tonic" and "Cream Shampoo," the advertising to be alternated between the two products and to be run as a listing with the customer's own advertisement, and to be accompanied by counter or window displays, and under said agreement paying money limited to 10 percent of purchases of "Wildroot" products during the preceding year, with the suggestion that the customer spend the money in equal portions during each of the four quarters of the year during which the agreement was effective;

(5) Paying money to certain customers in consideration of advertising "Wildroot" products on radio and/or television programs sponsored by them, the amounts in each case being arbitrarily determined in negotiations with individual customers, as were also the services or facilities required to be furnished in each case;

(6) Paying money to certain customers in consideration of advertising respondent's products in connection with a special promotional sale conducted by the customer, for example, making such a payment to a chain retail drug store to cover the cost of circulars sent by direct mail to consumers by the customer—the amount of money and the services and facilities required to be furnished being arbitrarily determined in each case in negotiations with individual customers.

As further alleged in the complaint, respondent, in 1950, made one or more of such types of payments "to each of certain of its customers, a substantial number of which were chain retail drugstores. Said customers comprised approximately one-half of 1 percent of respondent's customers and their total dollar volume of purchases accounted for approximately 20 percent of the total sales of respondent's products. The total of said payments to said customers in 1950 was approximately \$184,000.

Said payments were not available in any amount to thousands of independent retail drugstores, comprising approximately 99½ percent of respondent's customers, many of which compete in the resale of respondent's products with said customers that received payments. During 1950 the total dollar volume of purchases by these customers accounted for approximately 80 percent of the total sales of respondent's products.

Complaint dismissed without prejudice by the following order:

This matter came on to be heard by the Federal Trade Commission upon respondent's petition for an order recalling the matter from the



hearing examiner and dismissing the complaint herein, and briefs in support of and in opposition to said petition. This petition in effect is a motion for reconsideration of the Commission's orders of August 28, 1952, and September 26, 1952, denying respondent's request for leave to appeal from the decision of the hearing examiner herein denying respondent's motion to dismiss. Further consideration is requested on the merits and especially in the light of the Commission's action of January 9, 1953 dismissing six complaints alleging violation of section 2 (e) of the Clayton Act because of a change in Commission's interpretation of section 2 (d) and 2 (e) of that Act.

The Commission, upon a reconsideration of the entire record herein, having decided, for the reasons stated in the written opinion of the Commission which is being issued simultaneously herewith, that the public interest would not be served by further proceedings in this matter at this time:

*It is ordered*, That the complaint herein be and it hereby is, dismissed without prejudice.

Commissioners Mead and Spingarn not concurring.

Before *Mr. J. Earl Cox*, hearing examiner.

*Mr. Rice E. Schrimsher* and *Mr. John H. Bass, Jr.*, for the Commission.

*Moot, Sprague, Marcy & Gulick*, of Buffalo, N. Y., for respondent.

#### OPINION OF THE COMMISSION

By *Howrey, Chairman*:

This is a petition, filed directly with the Commission, to dismiss the complaint. We have treated such petition as an appeal from the ruling of the hearing examiner denying respondent's motion to dismiss.

Respondent Wildroot Co., Inc., moved the hearing examiner to dismiss the complaint upon the grounds: (1) that the matters and practices complained of are adequately covered by the Trade Practice Conference Rules for the Cosmetic and Toilet Preparations Industry, and (2) that respondent has subscribed to such rules, is now in compliance therewith, and intends to continue to comply.

In its petition to the Commission respondent included two further grounds: (1) that no useful purpose can be served by further prosecution of the action in that every result possible to be obtained has already been obtained, and (2) that all practices charged in the complaint have long since been abandoned.

The complaint charges that respondent violated section 2 (d) of the Clayton Act, as amended by the Robinson-Patman Act, by paying advertising and other promotional allowances to certain of its customers in the drug trade while failing to make such allowances avail-

able on proportionally equal terms to all of its other customers competing in the sale and distribution of Wildroot hair preparations.

Respondent contends that the practices complained of were discontinued prior to the effective date of the trade practice rules for the industry. There is also in the record the declaration of respondent's vice president and general manager, made under oath, that respondent has no intention of resuming such practices.

Counsel in support of the complaint take the position that the fact the questioned practices have been discontinued "gives no assurance they will not be resumed in the future."

On this point we agree with the hearing examiner who said, "There is no reason to doubt respondent's sincerity in its declaration that it has already ceased and will permanently refrain from use of the practices complained of by the Commission."

The sole question therefore seems to be whether it is in the public interest to continue the proceedings for the purpose of imposing upon respondent a cease and desist order requiring it to discontinue practices which it has already stopped and which it does not intend to resume.

In *Eugene Dietzgen Co. v. Federal Trade Commission*, 142 F. (2d) 321 (C. A. 7 1944), the court said:

The propriety of the order to cease and desist and the inclusion of a respondent therein must depend on all the facts which include the attitude of the respondent toward the proceedings, the sincerity of its practices and desire to respect the law in the future and all other facts. Ordinarily the Commission should enter no order where none is necessary. This practice should include cases where the unfair practice has been discontinued.

The object of the proceedings is to stop the unfair practice. If the practice has been surely stopped and by the act of the party offending, the object of the proceedings having been attained, no order is necessary, nor should one be entered. If, however, the action of the wrongdoer does not insure a cessation of the practice in the future, the order to desist is appropriate.<sup>5</sup>

The ruling of the hearing examiner clearly shows that he believed the motion to dismiss should have been granted for lack of public interest. However, he felt compelled to deny the motion because of the Commission's policy against settlement of Clayton Act cases by trade practice procedures.

<sup>5</sup> In a recent opinion of the Supreme Court dealing in part with the abandonment of a practice questioned under another section of the Clayton Act, the Court said: "The necessary determination is that there exists some cognizable danger of recurrent violation, something more than the mere possibility which serves to keep the case alive. \* \* \* To be considered are the bona fides of the expressed intent to comply, the effectiveness of the discontinuance and, in some cases, the character of the past violations." *United States v. W. T. Grant Co. et al.*, 345 U. S. 629, decided May 25, 1953. See also *Oregon-Washington Plywood Co. v. Federal Trade Commission*, 194 F. (2d) 48 (C. A. 9, 1952); *New Standard Publishing Company, Inc., v. Federal Trade Commission*, 194 F. (2d) 181 (C. A. 4, 1952); *Celanese Corp. of America*, 46 F. T. C. 1170 (1950); and *N. Erlanger, Blumgart & Co., Inc.*, 46 F. T. C. 1139 (1950).

The Commission is not under the same compulsion,<sup>6</sup> nor can such policy infringe on the Commission's discretion to dismiss in cases where the alleged improper practices have been abandoned.

The fact that the issuance of trade practice rules interpreting section 2 (d) of the Clayton Act was a factor in respondent's decision to discontinue, is no reason for refusing to consider the case on the same basis as any other case of discontinuance.

Respondent has stopped the practices. The circumstances do not indicate a likelihood of resumption. Everything that can be accomplished by a cease and desist order has already been accomplished by cooperative effort. In this situation the Commission is of the opinion that the present public interest will be adequately served by dismissing the complaint, without prejudice.

Commissioners Mason and Carretta concur.

Commissioners Mead and Spingarn dissent.

INTERLOCKING DIRECTORATE CASES (WHITIN MACHINE WORKS ET AL., AND THREE OTHERS). On June 30, 1953, following denial of appeals of counsel supporting the complaints from the initial decisions of the hearing examiners dismissing the complaints, and briefs in support of and in opposition thereto, the Commission dismissed four complaints, issued August 7, 1952, in which respondents were charged with violations of section 8 of the Clayton Act, through the having of or serving by the same individual as a director in two or more corporations, competitively engaged, in whole or in part, in interstate commerce, with capital, surplus, and undivided profits, in the case of any one of them, aggregating more than \$1,000,000, and otherwise within the prohibitions of said section; it appearing that in all cases the common directors had given up one of their directorships.

Said cases, in each of which it was alleged, among other things, that for many years respondent corporations, by virtue of their business and location of operation, had been and were competitors, so that the elimination of competition by agreement between them would constitute a violation of a provision of the antitrust laws, follow:

<sup>6</sup> On January 9, 1953, the Commission dismissed six complaints involving alleged violations by several cosmetic firms of section 2 (e) of the Clayton Act, as amended, by reason of discrimination between purchasers in the supplying of "demonstrator service" (Dockets Nos. 2973, 2974, 3017, 3039, 4435, and 4436). In dismissing the complaints the Commission said:

"Subsequent to the issuance of the complaint and the conclusion of the reception of evidence, the Commission promulgated trade practice rules for the Cosmetic and Toilet Preparations Industry \* \* \*.

\* \* \* The rules \* \* \* specifically provide that one type of service may be offered to some customers and an alternate type to others, and further set out some of the methods by which it may be determined whether a course of conduct results in 'proportionally equal terms' to all customers. None of these provisions were in existence in any form at the time this proceeding was tried.

In making any final decision of this case the Commission would of necessity take into consideration the trade practice rules. The injustice of entering an order to cease and desist upon a state of facts permitted by the rules is apparent."

*Whitin Machine Works*, Whitinsville, Mass.; *Draper Corp.*, Hopedale, Mass.; and *Phillips Ketchum*, South Natick, Mass., Docket 6023, in which respondent corporations, were engaged in the manufacture and competitive interstate sale and distribution of textile machinery supplies, and in which, as charged, respondent individual was at the same time director of both.

*Vick Chemical Co.*, New York, N. Y.; *Colgate-Palmolive-Peet Co.*, Jersey City, N. J.; and *William R. Basset*, Greenwich, Conn., Docket 6024, in which respondent corporations, as the case might be, manufactured, shipped, and sold in interstate commerce, among other things, household medicinal products, pharmaceuticals and chemicals, cosmetics and toiletries, biologicals, soap, dentifrices, and glycerin; made, shipped, and sold in interstate commerce many of the same classes of products; and were in competition among themselves in the offer, sale, and distribution of such products in commerce, and in which, as charged, respondent individual was at the same time director of both.

*Nesco, Inc.*, Milwaukee, Wis.; *The Ekco Products Co., Inc.*, Chicago; *David G. Baird*, Montclair, N. J.; and *Arthur Keating*, Chicago, Docket 6026, in which respondent corporations were engaged in the manufacture and shipment and competitive interstate sale and distribution of house wares and cooking utensils in interstate commerce, and in which respondent individuals were at the same time directors of both.

*Allis-Chalmers Manufacturing Co.*, and *Chain Belt Co.*, both of Milwaukee, Wis.; *Bucyrus-Erie Co., Inc.*, South Milwaukee; and *Edmund Fitzgerald*, Milwaukee, Docket 6027, in which respondent corporations, as the case might be, manufactured, shipped, and sold in interstate commerce, among other things, farm tractors and other farm equipment, dirt-moving machinery, electrical machinery, processing machinery, chain belts, sprockets, construction machinery, elevating and conveying machinery, power transmission equipment, excavating machinery, floating dredges, internal combustion and diesel power units and cranes, tractor equipment, bulldozers, etc.; made, shipped, and sold in such commerce many of the same classes of products, and were in competition among themselves in the offer, sale, and distribution of such products in commerce, and in which, as charged, respondent individual was at the same time a director in the three respondent corporations.<sup>7</sup>

<sup>7</sup> Complaint in Docket 6025, *Purity Bakers Corp.*, *American Bakeries Co., Inc.*, *Lewis A. Cushman*, and *George L. Burr*, in which a similar violation of law was charged, pending at the time of the dismissals of the complaints in the four above matters, was later dismissed by the Commission on October 6, 1953, following merger, pending appeal from the initial decision, the Commission then noting, however, that such merger might be subject to question under section 7 of the Clayton Act, and that such phase of the matter was then being explored.

The Commission was represented by *Mr. Paul Rand Dixon* in this group of cases in which hearings were held and respondents represented as follows, to wit:

In the case of *Whitin Machine Works et al.*, before *Mr. J. Earl Cox*, hearing examiner, by *Herrick, Smith, Donald, Farley & Ketchum*, of Boston, Mass.:

In the case of *Vick Chemical Co. et al.*, before *Mr. Abner E. Lipscomb*, hearing examiner, by *Mr. Sherwood F. Silliman*, of New York City, for *Vick Chemical Co.* and *William R. Basset*, and by *Mr. H. W. Reynolds*, of Jersey City, N. J., for *Colgate-Palmolive-Peet Co.*

In the case of *Nesco, Inc., et al.*, before *Mr. Earl J. Kolb*, hearing examiner, by *Mayer, Meyer, Austrian & Platt*, of Chicago, Ill.

In the case of *Allis-Chalmers Manufacturing Co. et al.*, before *Mr. Frank Hier*, hearing examiner, by *Lines, Spooner & Quarles*, of Milwaukee, Wis., for *Allis-Chalmers Manufacturing Co.*, by *Wood, Warner, Tyrrell & Bruce*, of Milwaukee, Wis., for *Chain Belt Co.*, by *Williams, Myers & Quiggle*, of Washington, D. C., and *Mr. Roger Sherman Hoar*, of Milwaukee, Wis., for *Bucyrus-Erie Co., Inc.*, and by *Porter, McIntyre, Johnson & Cutler*, of Milwaukee, Wis., for *Edmund Fitzgerald*.

**NELLIE C. CARNEY**, trading and doing business as **BLIND SALES Co.**, Washington, D. C., Docket 6058. Complaint, November 18, 1952. Order, June 30, 1953.

Charge: Using misleading trade name and misrepresenting business status or nature; in that respondent, engaged in the interstate offer, sale and distribution of rugs, brooms, mops, leather goods and various household articles, in competition with eleemosynary and charitable institutions, and others, engaged in the sale and distribution of similar goods in commerce, represented through the use of the trade name "Blind Sales Company", and the statement "Giving work to the blind" on sales slips and similar statements made by her agents, that she was engaged in a charitable or eleemosynary enterprise for the benefit of the blind; that the profits derived from the sale of her products were used for the benefit of the blind; and that she gave work to the blind; when in fact none of the profits from such sales were thus used, she did not give work to the blind; and her business was a commercial enterprise operated solely for her profit.

Dismissed, following appeals by respondent and by counsel supporting the complaint, from the initial decision, and upon briefs and oral arguments; it appearing that respondent bought her products from workshops employing the blind, that there was no contention that the products so sold were not actually made by blind persons, and that respondent's gross profit on the business during the year 1952

was \$1,300; and the Commission being of the opinion that the record as a whole did not establish sufficient public interest to warrant the issuance of an order to cease and desist, and that under the circumstances the complaint should be dismissed; thus making unnecessary more specific ruling on respondent's exceptions.

Before *Mr. Webster Ballinger*, hearing examiner.

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

*Mr. Carl L. Shipley*, of Washington, D. C., for respondent.