

FEDERAL TRADE COMMISSION DECISIONS



FINDINGS, ORDERS, AND STIPULATIONS

DECEMBER 3, 1934, TO JUNE 24, 1935

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MEMBERS OF THE FEDERAL TRADE COMMISSION
AS OF JUNE 24, 1935

EWIN L. DAVIS, *Chairman.*

Took oath of office May 26, 1933.

CHARLES H. MAROH.

Took oath of office February 1, 1929.

W. A. AYRES.

Took oath of office August 23, 1934.

GARLAND S. FERGUSON, Jr.

Took oath of office November 14, 1927, January 9, 1928,¹ September 26,
1934,² and February 9, 1935.³

OTIS B. JOHNSON, *Secretary.*

Took oath of office August 7, 1922.

¹ Second term.

² Recess appointment.

³ Third term.

ACKNOWLEDGMENT

This volume has been prepared and edited by Richard S. Ely,
of the Commission's staff.

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¹ Interlinear citations are to the reports of the National Reporter System and to the official United States Supreme Court Reports in those cases in which the proceeding, or proceedings, as the case may be, have been there reported. Such cases do not include the decisions of the Supreme Court of the District of Columbia, nor, in all cases, some of the other proceedings set forth in the above table, and described or reported in the Commission's Decisions and the Commission publication entitled "Statutes and Decisions—1914-1929", which also includes cases here involved up to 1930.

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² Interlocutory order. See also S. & D. 721.

³ For interlocutory order see "Memoranda" 20-744 or S. & D. 720.

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⁴ For order of Circuit Court of Appeals on mandate, see "Memoranda", 20-741 or S. & D. 189.

⁵ Interlocutory order. See S. & D. 722.

⁶ For interlocutory order, see "Memoranda", 20-743 or S. & D. 716.

⁷ For interlocutory order, see "Memoranda", 20-744 or S. & D. 719.

⁸ For interlocutory order, see "Memoranda", 20-744 or S. & D. 718.

⁹ For final decree of Supreme Court of the District of Columbia, see "Memoranda", 3-542 et seq., or S. & D. 190.

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¹⁰ For interlocutory order, see "Memoranda", 20-744, or S. & D. 720.

¹¹ For interlocutory order, see "Memoranda", 20-746 or S. & D. 724.

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¹² For interlocutory order, see "Memoranda", 20-745 or S. & D. 722.

¹³ For interlocutory order, see "Memoranda", 20-745 or S. & D. 723.

¹⁴ For interlocutory order, see "Memoranda", 20-745 or S. & D. 721.

¹⁵ For interlocutory order, see "Memoranda", 20-744 or S. & D. 721.

¹⁶ For order of the Supreme Court of the District of Columbia, denying petition for writ of mandamus, *tc.*, see "Memoranda", 20-742 or S. & D. 704.

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¹⁷ For order of the Supreme Court of the District of Columbia on mandate from Court of Appeals of the District of Columbia, see "Memoranda" 20-742 or S. & D., footnote, 650.

¹⁸ For interlocutory order, see "Memoranda" 20-743 or S. & D. 715.

¹⁹ For interlocutory order, see "Memoranda" 20-744 or S. & D. 719.

²⁰ For interlocutory order, see "Memoranda" 20-744 or S. & D. 718.

²¹ For interlocutory order, see "Memoranda" 20-743 or S. & D. 716.

²² For interlocutory order, see "Memoranda" 20-745 or S. & D. 724.

²³ For interlocutory order, see "Memoranda" 20-743 or S. & D. 717.

²⁴ For interlocutory order, see "Memoranda" 20-744 or S. & D. 720.

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²⁵ For interlocutory order, see "Memoranda", 20-743 or S. & D. 716.

²⁶ For interlocutory order, see "Memoranda", 20-744 or S. & D. 719.

²⁷ For interlocutory order in proceeding terminating in decision in 281 Fed. 744 (4-614), see "Memoranda", 20-743 or S. & D. 715.

For memorandum of decision of the Supreme Court of the District of Columbia declining to grant a supersedeas to operate as an injunction against Commission, pending appeal, and final decree dismissing plaintiff's bill on Nov. 15, 1927, see "Memoranda", 20-742 or S. & D. 651.

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²⁸ For interlocutory order, see "Memoranda", 20-743 or S. & D. 717.

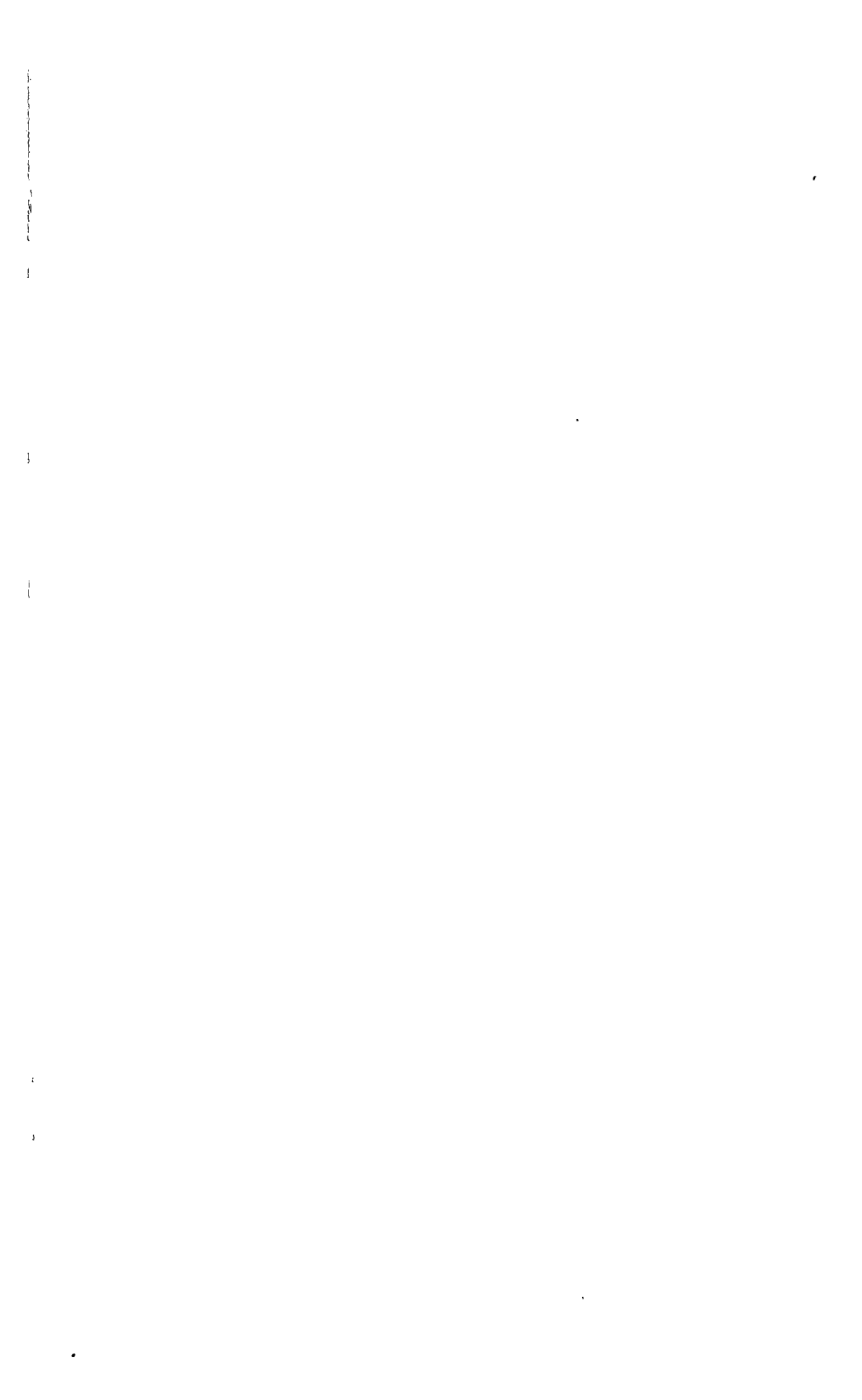
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75 F. (2d) 733.	
Ward Baking Co.....	(C. C. A.) 2-550.
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Western Sugar Refinery Co. et al.....	(C. C. A.) 4-557.
275 Fed. 725.	
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Winsted Hosiery Co. ³⁰	(C. C. A.) 3-618; (S. C.) 4-610.
272 Fed. 957; 258 U. S. 483 (42 S. Ct. 184).	
Winston Co., John C. ³¹	(C. C. A.) 8-625.
3 F. (2d) 961.	
Woolley, E. R.....	(C. C. A.) 11-692.
22 F. (2d) 122.	

²⁹ For interlocutory order, see "Memoranda" 20-743 or S. & D. 717.

³⁰ For interlocutory order, see "Memoranda" 20-742 or S. & D. 715.

³¹ For interlocutory order, see "Memoranda" 20-743 or S. & D. 716.



FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, DECEMBER 3, 1934, TO JUNE 24, 1935

IN THE MATTER OF

KAUMAGRAPH CO. ET AL.

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

Docket 2165. Complaint, Mar. 3, 1934—Order, Dec. 3, 1934

Consent order requiring respondent Kaumagraph Co. and respondent American Trade Mark Corporation, their agents, officers, directors, representatives, and employees, and respondent individuals, as specified, individually and in their respective official capacities as officers and directors of said corporations, to cease and desist from directly or indirectly engaging or taking part in any combination or concerted action or course of conduct, among themselves or with others, with intent, tendency, or effect of stifling, restraining or preventing actual or potential competition in the sale or distribution in interstate commerce, the District of Columbia or any Territory, of transfers and kindred products such as stamps, seals, brands, labels, and similar devices, or, with intent, tendency, or effect of establishing or maintaining a monopoly in said business in said corporations, or in any other person or concern, from directly or indirectly—

- (a) Causing or assisting in causing said American Trade Mark Corporation or any other manufacturer or seller of transfers or kindred products, falsely to be held out as an independent competitor of respondent Kaumagraph Co.;
- (b) Causing or assisting in causing, through concerted action between said corporations or between either and any other manufacturer of transfers or kindred products, the making of sales below cost by any manufacturer or seller of such products, when the purpose, tendency, or effect thereof is to restrain competition or injure competitors;
- (c) Covertly using, operating, or controlling any manufacturer or seller of transfers or kindred products as an instrumentality or weapon in behalf of respondent Kaumagraph Co., when the purpose or effect thereof is to unreasonably restrain competition or injure competitors;
- (d) Issuing or circulating threats or warnings of patent infringement suits, or litigation against purchasers or users of transfers or kindred products made or sold by competitors, when not made or done in good faith or upon probable cause, or causing or attempting to cause purchasers or prospective purchasers of such products to discontinue or refrain from dealing with competitors, through concerted action of respondent corporations or between either of them and any other concern, or in bad faith;

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- (e) Acquiring the capital stock or control of any competitors, with intent or effect of thereby substantially eliminating or suppressing competition, or establishing or maintaining a monopoly in respondents or any of them;
- (f) Causing or attempting to cause machines used to affix designs and marks of transfers or kindred products, to fabrics and other articles of commerce, to be offered for sale, lease or license, or to be sold, leased, or licensed, by respondents or by any manufacturer or vendor thereof, and prices to be fixed and charged therefor, on the condition, agreement, or understanding that only the transfers or kindred products made or sold by respondents shall be used in the operation of said machines by such vendees, licensees, or lessees in their business, with intent, tendency, or effect of thereby substantially restraining or preventing the competition encountered by respondents or any of them in the sale of their transfers and kindred products;
- (g) Causing or attempting to cause, by concerted action between respondent corporations or either of them and any other manufacturer of transfers or kindred products, purchasers of articles of commerce, upon which transfers or kindred products are used, to demand, require or insist as a condition to their purchases, that the manufacturers or sellers of aforesaid articles of commerce, shall use exclusively the transfers and kindred products of respondents; and

Ordered further, That the complaint be dismissed as to respondent Manufacturers Management Corporation, which has gone out of business and been dissolved, and as to respondent M. L. Stewart, deceased.

Mr. Henry Miller for the Commission.

Moses, Nehrbas & Tyler, of New York City, for Kaumagraph Co., Manufacturers Management Corporation, Trowbridge Marston, George M. Porges, and T. H. Miller.

Breed, Abbott & Morgan, of New York City, for American Trade Mark Corporation, Donald B. Stewart, Bert T. Shaw, and Madeline Ozy.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that Kaumagraph Company, a corporation, Manufacturers Management Corporation, a corporation, American Trade Mark Corporation, a corporation, and the following-named persons: Trowbridge Marston, George M. Porges, T. H. Miller, individually and as officers and directors of said Kaumagraph Company and Manufacturers Management Corporation, M. L. Stewart, individually and as an officer and director of said Manufacturers Management Corporation, Donald B. Stewart, Bert T. Shaw, Madeline Ozy, individually and as officers and directors of said American Trade Mark Corporation, respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Com-

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mission 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. (a) Respondent Kaumagraph Company is a corporation organized and existing since the year 1905 under and by virtue of the laws of the State of New York, having its principal office and place of business in the City and State of New York, to wit, at 200 Varick Street, New York City, N. Y.

(b) Respondent American Trade Mark Corporation is a corporation organized and existing since the year 1927 under and by virtue of the laws of the State of New York, having its principal office and place of business in the City and State of New York, to wit, at 151 West 19th Street, New York City, N. Y.

(c) Respondent Manufacturers Management Corporation is a corporation organized and existing since the year 1927 under and by virtue of the laws of the State of New York, having its office and place of business in the City and State of New York. The respondent Kaumagraph Company and its officers caused said Manufacturers Management Corporation to be created or incorporated. The officers and directors of said Manufacturers Management Corporation were and are officers and directors of respondent Kaumagraph Company and said Kaumagraph Company is and has been the holder or owner of all the outstanding capital stock or of more than a majority of the authorized capital stock of said Manufacturers Management Corporation, which two corporations have and maintain their offices and places of business jointly or in common at 200 Varick Street, New York City, N. Y.

Said Manufacturers Management Corporation is and has been actively engaged in the management, operation, and promotion of the affairs and business of said Kaumagraph Company and American Trade Mark Corporation and is or has been holding the legal or beneficial title or interest in or to a majority or more of the outstanding capital stock of said American Trade Mark Corporation. The said title or interest in said capital stock of the American Trade Mark Corporation is or has been held by said Manufacturers Management Corporation for the use or benefit of said Kaumagraph Company and of said Manufacturers Management Corporation or their officers. In the course of the business of respondent corporations, as hereinafter described, the said Manufacturers Management Corporation and American Trade Mark Corporation in their business affairs are and have been controlled, managed, directed, or operated, directly and indirectly, by or for the benefit of the said Kaumagraph

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Company and as agencies, subsidiaries, or instrumentalities of the said Kaumagraph Company and its officers and directors.

(*d*) Respondent Trowbridge Marston is and has been the president and director of respondent Kaumagraph Company, and the president and a director of respondent Manufacturers Management Corporation; and he is and has been actively serving as such respective president and director.

(*e*) Respondent George M. Porges is and has been vice president and director of respondent Kaumagraph Company and vice president and director of respondent Manufacturers Management Corporation, and he is and has been actively serving as such respective vice president and director.

(*f*) Respondent T. H. Miller is and has been holding the offices of secretary, treasurer, and director of respondent Kaumagraph Company and the offices of treasurer and director of respondent Manufacturers Management Corporation, and he is and has been actively serving as such respective officers and director of said corporations.

(*g*) Respondent M. L. Stewart is and has been holding the offices of secretary and director of respondent Manufacturers Management Corporation, and she is and has been actively serving as such secretary and director.

(*h*) Respondent Donald B. Stewart is and has been holding the offices of president, treasurer and director of respondent American Trade Mark Corporation, and he is and has been actively serving as such president, treasurer, and director.

(*i*) Respondent Bert T. Shaw is and has been holding the offices of vice president and director of said American Trade Mark Corporation and he is and has been actively serving as such vice president and director.

(*j*) Respondent Madeline Ozy is and has been holding the offices of secretary and director of said American Trade Mark Corporation, and she is and has been actively serving as such secretary and director.

PAR. 2. Respondents Kaumagraph Company and American Trade Mark Corporation are each, and since the respective dates of their incorporation have been, engaged in the business of manufacturing, selling, and distributing to the purchasing public throughout the United States, transfers, seals, stamps, brands, labels, and similar devices used for marking, branding, labeling, or stamping trade marks, designs, patterns, devices, and other marks or symbols upon textile fabrics, garments, embroidery, leather, leather goods, and other articles of commerce, embracing such commodities as hosiery and various other garments for men, women, and children, cloth or

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fabrics made in whole or in part of cotton, silk, wool, rayon, flax, hemp, or other fibrous material, and articles manufactured therefrom. Said transfers are usually made of pieces of thin tissue paper upon which is deposited a composition forming the outline of the design, mark, or symbol which when used is transferred to the fabric or other goods intended to be marked by pressing the transfer against the article and applying heat.

Said purchasers to which respondents Kaumagraph Company and American Trade Mark Corporation sell and distribute their said products throughout the United States embraces, among others, knitting mills, weaving mills, and other manufacturers of the fabrics, garments and other products or articles upon which such transfers, seals, stamps, brands, labels, or devices are used. In and throughout the course and conduct of said business, and in executing and filling the purchase orders received from their customers, said respondents Kaumagraph Company and American Trade Mark Corporation caused and have caused their said products, as and when sold, to be transported, shipped, or delivered in commerce from their respective factories or places of business in the State of New York and elsewhere into or through States other than the State or States in which such respective shipments originated, and in or through the Territories and the District of Columbia, to the several purchasers thereof in such other States or the Territories or said District.

PAR. 3. There are and for more than three years last past have been various and sundry other concerns, namely persons, partnerships, firms, or corporations likewise engaged in the business in the United States of manufacturing and/or selling and distributing similar or like transfers, seals, stamps, brands, labels, and other devices in commerce in, between, and among the several States and Territories of the United States and the District of Columbia, which concerns, in the course of their respective business, are, or have been, competitors of respondents. The said products of such other concerns are and have been competitive to the said products manufactured and sold by respondents Kaumagraph Company and American Trade Mark Corporation; and when being marketed as aforesaid the said products of such other concerns are and have been offered for sale or sold and distributed, in competition with said respondents and their products, to the purchasing public throughout the United States, or in various sections thereof.

Respondent corporation Manufacturers Management Corporation and said respondent persons, as individuals and in their respective capacities as aforesaid officers and directors of respondent corporations, are and have been directly and actively engaged in managing,

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conducting, or promoting the affairs and business of said Kaumagraph Company and American Trade Mark Corporation; and all the respondents in said business have been and are engaged in commerce as "commerce" is defined in said Act of Congress approved September 26, 1914, and in such competition therein with said competitors of respondents as said other concerns have been or are able to engender or afford in the sale or distribution of such transfers, seals, stamps, brands, labels, and similar devices.

PAR. 4. Respondent Kaumagraph Company is the predominant and largest competitor in and member of said industry and trade engaged in the manufacture, sale, and distribution in the United States of such transfers, stamps, seals, brands, labels, and similar devices; and its volume of business and resources are and have been substantially (to wit, about 100 percent) greater than the aggregate volume of business and resources of all competitors of respondents. By reason of such predominant position and large resources respondent Kaumagraph Company is and has been the most powerful and influential member and competitor in said industry and trade.

PAR. 5. In the course and conduct of respondents' said business and in or during the period of more than three years last past, respondent Kaumagraph Company has pursued and continues to pursue a course of action or conduct (a) with the purpose, tendency, and effect of stifling, suppressing, eliminating, preventing, or destroying actual and potential competition between the said Kaumagraph Company and American Trade Mark Corporation, on the one hand, and the said other concerns or competitors of respondents on the other hand, and the competition generally which has been or might be engendered or afforded by competitors of respondents, and (b) with the purpose, tendency, and effect of acquiring or maintaining or of attempting to acquire or maintain a monopoly in or of the industry or trade in the United States of selling and distributing said transfers, stamps, seals, brands, labels, and other products; and with similar or like purposes, tendencies, and effects the several respondents have engaged and are still engaged in an unlawful combination, conspiracy, and confederation among themselves and with others, and have acted and continue to act in concert, cooperation, and collusion with each other and with others. And in pursuance of said course of action or conduct and of said combination, conspiracy, confederation, cooperation, collusion, and concerted action, and in order to carry out or effectuate said purposes, tendencies, and effects of stifling, suppressing, eliminating, preventing, or destroying competition or creating or maintaining such monopoly as aforesaid, the following acts, practices, transactions, or methods are or have been used, committed,

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and engaged in by the respondents and especially by respondent Kaumagraph Company, directly or indirectly:

(1) Said American Trade Mark Corporation is and has been held out to the purchasing public of the United States as a genuine independent competitor of respondent Kaumagraph Company, and its business so operated as to make such American Trade Mark Corporation appear to be an active, independent, and genuine competitor of respondent Kaumagraph Company, with the intention, tendency, and effect of misleading and deceiving purchasers and others into dealing with said American Trade Mark Corporation in or because of the erroneous belief that it is an independent and genuine competitor of respondent Kaumagraph Company, of securing trade from purchasers who are not desirous of buying from respondent Kaumagraph Company, of thereby diverting trade from respondents' competitors, and of oppressing, obstructing, and restraining them in their business. In truth and in fact, said American Trade Mark Corporation and its business are and have been directly or indirectly controlled, managed, or operated by respondents Kaumagraph Company and Manufacturers Management Corporation, and said American Trade Mark Corporation is not and never has been a genuine or independent competitor of, nor has its business been operated in genuine competition with, said Kaumagraph Company or said other respondents.

(2) The American Trade Mark Corporation, having extensive resources and having the support of and access to the extensive resources of respondents Kaumagraph Company and Manufacturers Management Corporation in competition with other concerns of small or limited resources, sold its transfers and other products at prices below its costs, and at prices which were lower than its cost of manufacture, sale, and distribution of said products, and at prices which produced no profit to said American Trade Mark Corporation, with the intention, tendency, and effect of driving such competing concerns out of business and of eliminating and restraining competition, and with the intention and tendency of establishing and maintaining a monopoly in respondents.

(3) Said American Trade Mark Corporation is and has been directly or covertly used in the operation of its business as an instrumentality or weapon of or in behalf of respondents Kaumagraph Company and Manufacturers Management Corporation to prevent, hamper and obstruct the making of sales of transfers and similar products by respondents' competitors and to otherwise restrain, prejudice, and injure such competitors in their business.

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(4) While pretending to be independent of and concealing its connection with said Kaumagraph Company, said American Trade Mark Corporation actively engaged in proposing and attempting to effect mergers or consolidations with itself of competitors of Kaumagraph Company under the pretense of competitively fighting that company, but with the real purpose of placing itself in a position of influence and control among those competitors while maintaining secretly its aforesaid relationship with such Kaumagraph Company, all to the end that the business of said competitors might be directly or indirectly controlled by respondents, particularly by respondent Kaumagraph Company, and competition with respondents thereby eliminated, lessened, or restrained, and that a monopoly be established or maintained in respondents. Respondents Kaumagraph Company and Manufacturers Management Corporation furnished and undertook to supply financial and other aid and assistance to said American Trade Mark Corporation to enable it so to do and to promote such mergers or consolidations.

(5) Issuing and causing to be issued and delivered, by mail and otherwise, by or in the name of said Kaumagraph Company or others to the purchasing public generally and to the customers and prospective customers of respondent's competitors, circular letters, and communications threatening patent infringement suits or other litigation against purchasers or users of certain products of respondents' competitors, and warning or advising purchasers and prospective purchasers of liability for or the intention of respondents to institute patent infringement suits or other litigation against purchasers or users of the transfers or other products of a competitor or competitors of respondents, which threats, warnings, and advice were not made in good faith nor upon probable or reasonable cause but with the intention, tendency, and effect of causing trade to be diverted from competitors of respondents or of causing such competitors to be otherwise hampered, obstructed, prejudiced, or injured in their business.

(6) Notifying, by circular letter and other communications, customers and prospective customers of respondents' competitors of the pendency between the Kaumagraph Company and certain of its competitors of suits for alleged patent infringements relating to the manufacture of transfers or other competitive products, with the intention, tendency, and effect of coercing or causing purchasers and prospective purchasers of transfers and similar products to discontinue purchasing from or to refrain from dealing with competitors of respondents, and otherwise prejudicing and injuring such competitors in their business.

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(7) With the financial and other aid and assistance of the other respondents, said American Trade Mark Corporation acquired the outstanding capital stock, the business, assets, and the control of the Continental Trade Mark Corporation and the Mark-O-Gram Company, corporations which then and prior to such respective acquisitions were substantial competitors of respondents, particularly of respondent Kaumagraph Company, in said business of manufacturing and selling transfers, seals, stamps, brands, and similar products; all with the intention, tendency and effect of thereby eliminating, suppressing, and preventing all actual and potential competition of said Continental Trade Mark Corporation and Mark-O-Gram Company with respondents, and with the intention and tendency of creating and maintaining a monopoly in respondents.

(8) Causing and continuing to cause certain machines, used for affixing the designs and marks of transfers and similar products to fabrics and other articles of commerce, to be offered for sale or lease or license, and to be sold, licensed, or leased by respondents or the manufacturers thereof or by others, and prices to be fixed and charged therefor, on the condition, agreement, or understanding that only the transfers, stamps, brands, seals and other products manufactured and sold by the respondent shall be used in the operation of said machines by such vendees, licensees, or lessees in their business; with the intention, tendency, and effect of thereby substantially lessening, restraining, and preventing the competition encountered by respondents in the sale of their transfers and other products and of lessening, restraining, or obstructing the freedom of fair competition in said line of trade or commerce, and of injuring respondents' competitors in their business. Said machines are or are claimed by respondents to be patented, and their marketing is and has been controlled by respondents pursuant to contract between respondent Kaumagraph Company and the manufacturers of the machines.

(9) With the intent, tendency, and effect of diverting trade from competitors, of causing or coercing customers and prospective customers to refrain from dealing with their competitors, of prejudicing the purchasing public against competitors' transfers and other products, and of otherwise injuring and oppressing competitors in their business, respondents attempted to and did cause purchasers of hosiery and other articles upon which transfers, stamps, seals, brands, and similar products are used to demand, require, or insist as a condition to such purchasers that manufacturers of said hosiery and other articles use exclusively or only the transfers, stamps, seals, brands, or other products manufactured or sold by respondents to

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the exclusion of the transfers, stamps, brands, seals, or similar products manufactured or sold by competitors of respondents.

(10) Other overt acts, practices, transactions, or methods.

PAR. 6. The aforesaid acts, practices, and things done by respondents and each of them as alleged in paragraph 5 hereof have and had the capacity, tendency, and effect (*a*) of restraining, suppressing, stifling, or preventing actual and potential competition in the sale and distribution of transfers, stamps, seals, brands, and similar products in the United States between the respondents and their said competitors; (*b*) of creating or maintaining and tending to create or maintain a monopoly in respondents, particularly in respondent Kaumagraph Company, in the manufacture or sale and distribution of said products in the United States; (*c*) of hindering, restraining, or obstructing the free flow of said products in the channels of interstate trade and commerce and to deny to the public those advantages which would be obtained by purchasers and the public generally under conditions of normal and unobstructed or free and fair competition in said trade and industry, and to otherwise injure the public; (*d*) of unfairly diverting trade from and otherwise prejudicing and injuring respondents, competitors in their business; and (*e*) of otherwise operating as a restraint upon and a detriment to the freedom of fair and legitimate competition in said trade or industry of selling and distributing transfers, stamps, seals, brands, labels, and other products in the United States.

PAR. 7. The said acts, transactions, practices, and things done by respondents as alleged in paragraph 5 hereof, under the circumstances and conditions hereinbefore set forth, are methods of competition in commerce which are unfair and unlawful, and they and each of them constitute unfair methods of competition in commerce in violation of Section 5 of the said Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST AND ORDER OF DISMISSAL

This proceeding having come on for final hearing by the Federal Trade Commission upon the record, including the complaint of the Commission issued under Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", and the substitute answer of respondents Kaumagraph Company, Trowbridge Marston, George M. Porges, T. H. Miller, American Trade Mark Corporation, Donald B. Stewart, Bert T. Shaw, and

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Madeline Ozy, that such respondents, desiring to conclude the proceeding without further expense incident to the introduction of evidence in support of the complaint or in opposition thereto, and desiring to waive hearing and not to contest the proceeding, waive hearing on the charges set forth in the complaint, refrain from contesting the proceeding and, pursuant to the provisions of the Rules of Practice of the Federal Trade Commission with respect to answers (quoted and cited in the complaint), consent that the Commission may make, enter, and serve upon respondents without a trial, without evidence, and without findings as to the facts or other intervening procedure, a final order as stated in said substitute answer; and the said substitute answer having been accepted by the Commission in lieu of answers theretofore filed by respondents, and the Commission having duly considered the matter and being advised in the premises—

(a) *It is now ordered*, That said respondents Kaumagraph Company and American Trade Mark Corporation, their agents, officers, directors, representatives, and employees, and respondents Trowbridge Marston, George M. Porges, T. H. Miller, Donald B. Stewart, Bert T. Shaw, and Madeline Ozy, individually and in their respective official capacities hereinabove stated, and their agents, representatives, and employees, cease and desist from directly or indirectly entering into, engaging or taking part in, any agreement, combination, conspiracy, collusion, concerted action, or concerted course of conduct among themselves or with others, for the purpose or with the intention, tendency or effect of stifling, suppressing, eliminating, restraining, preventing, or destroying actual or potential competition in the industry, trade, or business in the United States of selling or distributing, in interstate commerce or in the District of Columbia or in any Territory of the United States, transfers and kindred products such as stamps, seals, brands, labels, and similar devices, or with the intention, purpose, tendency, or effect of establishing, creating, or maintaining, or of tending to establish, create, or maintain, a monopoly of said industry, trade, or business in respondent Kaumagraph Company or respondent American Trade Mark Corporation or in any other person, firm or corporation; and, directly or indirectly, from doing, or engaging or taking part in, any of the following acts, practices, or methods, to wit:

(1) Unless such American Trade Mark Corporation or other manufacturer or seller of transfers or kindred products is an independent competitor of respondent Kaumagraph Company, causing or assisting in causing said American Trade Mark Corporation or

any such other manufacturer or seller to be held out as an independent competitor of respondent Kaumagraph Company.

(2) By concerted action between respondent corporations or between any such corporation and any other manufacturer or manufacturers of transfers or kindred products, causing or aiding or assisting in causing the making of sales below cost by any manufacturer or seller of transfers or kindred products when the purpose, tendency or effect thereof is to restrain competition or injure competitors.

(3) Covertly using, operating, or controlling any manufacturer or seller of transfers or kindred products as an instrumentality or weapon in behalf of respondent Kaumagraph Company, when the purpose or effect thereof is to unreasonably restrain competition or injure competitors.

(4) When not made or done in good faith or upon probable cause, issuing or circulating threats or warnings of patent infringement suits or other litigation against purchasers or users of transfers or kindred products manufactured or sold by competitors of respondents; or, by concerted action of respondent corporations or between any such corporations and any other concern, or in bad faith, causing or attempting to cause purchasers or prospective purchasers of transfers and kindred products to discontinue purchasing from or to refrain from dealing with competitors of respondents or any of them.

(5) Acquiring the capital stock or control of any competitors of respondents with the intention, purpose or effect of thereby substantially eliminating or suppressing competition or of establishing or maintaining a monopoly in respondents or any of them.

(6) Causing or attempting to cause machines, used for affixing the designs and marks of transfers or kindred products to fabrics and other articles of commerce, to be offered for sale, lease or license or to be sold, leased, or licensed, by respondents or by any manufacturer or vendor thereof, and prices to be fixed or charged therefor, on condition, agreement, or understanding that only the transfers or kindred products manufactured or sold by the respondents shall be used in the operation of said machines by such vendees, licensees or lessees in their business, with the intention, purpose, tendency, or effect of thereby substantially lessening, restraining or preventing the competition encountered by respondents or any of them in the sale of their transfers and kindred products.

(7) By concerted action between respondent corporations or between any such corporation and any other manufacturer or manufacturers of transfers or kindred products, causing or attempting to cause purchasers of articles of commerce upon which transfers or

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kindred products are used, to demand, require or insist as a condition to such purchases that manufacturers or sellers of said articles of commerce shall use exclusively or only the transfers and kindred products of respondents.

(b) *It is further ordered*, That respondents Kaumagraph Company, Trowbridge Marston, George M. Porges, T. H. Miller, American Trade Mark Corporation, Donald B. Stewart, Bert T. Shaw, and Madeline Ozy shall, within 60 days after the date of the service upon them of a copy of the order herein, 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 hereinabove set forth.

(c) It appearing to the Commission that respondent Manufacturers Management Corporation has gone out of business and has been dissolved, and that respondent M. L. Stewart is deceased, therefore,

It is further ordered, That said complaint be and the same is hereby dismissed as to said respondents Manufacturers Management Corporation and M. L. Stewart.

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IN THE MATTER OF
NACTO CLEANER CORPORATION

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

Docket 2174. Complaint, Apr. 27, 1934—Order, Dec. 7, 1934

Consent order requiring respondent corporation, its agents, etc., in connection with the sale and the advertising and offering for sale of Nacto Fabric Cleaner in interstate commerce, to cease and desist from representing, directly or indirectly, on the labels attached to the product, Nacto Fabric Cleaner, or in advertisements in newspapers, circulars, or other publications, or by means of the radio, that Nacto Fabric Cleaner when used on materials will not injure them or their color, unless and until the said product shall be so composed that in connection with its use it will not in fact injure materials or their color.

Mr. Edward E. Reardon for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that Nacto Cleaner Corporation, hereinafter referred to as the respondent, has been or is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said 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, Nacto Cleaner Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located in the City of New York in the said State. It is now and for more than one year last past has been engaged in the manufacture and compounding of cleaning fluids for garments and fabrics and in the sale and distribution of said cleaning fluids under the brand or trade name "Nacto", in commerce between and among the various States of the United States. It has caused and still causes said "Nacto" cleaning fluids when sold to be shipped from its factory in the State of New York to purchasers thereof located in the State of New York and in various other States of the

United States, the Territories thereof and the District of Columbia, and there is now and has been for more than one year last past a constant current of trade and commerce between and among the various States and territories of the United States and the District of Columbia in said "Nacto" cleaning fluids. In the course and conduct of its business, respondent is now and has been for more than one year last past in competition with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution in interstate commerce of cleaning fluids used for the same purposes for which said respondent represents said "Nacto" cleaning fluid to be useful.

PAR. 2. On the labels of the containers of one of its products called by respondent "Nacto Fabric Cleaner" and in soliciting the sale of the said product respondent, Nacto Cleaner Corporation, in and by advertisements in magazines of general circulation throughout the United States and in newspapers and circulars, represents, and for more than one year last past has represented that said "Nacto Fabric Cleaner" works equally well on heavy and fine fabrics and that it will not injure material or color.

In truth and in fact, said "Nacto Fabric Cleaner" does not work equally well on heavy and fine products, and will injure certain materials and colors. And in truth and in fact, said "Nacto Fabric Cleaner" when used on garments and fabrics dyed with "fugitive" colors will cause the same to "bleed" and will also dissolve certain materials such as celanese, crepes, and silk cloths when and if such celanese, crepes, and silk cloths are "weighted" to give them body, and will thus injure such colors and materials.

PAR. 3. The use by the respondent, Nacto Cleaner Corporation, of the advertising and labels described in paragraph 2 hereof, stating that "Nacto Fabric Cleaner" works equally well on heavy and fine fabrics and/or that "Nacto Fabric Cleaner" will not injure material or color has the capacity and tendency to and does mislead and deceive purchasers and prospective purchasers of said "Nacto Fabric Cleaner" into the belief that said "Nacto Fabric Cleaner" works equally well on heavy and fine fabrics and that it will not injure material or color, and to purchase said "Nacto Fabric Cleaner" in such beliefs. Thereby trade in interstate commerce is diverted to respondent from respondent's competitors, and as a consequence thereof, substantial injury is done by respondent to substantial competition in interstate commerce.

PAR. 4. The above acts and things done by respondent are all to the injury and prejudice of the public and the competitors of respondent in interstate commerce within the intent and meaning of

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Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 717), the Federal Trade Commission on April 27, 1934, issued its complaint against the above-named respondent, in which it is alleged that the respondent is and has been using unfair methods of competition in interstate commerce, in violation of the provisions of Section 5 of said Act. On December 5, 1934, the respondent filed its amended answer to the said complaint, wherein the respondent consents that the Federal Trade Commission may make, enter, and serve upon it, in accordance with the provisions of paragraph (b) of Rule V of the Rules of Practice of the Commission, an order to cease and desist from the practices alleged in the complaint in connection with the sale in interstate commerce of a product manufactured by the respondent known as Nacto Fabric Cleaner, and the Commission being fully advised in the premises:

It is now ordered, That the respondent, Nacto Cleaner Corporation, its agents, employees, and representatives, in connection with the sale and the advertising and offering for sale of Nacto Fabric Cleaner in interstate commerce do—

Cease and desist, From representing, directly or indirectly, on the labels attached to the product, Nacto Fabric Cleaner, or in advertisements in newspapers, circulars, or other publications, or by means of the radio, that Nacto Fabric Cleaner when used on materials will not injure them or their color, unless and until the said product shall be so composed that in connection with its use it will not in fact injure materials or their color.

It is further ordered, That the said respondent, Nacto Cleaner Corporation, shall, within 60 days after the date of service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with and is now complying with the order to cease and desist hereinbefore set forth.

Complaint

IN THE MATTER OF
NATIONAL DELIVERY ASSOCIATION, INC.

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

Docket 2163. Complaint, Feb. 14, 1934—Order, Dec. 10, 1934

Order accepting and approving stipulation, pursuant to which it was stipulated and agreed that respondent had ceased and would not resume representing in advertisements and telephone directories, circulars, newspapers, or periodicals, or by radio or otherwise, in or in connection with its business of moving and transporting goods, wares, and merchandise, in commerce, as defined in said act, that—

- (a) It makes daily trips to Philadelphia, New York, Pittsburgh, New Haven, Boston, Albany, Richmond, Norfolk, York, and all way points, or to any other point or points, unless and until it shall in fact have and maintain a regular schedule of daily trips to the cities or points so named;
- (b) It makes weekly trips to Buffalo, Cleveland, Detroit, Chicago, Cincinnati, Columbus, Indianapolis, St. Louis, Rochester, Charlotte, Atlanta, Jacksonville, and all way points, or to any other point or points, unless and until it shall in fact have and maintain a regular schedule of weekly trips to the cities or points so named;
- (c) It has or maintains offices in Boston, Hartford, Bridgeport, New York, Albany, Philadelphia, Reading, York, Wilmington, Baltimore, Roanoke, or in any other cities or at any other points, unless and until it shall in fact have or maintain offices at any place or places so named in charge of a representative of respondent and that reasonably fulfill the requirements of offices as that term is ordinarily used and understood; or
- (d) It owns and/or operates storage warehouses and does a general storage business, unless and until it does in fact own and/or operate storage warehouses; and that—

Upon the execution of this stipulation the Commission will close the case without prejudice to its being reinstated and carried through to an order to cease and desist, in the discretion of the Commission.

Mr. Robt. N. McMillen for the Commission.

Mr. Samuel Boyd, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission having reason to believe that the National Delivery Association, Inc., a corporation, has been, or is, using unfair methods of competition in commerce as "commerce" is defined in such act, and it appearing to said Commission that a proceeding by it in respect thereto would be in the

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

PARAGRAPH 1. Respondent, National Delivery Association, Inc., is a corporation organized and existing under and by virtue of the laws of the District of Columbia, having its principal office and place of business in the City of Washington, in said District. The said respondent was incorporated in 1924 and since said date has been and now is engaged in the business of transporting and moving household goods and other merchandise for hire. The respondent in carrying on its business enters into contracts for moving of such merchandise with individuals, partnerships, and corporations desiring to have such household goods and merchandise moved. In further carrying on its business respondent enters into contracts with owners and operators of such moving vans and trucks for a consideration to transport and move such household goods and other merchandise in the name of the respondent. Such household goods or other merchandise is transported or moved as a result of the above-mentioned contracts, from its point of location in one State of the United States, or the District of Columbia, to other States of the United States or from its point of location in the District of Columbia to other points in said District.

In the course and conduct of its said business, respondent is in competition with other corporations, partnerships, and individuals engaged in the business of transporting and moving household goods and other merchandise in interstate commerce for compensation or hire.

PAR. 2. The respondent advertises its business and services in telephone directories and in magazines having general circulation throughout the United States and by means of circulars, blotters, and various other advertising media. The following statements and representations appear in such advertisements:

(a) "75 padded vans" (This statement is accompanied by a picture representation of moving vans bearing respondent's name);

(b) Fleet of 75 motor vans for long distance moving;

(c) Fleet of 50 padded vans for local and long distance moving;

(d) Take advantage of door-to-door deliveries by motor trucks of this company;

(e) Daily trips to Philadelphia—Baltimore—New York—Pittsburgh—New Haven—Boston—Albany—Richmond—Norfolk—York, and all way points;

(f) Weekly trips to Philadelphia—Baltimore—New York—Pittsburgh—New bus, Indianapolis, St. Louis, Rochester, Charlotte, Atlanta, Jacksonville, and all way points;

NATIONAL DELIVERY ASSOCIATION
EXECUTIVE OFFICES, 1317 NEW YORK AVENUE, WASHINGTON, D. C.

(g) We have affiliations with some of the largest transport companies and have direct offices in the following twelve cities: Washington, D. C. (Executive offices), Boston, Hartford, Bridgeport, New York City, Albany, N. Y., Philadelphia, Reading, Pa., York, Pa., Wilmington, Del., Baltimore, and Roanoke, Va.

The statements and representations made by respondent in its advertising as set forth above are each and all false and misleading in that, to wit:

(a) The respondent does not own 75 padded vans;

(b) Respondent does not own a fleet of 75 motor vans for long distance moving;

(c) Respondent does not own any padded motor vans;

(d) Respondent does not make door-to-door deliveries in motor vans of its company, its deliveries are made in motor vans owned by others, the services of such motor vans being obtained by contract;

(e) The respondent does not, and vans operating as a result of contracts with the respondent do not make daily trips to the cities mentioned nor to all way points, but trips are made to such places only when loads of merchandise are available;

(f) The respondent does not, and vans operating as a result of contracts with the respondent do not make weekly trips to the cities mentioned, but such trips are made only when loads are available.

(g) Respondent does not have offices in the cities and towns mentioned; respondent does have offices in Washington, D. C., in New York, N. Y., and Newark, N. J.

PAR. 3. Respondent in advertising its business in telephone directories and by circulars and blotters has represented that it maintains and operates or owns storage warehouses and does a general storage business. In truth and in fact the respondent neither owns, operates nor controls any storage warehouses and does not do a general storage business. When goods and merchandise are delivered to it for storing, respondent causes the same to be stored with some general storage company.

PAR. 4. Respondent in advertising its business by the media aforesaid makes use of the title "Return Load Bureau, Inc." and causes advertisements to be inserted purporting to be the advertisements of the Return Load Bureau, Inc., and in said advertisements causes such expressions to be made as "50 padded vans" "75 padded vans", "storage", when in truth and in fact respondent is not incorporated under the name "Return Load Bureau, Inc." and does not have a license or permission of any corporation by that name to use such title, but the same is merely a trade name or title appropriated by respondent, and the advertisements as to "50 padded vans", "75 padded vans", and "storage" are false and untrue.

Stipulation

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PAR. 5. The said advertisements and representations made by respondent as to its business and services and each of them set forth in paragraphs 2, 3, and 4 hereof, have the capacity and tendency to deceive the public desiring the services of a moving or storage organization, and to induce persons desiring to have merchandise moved or stored, to do business with the respondent in and on account of the belief that said advertisements and representations are true.

Many persons desire to have their household goods or other merchandise transported or moved by companies: (1) owning and operating their own moving vans and employing their own drivers, (2) making daily or weekly trips to designated places, (3) maintaining offices in the cities to which or from which their household goods are to be transported or moved, and many persons desire to have their household goods or other merchandise moved and stored or stored by companies owning, maintaining or operating their own storage warehouses. Said advertisements and representations referred to in paragraphs 2, 3, and 4 have had, and do have, the tendency and capacity to induce persons to do business with the respondent because of the erroneous belief that said advertisements and representations are true and thus to divert trade from competitors of the respondent engaged in the moving or storage business in interstate commerce, to respondent.

The above acts and things done by respondent are all to the injury and prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

STIPULATION

Whereas, on the 14th day of February, 1934, the Federal Trade Commission, pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", issued its complaint under the above docket number, charging that National Delivery Association, Inc., hereinafter referred to as respondent, had been and was using unfair methods of competition in commerce within the meaning of said act in connection with the advertisement of its business;

And, whereas, thereafter said respondent filed its answer to said complaint and a hearing was had before an examiner of the Commission;

Order approving

And, whereas, it now appears that respondent has changed and modified the claims and representations of its advertising matter so as to omit therefrom those claims and representations now deemed by the Commission to be false and/or misleading and to constitute unfair methods of competition within the meaning of said act, and is willing to enter into a stipulation with the Commission wherein it will agree not to resume the use of the same;

Now, therefore, it is hereby stipulated and agreed by and between Ewin L. Davis, acting chairman of the Federal Trade Commission, and said respondent that respondent has ceased and will not resume representing in its advertisements in telephone directories, pamphlets, circulars, newspapers, periodicals, by radio, or otherwise, in or in connection with its business of moving and transporting goods, wares and merchandise in commerce, as commerce is defined in said act:

1. That it makes daily trips to Philadelphia, Baltimore, New York, Pittsburgh, New Haven, Boston, Albany, Richmond, Norfolk, York, and all way points, or to any other point or points, unless and until it shall in fact have and maintain a regular schedule of daily trips to the cities or points so named;

2. That it makes weekly trips to Buffalo, Cleveland, Detroit, Chicago, Cincinnati, Columbus, Indianapolis, St. Louis, Rochester, Charlotte, Atlanta, Jacksonville, and all way points, or to any other point or points, unless and until it shall in fact have and maintain a regular schedule of weekly trips to the cities or points so named;

3. That it has or maintains offices in Boston, Hartford, Bridgeport, New York, Albany, Philadelphia, Reading, York, Wilmington, Baltimore, Roanoke, or in any other cities or at any other points, unless and until it shall in fact have or maintain offices at any place or places so named in charge of a representative of respondent and that reasonably fulfill the requirements of offices as that term is ordinarily used and understood;

4. That it owns and/or operates storage warehouses and does a general storage business, unless and until it does in fact own and/or operate storage warehouses.

It is further stipulated and agreed that upon the execution of this stipulation the Federal Trade Commission will close the case without prejudice to its being reinstated and carried through to an order to cease and desist in the discretion of the Commission.

ORDER APPROVING STIPULATION

This proceeding being before the Federal Trade Commission upon the complaint of the Commission, answer of respondent, the evidence taken and briefs filed;

Order approving

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And it appearing to the Commission that the respondent has modified the claims and representations of its advertising matter so as to omit therefrom those claims and representations now deemed by the Commission to be false and/or misleading and to constitute unfair methods of competition within the meaning of the Federal Trade Commission Act, and, as evidence of its good faith in making such modifications, has tendered to the Commission a stipulation that it will not resume the claims and representations theretofore used and in said stipulation referred to, a copy of which is hereto attached and made a part hereof;

Now therefore it is ordered, That said stipulation be and hereby is accepted and approved and the chairman of the Commission is authorized to execute the same on behalf of the Commission, and that thereupon this matter be closed without further order but without prejudice to its being reinstated hereafter and carried through to an order to cease and desist in the discretion of the Commission.

Complaint

IN THE MATTER OF

MAX MANDEL AND DAVID M. WOLFSON, COPARTNERS
TRADING AS WOLFSON TRADING COMPANY

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

Docket 2179. Complaint, May 10, 1934—Order, Dec. 13, 1934

Consent order requiring respondents, its agents, etc., in connection with the sale or distribution of military uniforms or military equipment in interstate commerce or in the District of Columbia or in any Territory, to cease and desist from directly or indirectly making or causing to be made, in catalogs, advertising matter, or by any other means, any representations, statements, or assertions to the effect that—

- (a) The cut or design of any such military uniforms or equipment is or has been produced by leading designers of military uniforms or military equipment, unless the cut or design thereof has in fact been produced by leading designers of such military uniforms or military equipment; or that—
- (b) Tailoring in any such uniforms or equipment is or has been done by hand, when the tailoring or making thereof is not or has not been by hand in all parts and operations, except the sewing of the seams and edges of such garments.

Mr. Henry Miller for the Commission.

Mr. Abraham Mandel, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that Max Mandel and David M. Wolfson, copartners trading as Wolfson Trading Company, hereinafter referred to as the respondents have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Max Mandel and David M. Wolfson are copartners trading under the name and style of Wolfson Trading Company, with their principal place of business in the City of New York, State of New York. They are now and for more than two years last past have been engaged in the manufacture of military uniforms and military equipment and in the sale thereof between

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and among the various States and Territories of the United States and the District of Columbia. The said respondents cause such military uniforms and military equipment when sold by them to be transported from their place of business in New York City, N. Y., to the purchasers thereof in the State of New York and in various other States of the United States, the Territories thereof and the District of Columbia, and there is now and has been at all times hereinafter mentioned, a constant current of trade and commerce by the said respondents in such military uniforms and military equipment between and among the various States of the United States, the Territories thereof and the District of Columbia. Said respondents are now and have been at all times hereinafter mentioned, in substantial competition with other partnerships and with corporations, firms, and individuals engaged in the sale and distribution in interstate commerce of military uniforms and military equipment.

PAR. 2. In and by its catalogs distributed by the said respondents by mail throughout the United States, the said respondents now represent, and for more than two years last past have represented, that the cut and design of its military uniforms have been produced by leading designers of military uniforms and that the tailoring in such uniforms is expertly done by hand, when in truth and in fact neither the cut nor the design of such uniforms has been produced by any leading designer or by any designer of military uniforms employed by or associated with respondent, but are of standard and usual cut and design, and when in truth and in fact the tailoring in such uniforms is not done by hand. The aforesaid misrepresentations have had and still have the capacity and tendency (1) to mislead and deceive purchasers and prospective purchasers into the beliefs that the cut and design of the military uniforms sold by the respondents have been produced by leading designers of military uniforms employed by or associated with respondents, and that the tailoring in such uniforms is done by hand, and (2) to induce purchasers and prospective purchasers of military uniforms and military equipment to purchase the same from the respondents in such beliefs. By such misrepresentations trade is diverted to respondents from respondents' competitors and thereby substantial injury is done by respondents to substantial competition in interstate commerce.

PAR. 3. The above alleged acts and things done by respondents are all to the injury and prejudice of the public and the competitors of respondents in interstate commerce, within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding coming on for final hearing by the Federal Trade Commission upon the record, including the complaint of the Commission issued under Section 5 of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", and respondents' substitute answer that respondents, desiring to conclude the proceeding without further expense and desiring to waive hearing and not to contest the proceeding, waive hearing on the charges set forth in the complaint, refrain from contesting the proceeding, and, pursuant to the provisions of the Rules of Practice of the Federal Trade Commission with respect to answers, consent that the Commission may make, enter, and serve upon respondents, without a trial, without evidence, and without findings as to the facts or other intervening procedure, an order to cease and desist in the terms and subject to the conditions set forth in said substitute answer; and said substitute answer having been accepted by the Commission; and the Commission having duly considered the matter and being advised in the premises, thereupon:

It is now ordered, That, in the course of or in connection with the sale or distribution of military uniforms or military equipment in interstate commerce or in the District of Columbia or in any territory of the United States, respondents, Max Mandel and David M. Wolfson, their agents, representatives, servants, and employee cease and desist from directly or indirectly making or causing to be made in catalogs, advertising matter, or by any other means, any representations, statements, or assertions to the effect (a) that the cut or design of any such military uniforms or equipment is or has been produced by leading designers of military uniforms or military equipment, unless the cut or design thereof has in fact been produced by leading designers of such military uniforms or military equipment; or (b) that the tailoring in any such uniforms or equipment is or has been done by hand, when the tailoring or making thereof is not or has not been by hand in all parts and operations except the sewing of the seams and edges of such garments.

It is further ordered, That respondents, Max Mandel and David M. Wolfson, shall, within 60 days after the service upon them of a copy 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 hereinabove set forth.

IN THE MATTER OF
GLOBE AUTOMATIC SPRINKLER COMPANY OF
PENNSYLVANIA

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

Docket 2155. Complaint, Jan. 20, 1934—Decision, Dec. 18, 1934

Where a corporation engaged throughout the United States in, (1) sale to customers of automatic fire extinguishing apparatus made by it, including (a) tanks, pipes, valves, hangers, and other supports usually referred to as "materials" or "equipment" and, (b) automatic sprinkler heads, automatic valves, water motors, exhausters, and other accessories usually referred to as "devices", and also in, (2) installation of complete automatic fire extinguishing systems, in competition with, (a) some five to seven manufacturers who made both "materials" and "devices" and whose principal business consisted in installation of such complete systems, and (b) some eight or nine manufacturers who made "devices" only and whose business consisted either exclusively or principally in the sale thereof, and who, unlike said manufacturers first referred to, found a market for their products, under long established custom in the industry, through local contractors or "licensees" with whom they had contracts running for periods of years, in some cases, and, in other cases, for an indefinite term, pursuant to which contracts such licensees used only the "devices" of the particular manufacturer—

Quoted and offered "licensees" of aforesaid competitors, last referred to, over a period of some twelve months, prices which were from 40 percent to 50 percent lower than those prevailing for similar competitive devices, which were correspondingly lower than the prices it was quoting its own licensees, and which represented approximately said competitors' cost of production, and thereby compelled them to sell at prices which did not yield them a reasonable profit; with intent and effect of prejudicing and injuring said competitors, and suppressing competition through tending to cause said competitors' licensees to violate their contracts with their respective manufacturers, its competitors, and thereby deprive them of their principal market for their products, and through compelling such competitors to reduce their prices to their licensees below a level yielding a reasonable profit, in order to meet the prices thus quoted by it:

Held, That such practice, under the circumstances set forth, constituted an unfair method of competition, to the prejudice of the public.

Mr. Robt. N. McMillen for the Commission.

COMPLAINT

Acting in the public interest, pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission charges that Globe

Automatic Sprinkler Company of Pennsylvania, a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Globe Automatic Sprinkler Company of Pennsylvania, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania with its principal office and place of business located in the city of Philadelphia in said State, and is engaged in the business of manufacturing, distributing, and selling automatic fire extinguishing apparatus or equipment and in the installation of said apparatus or equipment through its own instrumentalities or through contractor-licensees. That respondent in the course and conduct of its said business causes the aforesaid products manufactured by it to be transported in interstate commerce from the city of Philadelphia in the State of Pennsylvania into and through other States of the United States to the purchasers thereof located in States of the United States other than in the State of Pennsylvania. In the course and conduct of its said business respondent was at all times hereinafter mentioned, and still is, in competition with other corporations, and with individuals, firms and partnerships likewise engaged in the manufacture, distribution, and sale in interstate commerce of automatic fire extinguishing apparatus or equipment.

PAR. 2. That competitors of respondent in the course and conduct of their respective businesses entered into written contracts with purchasers located throughout the principal cities of the United States in and by which contracts the said purchasers agreed to purchase solely and exclusively from said competitors automatic sprinkler apparatus and equipment for stated periods of time specified in said contracts.

PAR. 3. That the respondent well knowing the existence of such contracts and the terms thereof intentionally, deliberately, knowingly and willfully has engaged in the practice of inducing and persuading or seeking to induce and persuade said purchasers of automatic sprinkler apparatus and equipment who have contracted with competitors of respondent in the manner set out in paragraph 2 hereof to breach such contracts entered into by such purchasers with such competitors of respondent and to purchase automatic sprinkler apparatus and equipment from respondent in the place and stead of said competitors of respondent with whom such purchasers had subsisting contracts as aforesaid.

PAR. 4. That the said inducing and persuading or seeking to induce and persuade purchasers to breach their contracts as set out in paragraph 3 hereof has been done in wanton disregard of the rights of said competitors and with the intention and purpose of stifling and suppressing competition in the sale and distribution in interstate commerce of automatic sprinkler apparatus and equipment and has had the capacity and tendency to injure and harass said competitors of respondent and unfairly to divert trade from and otherwise injure said competitors of respondent, and thereby substantial injury has been done to said competitors and the public.

PAR. 5. That the above alleged acts and practices of said respondent as aforesaid are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served its complaint on respondent, Globe Automatic Sprinkler Company of Pennsylvania, a corporation, charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act.

Respondent entered its appearance and filed answer, hearings were had before a duly qualified examiner of the Federal Trade Commission, evidence was introduced on behalf of the Commission and of the respondent, brief was filed by the trial attorney for the Commission, respondent filed no brief but asked and was granted leave to file, and filed, a statement in lieu of oral argument. And the Commission, having duly considered the whole record and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Globe Automatic Sprinkler Company of Pennsylvania, is, and has been since the year 1911, a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal place of business at Philadelphia, in said State. It is, and has been since its organization, engaged in the business of manufacturing and selling to customers throughout

the United States automatic fire extinguishing apparatus, and in the installation of complete automatic fire extinguishing systems. It has branch offices in the principal cities of the United States, through and from which it solicits orders for apparatus and for the installation of sprinkler systems. Pursuant to the sales above referred to, shipment is made from its place of business in Pennsylvania to purchasers located throughout the United States.

PAR. 2. Respondent is one of a number of subsidiary "Globe" companies owned and controlled by the Globe Automatic Sprinkler Company of the United States, a holding company. Another subsidiary owned and controlled by said holding company is the Globe Automatic Sprinkler Company of New Jersey, whose business is the installation of complete sprinkler systems.

PAR. 3. The material and equipment for the construction of an automatic sprinkler system consists of water tanks (unless connected with a water system), pipes, valves, hangers and other supports, usually referred to in the industry and trade as "materials" or "equipment", and automatic sprinkler heads, automatic valves, water motors, exhausters, and other accessories, usually referred to in the industry and trade as "devices."

PAR. 4. Manufacturers in the industry divide into three classes:

First, those who fabricate and manufacture both materials and devices, as above defined, and whose principal business is the installation of complete sprinkler systems. To this class belong the group of "Globe" companies.

Second, those who manufacture and sell only devices as their principal business but, to a substantial extent, install complete systems.

Third, those whose sole business is manufacturing and selling devices.

Classes two and three, as above defined, depend principally upon local installing contractors as a market for their devices.

Early in the history of the industry and until late in the year 1933, contracts were entered into between the sprinkler manufacturers and these local contractors for the sale by the former to the latter of devices and in one form or another these contracts provided that the contractor, in the trade termed a "licensee", would purchase and use the devices of his manufacturer to the exclusion of all other devices. With some manufacturers these contracts ran for a period of years, with others they were for an indefinite term to be terminated upon notice. The licensees of the class two and three manufacturers, as above defined, were their principal and usually their only substantial customers, but the licensees of the class one manufacturers played a minor part in the business of the manufac-

Findings

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turers. In numbers there were and are some five to seven manufacturers in class one, and some eight or nine in classes two and three.

PAR. 5. Beginning in June 1932 and continuing at intervals throughout the ensuing twelve months, respondent sent to the licensees of its competitors, manufacturers in classes two and three, a series of letters soliciting the purchase by them of sprinkler devices at prices from 40 to 50 percent lower than the then prevailing prices for similar, competing devices, and from 40 to 50 percent lower than respondent was quoting, and continued to quote, its own licensees. Such prices so quoted were approximately at the level of the cost of production of respondent's competitors and, in meeting such prices, its competitors would be and were compelled to sell at prices that would not return them a reasonable profit.

PAR. 6. Respondent and many of its said competitors, and many of their licensees, were members, from time to time of the National Automatic Sprinkler Association, a trade association, and respondent's president was active in association affairs. Upon the records of said association, and in notices from the secretary thereof to the members concerning applications of local installation contractors for membership, the contractor was identified as the licensee of a particular manufacturer. The identity of the devices customarily used by a local contractor was a matter of common knowledge among those who came in competition with him, and it was assumed in the industry and trade that a local contractor was the licensee of the manufacturer whose devices he consistently used. In many cases respondent sent the aforementioned letters of solicitation to contractors whom it knew at the time were licensees of its competitors. In practically all other cases respondent knew that the contractors addressed were probably licensees of competitors, and it could have acquired actual knowledge of the facts by making reasonable inquiry.

PAR. 7. The conduct of respondent in thus soliciting licensees of its competitors, at prices substantially lower than prevailing prices and at prices approximately at the level of competitors' costs of production, was for the purpose, and had the effect of prejudicing and injuring its competitors and suppressing competition, in that it tended to cause said licensees to violate their contracts with their respective manufacturers and thus deprive them, competitors of respondent, of the principal market for their products and compelled them to reduce their prices to their licensees below the level that would yield them a reasonable profit.

PAR. 8. The conduct of respondent, as aforesaid, constituted and constitutes an unfair method of competition within the intent and meaning of Section 5 of the Act of Congress, heretofore mentioned, and was and is to the prejudice of the public.

ORDER TO CEASE AND DESIST

This proceeding being before the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the evidence taken and briefs filed, and the Commission having made its findings as to the facts and its conclusion drawn therefrom that the respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes"—

It is now ordered, That the respondent, Globe Automatic Sprinkler Company of Pennsylvania, its agents, employees, and representatives forthwith cease and desist, in connection with the sale or offering for sale in interstate commerce of automatic sprinkler apparatus, equipment, materials and devices, from maliciously interfering with the contractual relationship between its competitors and their said contractors or "licensees" by selling or offering to sell to them at reduced or cut prices, or otherwise, for the purpose of injuring said competitors and suppressing competition.

It is further ordered, That within 30 days from the date of the service of this order upon respondent, it file with the Commission a report in writing, setting forth in detail the manner and form in which it shall have complied with this order.

IN THE MATTER OF
CARLTON MILLS COMPANY, INC.

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

Docket 2169. Complaint, Apr. 13, 1934—Decision, Dec. 18, 1934

Where a corporation engaged in the manufacture of knitted and other fabrics of many varieties and kinds, including one with deep curled pile, which simulated the fur known as "Persian Lamb", or "Persian", and in the sale of said material to garment makers, usually, in competition with individuals and concerns engaged in the manufacture, sale, and distribution of knitted and other fabrics, some of which competing fabrics were similar to its aforesaid last referred to, material, and many or all of which competing fabrics were sold largely to garment manufacturers for sale or resale to the general public in the finished garments—

- (a) Described and designated its aforesaid last referred to product, to garment makers and all others, as "Persian Kurl", "Carlton Persian Kurl", "Genuine Persian Kurl—Carlton", and "Genuine Carlton Persian Kurl", notwithstanding fact said fabric was not "Persian Lamb" or "Persian", namely, as known to the purchasing public, the fur of very young lambs;
- (b) Furnished garment manufacturers and customers labels and string tickets for use on said garments in the display and sale thereof to the public, which labels had woven therein in large letters "Persian Kurl", together with the words "Genuine", "Genuine Carlton", and the abbreviation "Reg." in red letters and which string tickets contained the words "Persian Kurl" in conspicuous letters, and a printed reproduction of the aforesaid label;
- (c) Featured the words "Persian Kurl", together with a reproduction of the aforesaid label, in advertising said fabrics to garment manufacturers and the purchasing public in newspapers and trade magazines, and in some cases used the expressions therein "Genuine Carlton Persian Kurl", and "Carlton Persian Kurl" in referring thereto; and
- (d) Cooperated with customers in the expense of newspaper and other advertising of finished garments made therefrom in which the same expressions were used in describing said material, and in which there was emphasized the idea of "Persian Lamb" in connection with said fabric or garments made thereof through such typical advertising as "Precious Persian—The Fur Fashion of the Moment—Coats of Persian Kurl—The Fur Fabric of the Moment", and such statements as "The Smart Young Miss is 'Going Persian'," "Fashioned in Carlton's genuine Persian Kurl" (with picture of gamboling lambs), "A season of Persian", "Genuine Carlton Persian Kurl Coats", and in the advertising of retail merchants in which garments made of said fabrics were sometimes referred to as "Persian Kurl Coats", and were sometimes described by featuring expressions used by it;

With result of placing in the hands of retailers an instrument of fraud whereby they might be enabled to sell garments made from said material to the ignorant and uninformed, as and for genuine "Persian Lamb", and

with tendency and capacity to confuse, mislead, and deceive members of the public into the belief that said material was genuine "Persian Lamb" and induce purchasers thereof to buy garments made therefrom because of such erroneous belief, and divert trade to it from competitors engaged in the sale of similar fabrics, who do not misrepresent the same, and from those engaged in the sale of "Persian Lamb" and other materials from which ladies' coats, etc., are made:

Held, That such practices, under the conditions and circumstances set forth, were to the injury and prejudice of the public and competitors, and constituted unfair methods of competition.

Mr. John W. Hilldrop for the Commission.

Mr. I. Arnold Humber, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Pennsylvania corporation engaged in the manufacture, sale, and distribution of various knitted and other fabrics, including a material with a deep curled pile which simulated the fur known as "Persian Lamb", or "Persian", and with office and principal place of business in Philadelphia, with advertising falsely or misleadingly and misbranding or mislabeling as to nature of product, in violation of the provisions of Section 5 of such Act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as alleged, engaged in the sale of aforesaid material to garment manufacturers, usually, in competition with others engaged in the sale of similar and other fabrics to such manufacturers for resale to the public, makes use of words as "Persian Kurl", "Carlton Persian Kurl", and "genuine Carlton Persian Kurl", in describing and designating its said product to garment makers and all others, and in labels and string tickets for the garments made therefrom, and in the advertising of such material and garments, and further emphasizes and features in various ways the idea of genuine "Persian Lamb", i. e., the fur of very young lambs, as known to the trade and purchasing public from the terms "Persian Lamb" or "Persian", in advertising its said fabric, and in the advertising thereof, or of garments made therefrom, by its customers and retail merchants, in which advertising it cooperates and in the expense of which it shares.¹

Said practices, as charged, result in placing in the hands of retailers an instrument of fraud enabling them to sell garments made from said material to the ignorant and uninformed as "Persian

¹ Typical advertising, as alleged in the complaint, is set forth in the findings, *infra*, at p. 36.

Lamb", and have the tendency and capacity to confuse, mislead and deceive the public into the belief that said material, and the garments made therefrom are "Genuine Persian Lamb" and induce the purchase of said material and garments because of such erroneous belief, and divert trade to it from competitors engaged in the sale of similar fabrics, and from those engaged in the sale of "Persian Lamb" and other materials from which ladies' coats, jackets, and trimmings are made; all to the injury and prejudice of the public and competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon Carlton Mills Company, Inc., a corporation hereinafter referred to as respondent, charging it with unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act.

The respondent having entered its appearance, and having filed its answer herein, hearings were had and evidence thereupon introduced on behalf of the Commission and on behalf of the respondent before an examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon this proceeding came on for final hearing on the brief and oral argument of counsel for the Commission and on the brief and oral argument for respondent, and the Commission having duly considered the record and being duly advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. That said respondent, Carlton Mills Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, and has its office and principal place of business in the city of Philadelphia in said State.

PAR. 2. That said respondent is now and has been engaged for more than thirty years last past in the business of manufacturing knitted and other fabrics of many varieties and kinds, and in the sale thereof to buyers located in the city of New York, State of New York, and in other States of the United States. That one of the fabrics manufactured and sold by respondent as aforesaid during the last three years or more is described and designated by respondent as "Persian Kurl" and "Carlton Persian Kurl", "Genuine . . . Persian

Kurl . . . Carlton", and "Genuine Carlton Persian Kurl". That respondent in the course and conduct of its said business causes its said fabrics to be transported in interstate commerce from its said place of business in Pennsylvania to, into, and through States of the United States other than Pennsylvania to the buyers thereof to whom or to which they are or have been sold.

PAR. 3. That during the time above mentioned other individuals, firms and corporations in various States of the United States are and have been engaged in the manufacture, sale, and distribution in interstate commerce of various knitted and other fabrics, some of which are similar in kind, material, appearance, and structure to that made and sold by respondent and described as "Persian Kurl", etc., as aforesaid, and such other individuals, firms, and corporations have caused, and do now cause their said fabrics when sold by them to be transported from various States of the United States into and to States other than the State of origin of the shipment thereof. Said respondent has been during the aforesaid time in competition in interstate commerce in the sale of its said fabric with such other individuals, firms, or corporations. Many or all of such competing fabrics are sold largely to manufacturers for sale or resale to the general public in the finished garments into which the fabrics are made.

PAR. 4. As previously stated, respondent usually sells its said fabrics described and designated as aforesaid to garment makers who make it into garments which are eventually sold to the purchasing public. Said fabric is one having a deep fur pile resembling the fur known as "Persian Lamb" or simply "Persian." That said terms "Persian Lamb" and "Persian" are known to the purchasing public as describing and designating the fur of very young lambs and were so known at the time said respondent began to describe its fur as aforesaid.

That respondent furnishes its customers string tickets and cloth labels to be attached to the finished garments made from said fabric. Said labels have woven therein in large letters the words "Persian Kurl" extending from the lower left hand corner to the upper right hand corner. Above said expression "Persian Kurl" and at the upper left hand corner is the word "Genuine" in red letters, and below said expression, in the lower right hand corner is the word "Carlton" in red letters, and also the abbreviation "Reg." These labels remain on the garments when they are displayed and sold to the purchasing public.

On one side of the said string tickets at the top are the words "Persian Kurl" in conspicuous letters. At the bottom on the same

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side is a printed reproduction of the said label. Said tickets are intended to and usually remain on the garments on which they are placed when they are displayed and sold to the purchasing public.

Respondent also advertises said fabric to the garment manufacturers and the purchasing public in various States of the United States in newspapers and trade magazines in which the name "Persian Kurl" is featured as well as a reproduction of the label as above described, and in some cases the expression "Genuine Carlton Persian Kurl" and "Carlton Persian Kurl" are used in referring to said fabric.

That respondent cooperates with its customers in the expense of newspaper and other advertising of finished garments made from the said fabric in which the same expressions are used in describing the material as set out above. In an advertising circular of this type of advertising the front page thereof bears a picture of a woman wearing a coat that has the appearance of Persian Lamb and the following wording appears:

Precious Persian

The Fur Fashion of the Moment

Coats of Persian Kurl

The Fur Fabric of the Moment

On one of the inside pages, in addition to a reproduction of the label as heretofore described, the following statements and expressions appear in connection with reference to said fabric: /

The Smart Young Miss is "Going Persian"

Fashioned in Carlton's Genuine Persian Kurl

(Accompanied by a picture of two gambolling lambs)

A Season of Persian

Genuine Carlton Persian Kurl Coats

In addition to the advertising of the said fabrics and of garments made therefrom as previously outlined, retail dealers also advertise garments made from said fabric in which expressions used by respondent are featured in describing garments made therefrom or the garments are referred to simply as "Persian Kurl Coats."

PAR. 5. That in truth and in fact said fabric made by respondent is not "Persian Lamb" or, as commonly called, "Persian", nor is

it a pelt or fur but is a knitted or woven fabric with a deep curled pile simulating the appearance of genuine "Persian" fur.

PAR. 6. That the representations of respondent as aforesaid have had and do have the tendency and capacity to confuse, mislead, and deceive members of the public into the belief that respondent's said material is genuine "Persian Lamb" as previously described, and that the garments made from said material are genuine "Persian Lamb" garments when such are not the facts. Said terminology and representations further place in the hands of retailers an instrument of fraud whereby they may be enabled to sell garments made from respondent's said material to the ignorant and uninformed as and for genuine "Persian Lamb." That said representations of respondent have had and do have the tendency and capacity to induce members of the public to buy said fabric and garments made therefrom because of the erroneous belief engendered as above set forth, and to divert trade to respondent from competitors engaged in the sale in interstate commerce of similar fabrics who do not misrepresent the same and also from those engaged in the sale in interstate commerce of "Persian Lamb" and other materials from which ladies' coats, jackets, and trimmings are made.

CONCLUSION

The practices of respondent, Carlton Mills Company, Inc., a corporation, under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and the competitors of respondent and are unfair methods of competition in commerce and constitute a violation of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and the testimony taken, and the briefs filed herein, and the Commission having made its findings as to the facts with the conclusion that the respondent has violated an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes"—

It is now ordered, That the respondent, Carlton Mills Company, Inc., its agents, representatives, and employees in selling and/or offering for sale in commerce among the several States of the United

States or in the District of Columbia, certain knitted and other fabrics of many varieties and kinds among which is a fabric manufactured and sold by respondent and by it described and designated as "Persian Kurl", "Carlton Persian Kurl", "Genuine . . . Persian Kurl . . . Carlton", and "Genuine Carlton Persian Kurl", described in the findings as to the facts herein and any similar fabric and/or in selling and offering for sale any such fabrics to be sold or offered for sale in the commerce aforesaid, cease and desist from:

(1) Describing and designating its product to garment makers and all others as "Persian", or "Persian Lamb" or using any other words or phrases having a tendency and capacity to create the impression that such fabrics are "Persian" or "Persian Lamb" unless said fabric or fabrics are actually the fur of young Persian lambs.

(2) From furnishing to customers string tickets and cloth labels to be attached to finished garments made from said fabrics containing the words "Persian Kurl", "Genuine" and words of like purport and meaning carrying the suggestion and making the impression that said fabric is "Persian" or made of "Persian Lamb" unless the said fabric is made of the fur of Persian lambs.

(3) From advertising in newspapers and trade magazines the said fabric as "Persian Kurl", "Genuine Carlton Persian Kurl", and "Carlton Persian Kurl" unless in truth and in fact said fabric is made of the fur of young Persian lambs; from cooperating with its customers and sharing in the expense of newspaper and other advertisements whereby the following word or words of like purport and meaning are used in the description and advertisement of finished garments made from said fabric, to wit:

Precious Persian

The Fur Fashion of the Moment

Coats of Persian Fur

The Fur Fabric of the Moment

The Smart Young Miss is "Going Persian"

Fashioned in Carlton Genuine Persian Fur
(Accompanied by a picture of two gambolling lambs)

A Season of Persian
Genuine Carlton Persian Fur Coats

and from circulating, or cooperating with its customers and circulating, and sharing in the expense of circulating a certain advertising circular bearing the picture of a woman wearing a coat that has the appearance of Persian Lamb, unless the said fabric so advertised is in truth and in fact made of the fur of young Persian Lambs.

(4) From cooperating with retail merchants and sharing expenses with them in advertising and describing the said fabric and the material thereof or the completed garments as "Persian Kurl Coat" unless the said fabric is in truth and in fact made of the fur of young Persian lambs.

(5) From directly or indirectly in any manner advertising or holding out to its customers and the public the idea, or making or attempting to make an impression on the minds of its said customers and the public that its said product is "Persian" or "Persian Lamb" unless in truth and in fact said product is actually made of the fur of young Persian lambs.

It is further ordered, That respondent within 60 days of the service upon it of the order herein, file with the Commission a reply in writing, setting forth in detail the manner and form in which the order has been complied with and conformed to.

Complaint

20 F. T. C.

IN THE MATTER OF
FAIRYFOOT PRODUCTS COMPANY

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

Docket 2178. Complaint, May 4, 1934—Decision, Dec. 18, 1934

Where a corporation engaged in sale and distribution of a medicated pad for bunions, falsely advertised that through use thereof pain would be stopped quickly and permanently and bunion caused to melt away and disappear, and the foot to resume its normal shape, and thus enable purchaser to wear smaller shoes and enjoy bunion-free feet, and that it had the approval of leading physicians and surgeons, facts being it could not accomplish, to a substantial extent, any of the results claimed for it, there is no medication known to medical science which will dissolve or remove bunions after the first or incipient stage has been passed, and its virtue was limited to its mechanical effect in relieving pressure upon the affected part and the temporary relief of pain; with capacity and tendency to deceive retailers and using public into belief that said product was a cure for and would give permanent relief in all cases at any stage, and with effect of so doing, and of thereby diverting business to it from competitors, who honestly represent their products:

Held, That such practices, under the conditions and circumstances set forth, were to the prejudice of the public and competitors, and constituted unfair methods of competition.

Mr. Robt. N. McMillen for the Commission.

Mr. Harry F. Williams, of Chicago, Ill., for respondent.

COMPLAINT

Acting in the public interest, pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that Fairyfoot Products Company, a corporation, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Fairyfoot Products Company, is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business in the city of Chicago, in said State.

PAR. 2. A substantial part of respondent's business is the sale and distribution of a medicated pad, designated by it as "Fairyfoot",

which it advertises and otherwise represents to be a treatment for bunions on the feet. Sales are made by respondent to retail druggists and direct to the using public, and when such sales have been made shipment is made from respondent's place of business in the State of Illinois to the purchasers in many other States of the United States.

PAR. 3. In advertisements inserted in magazines and newspapers and in representations contained in circular letters mailed to prospective customers, respondent makes, in substance, the following representations:

That by the use of respondent's said treatment bunions are dissolved; pain is stopped almost instantly, and permanent relief follows; painful, ugly bunions are gradually dissolved; the user is enabled to wear smaller shoes; that the bunion is made to disappear as though it were melted away, and the foot again resumes its natural appearance and shape; in a surprisingly short period the deformed foot may again have its natural size and shape; bunion suffering is ended completely; that the treatment is approved by leading physicians and surgeons; that the normal functions are stimulated and the bunion is subjected to a continuous massage; that the absence of irritation and the gentle, continuous massage of the plaster plus the special Fairyfoot formula gradually reduces the unsightly bunion hump, thus helping the toe to straighten out; that many devices have been offered by others for the purpose of relieving bunions, and that some of these make matters worse while few, if any, do the slightest good; that Fairyfoot gently dissolves swelling caused by inflammation and should restore the foot to its normal appearance; when Fairyfoot is given a thorough and fair trial it brings sure and certain relief from bunion suffering, and the user can know once more the pleasure of bunion-free feet.

PAR. 4. In truth and in fact such representations are false and misleading in that respondent's product and the method of applying same will not dissolve or remove bunions and will not restore the foot to its normal shape; it operates to relieve pain only to the extent that it relieves the pressure of the shoe upon the affected part and any relief gained thereby is not lasting or permanent and is not due to any medication contained in or constituting the Fairyfoot formula; it is not, and has not been, approved by leading physicians and surgeons; the preparation or treatment contains nothing that will reduce the bunion except to the extent it may relieve by mechanical means the pressure of the shoe upon the affected part, as hereinbefore alleged.

PAR. 5. There are in the United States persons, firms, and corporations engaged in the business of manufacturing and/or selling and distributing in interstate commerce mechanical devices for the relief and amelioration of the pain and discomfort of bunions and preparations for the treatment of such condition, and with these persons, firms, and corporations, respondent is in substantial competition.

PAR. 6. That the false and misleading advertisements and misrepresentations hereinbefore set out are to the prejudice of the said competitors of respondent and are prejudicial to the public interest, in that such false and misleading advertisements and misrepresentations have the capacity and tend to divert business to respondent from its competitors and to deceive and defraud the purchasing public.

PAR. 7. The said false and misleading advertising and misrepresentations as hereinabove alleged constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondent above named, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance and filed answer, hearings were had before a duly qualified examiner of the Federal Trade Commission and evidence was introduced on behalf of the Commission and of the respondent.

Thereafter briefs were filed by counsel for the Commission and counsel for respondent and oral argument presented. And the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and conclusion therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Fairyfoot Products Company, is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its place of business at Chicago in said State.

PAR. 2. A substantial part of respondent's business consists in the sale and distribution of a medicated pad designated by it as "Fairy-

foot", which it advertises and otherwise represents to the public to be a treatment for bunions. Sales are made to retail druggists and to the using public and, pursuant to such sales, shipment is made from respondent's place of business in the State of Illinois to purchasers in many States of the United States.

PAR. 3. There are in the United States, and have been during all the time respondent has been engaged in so advertising and selling its said Fairyfoot remedy, persons, firms, and corporations engaged in manufacturing and selling in interstate commerce mechanical devices for the relief and amelioration of the pain and discomfort of bunions and preparations for their treatment, and with these persons, firms, and corporations respondent has been and is in substantial competition.

PAR. 4. In the course and conduct of its said business and in soliciting prospective purchasers of, and for the purpose of creating a demand for, its said product, respondent has advertised and does advertise in magazines and newspapers, and has represented and represents in circular letters mailed to prospective customers, substantially as follows:

That by the use of Fairyfoot, bunions are dissolved; pain is stopped almost instantly and permanent relief follows; painful, ugly bunions are gradually dissolved; the user is enabled to wear smaller shoes; the bunion is made to disappear as though it were melted away and the foot again resumes its natural appearance and shape; bunion suffering is ended completely; the normal functions are stimulated and the bunion is subjected to a continuous massage; the absence of irritation and the continuous massage of the plaster plus the special "Fairyfoot" formula gradually reduces the unsightly bunion hump, thus helping the toe to straighten out; it brings sure and certain relief from bunion suffering and the user can know once more the pleasure of bunion-free feet; and many other similar claims and representations either asserting or implying that "Fairyfoot" works a cure of or permanent relief from bunions in any stage, and is approved by leading physicians and surgeons.

PAR. 5. Such representations so made by respondent in its advertising and otherwise are false and misleading in that said pad and its medication will not accomplish the things, or any of them to a substantial degree, so represented by respondent. In truth and in fact there is no medication known to or recognized by medical science that will dissolve bunions or make them disappear, or that will substantially relieve and reduce them after the first or incipient state has been passed. Neither will the medicinal formula with which the Fairyfoot pad is treated instantly nor almost instantly

Order

20 F. T. C.

stop pain or give permanent relief. The pad and its medicinal treatment have no other virtue or effect than that of a mechanical device for relieving the pressure or friction of the shoe upon the affected part and temporarily relieving the pain.

PAR. 6. Such false and misleading representations by respondent of and concerning its "Fairyfoot" bunion remedy have the capacity and tendency to and do in fact deceive retail merchants and the using public into the belief that respondent's said product is a cure for, or will give permanent relief in cases of, bunions at any stage, thus diverting business from those of its said competitors who honestly represent competing products and preparations.

CONCLUSION

The practices of said respondent under the conditions and circumstances described in the foregoing findings have been and are to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce and a violation of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This matter having been considered by the Federal Trade Commission upon the complaint, the answer of the respondent, the testimony taken and evidence introduced at hearings, and upon briefs and oral argument of counsel for the Commission and for the respondent, and the Commission having fully considered the record and having made its findings as to the facts and its conclusion that respondent has violated the provisions of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes"—

It is now ordered, That the respondent, Fairyfoot Products Company, its officers, agents, and employees, forthwith cease and desist from representing in advertising matter, circular letters, by means of radio broadcast, or otherwise, in or in connection with selling or offering for sale in interstate commerce, its device or preparation known as "Fairyfoot" bunion remedy or treatment:

That the treatment is approved by leading physicians and surgeons; that by the use of Fairyfoot, bunions are dissolved, pain is stopped instantly, or almost instantly, and permanent relief follows; the foot again resumes its natural appearance and shape; bunion suffering is ended completely, the normal functions are stimulated; the

absence of irritation and the continuous massage of the plaster plus the special "Fairyfoot" formula gradually reduces the bunion hump; that "Fairyfoot" gently dissolves the swelling caused by inflammation and should restore the foot to its normal appearance; it brings sure and certain relief from bunion suffering and the user can know the pleasure of bunion-free feet; and cease and desist from representing in any other or similar manner or words that its said device or preparation works a cure for, or gives permanent relief from, bunions, or attribute to it or its medicinal formula any result or effect other than that which may be derived from a mechanical device that relieves the pressure or irritation of the shoe at the affected part and temporarily relieves pain.

It is further ordered, That respondent shall within 30 days from the date of service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which this order has been complied with.

Complaint

20 F. T. C.

IN THE MATTER OF
HUGH WALLACE COMPANY

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

Docket 2183. Complaint, May 19, 1934—Decision, Dec. 18, 1934

Where a corporation engaged in production and sale of a fabric for use in making and trimming coats and other garments, with cotton back and worsted face of certain long staple wool, and pile which closely simulated or resembled "Persian Lamb Fur", to wit, the fur of certain very young lambs, to which a great good will attached, and for which, or garments made therefrom or trimmed therewith, there was a public demand, at high prices—

Adopted and employed the name "Persian-Laine" for use in the offer and sale of said fabric to wholesalers, jobbers, garment makers, retail dealers, and ultimate purchasers thereof or of garments made therefrom or trimmed therewith, and supplied purchasers thereof with tags to be sewed on or otherwise attached and fastened to said garments, upon which tags there was depicted a ram's head and the words "Wallace Persian-Laine," and thus represented to and assured purchasers of said fabric and of garments made therefrom or trimmed therewith, that the same was the fur skin of said lambs;

With effect of deceiving and misleading the purchasing public into the erroneous belief that said knitted fabric was the fur of such young lambs, and of unfairly diverting trade to itself from competitors who sell the fur of very young lambs or garments made therefrom or trimmed therewith, and from competitors who offer and sell, without misrepresentation, fabrics or products made in simulation or imitation of such fur, or otherwise competitive therewith, to its unfair advantage, and to the injury of competitors and the public, and with capacity and tendency so to deceive, mislead, and divert:

Held, That such practices, under the conditions and circumstances set forth, were to the prejudice of the public and competitors, and constituted unfair methods of competition.

Mr. John W. Hildrop for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that Hugh Wallace Company, a corporation, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said 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, Hugh Wallace Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, having and maintaining its office, plant, and principal place of business at 2616 East Grand Boulevard, in the city of Detroit, in the State of Michigan. Respondent has been and is engaged in the production of a certain knitted fabric with a pile in simulation of Persian Lamb fur. Said cloth is made with a cotton back and with a face of worsted composed of long staple Lincoln luster wool or wool of a similar type. Respondent has been and is engaged also in offering for sale and selling said fabric in commerce between and among the several States of the United States and the District of Columbia, and in causing such fabric when so sold to be transported from its said place of production in the State of Michigan into and across the several States of the United States and the District of Columbia to the several purchasers thereof located in said respective States or the District of Columbia.

Said fabric closely resembles Persian Lamb fur and is used for the making or trimming of cloaks, coats, and other garments, for which purposes Persian Lamb fur has also long been, and now is, generally in use.

In the course and conduct of its said business, respondent is, and has continuously been, in competition with other persons, firms, associations, and corporations engaged in offering for sale and selling Persian Lamb fur or knitted fabrics in simulation thereof, or other fabrics in imitation thereof, or other competitive products to be used for the same or similar purposes, in like commerce between and among the several States of the United States and the District of Columbia.

PAR. 2. Respondent refers to and designates its said product by the name of "Persian Laine", said name having been coined and adopted by respondent as the name thereof and to be used as the name of said product in offering for sale and selling the same to and by wholesalers, jobbers, makers of garments, and retail dealers, and to the ultimate purchasers of such fabric or of garments made thereof or trimmed therewith. Respondent furnishes to purchasers thereof certain tags to be sewed onto or otherwise attached and fastened to, said fabric or to garments made of said fabric or trimmed therewith, the same to be used with or attached to the same until it has passed into the hands of the retail purchasers of said garments, which said tags are so used. Each of said tags bears upon its face the picture of a ram's head and the words "Wallace Persian-Laine." Respondent thus causes said product to be designated

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and described as "Persian-Laine" by all persons buying said product, or using the same in the making or trimming garments or in the sale of said product or of garments made thereof or trimmed therewith, down to and including the retail purchaser or consumer thereof.

PAR. 3. "Persian Lamb" is produced principally in Bokhara, Turkestan, and Central Asia. It is the fur skin of a very young lamb. The lamb is usually killed within five days after its birth. At the birth of the lamb its fur has a gloss and curl which rapidly coarsens after five days. The skins of such young lambs, when so killed, are known to the trade and to the public principally as "Persian", "Persian Lamb", "Astrakhan", "Broadtail", "Krimmer", and "Karakul." The use of any of said names to designate a product carries to purchasers thereof, and to purchasers of garments made therefrom or trimmed therewith, the representation and assurance that the same is and are such fur skin of the young lambs above referred to.

Respondent's said name so coined and adopted to designate its said knitted fabric constitutes a representation and assurance to purchasers thereof and to purchasers of garments made thereof or trimmed therewith, that the same is the fur skin of said young lambs. Respondent's said knitted fabric closely simulates "Persian" or "Persian Lamb."

The use of said name "Persian-Laine", has the tendency and capacity to deceive and mislead the purchasers thereof and the purchasers of garments made thereof or trimmed therewith, into the erroneous belief that the said knitted fabric is "Persian" or "Persian Lamb", and will divert trade to respondent from his competitors who are offering for sale and selling in said commerce true "Persian" or "Persian Lamb", or any fabric or product that is to be used for the same or similar purposes or that is otherwise competitive therewith in said commerce.

PAR. 4. In the public mind great good will has attached to "Persian" or "Persian Lamb", to wit, to the fur skin of said very young lambs, and the public seeks after, and is willing to pay high prices for, the same or for garments made thereof or trimmed therewith.

So long as respondent shall so sell its said product under said false and misleading name and designation, and shall deceive and mislead the purchasing public into the erroneous belief that said knitted fabric is the fur skin of said young lambs, respondent will unfairly continue to divert trade to itself from its competitors who offer for sale and sell the fur skin of the skin of said young lambs, or garments made thereof or trimmed therewith, and also from all competitors who offer for sale and sell fabrics or other products

made in simulation of such fur skin of said young lambs, or in imitation thereof or that are otherwise competitive therewith, or who sell garments made thereof or trimmed therewith; all to the unfair advantage of respondent, to the unfair disadvantage of respondent's competitors and to the injury of the public.

PAR. 5. The above alleged acts and practices of respondent are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon Hugh Wallace Company, a corporation hereinafter referred to as respondent, charging it with unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act.

The respondent having entered its appearance, and having filed its answer herein, hearings were had, and evidence was thereupon introduced on behalf of the Commission and on behalf of the respondent before an examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon this proceeding came on for final hearing on the briefs and oral argument of counsel for the Commission and counsel for the respondent, and the Commission having duly considered the record, and being fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Hugh Wallace Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, having and maintaining its office, plant, and principal place of business at 2616 East Grand Boulevard, city of Detroit, in the State of Michigan. Respondent has been and is engaged in the production of a certain fabric with the pile in simulation of "Persian Lamb Fur". Said cloth is made with a cotton back and a face of worsted composed of long staple Lincoln Luster Wool, or wool of a similar type. Respondent has been and is engaged also in offering for sale and selling said fabric in commerce between and among the several States of the United States

and in the District of Columbia, and in causing such fabric when so sold to be transported from its said place of production in the State of Michigan, into and across the several States of the United States and the District of Columbia, to the several purchasers thereof located in said respective States and the District of Columbia.

Said fabric closely resembles Persian Lamb Fur and is used for the making or trimming of coats, cloaks, and other garments for the purpose Persian Lamb Fur has long been, and now is, generally in use.

In the course and conduct of its said business respondent is and has continuously been in competition with other persons, firms, associations, and corporations engaged in offering for sale and selling Persian Lamb Fur or knitted fabrics in simulation thereof, or other fabrics in imitation thereof, or other competitive products to be used for the same or similar purposes, in like commerce between and among the several States of the United States and the District of Columbia.

PAR. 2. Respondent refers to and designates its said product by the name of "Persian-Laine", said name having been coined and adopted by respondent as the name thereof, and to be used as the name of said product, in offering for sale and selling the same to wholesalers, jobbers, makers of garments, and retail dealers, and to the ultimate purchasers of such fabric, or of garments made thereof, or trimmed therewith. Respondent offers the purchasers thereof certain tags to be sewed thereon or otherwise attached and fastened to said fabric, or to the garments made of said fabric or trimmed therewith, the same to be used with or attached to the same until it has passed into the hands of the retail purchasers of said garments, which said tags are so used.

Each of said tags bears upon its face the picture of a ram's head and the words "Wallace Persian-Laine". Respondent thus causes said product to be designated as "Persian Laine" by all persons buying said product, or using the same in the making or trimming of garments, or in the sale of said product or of garments made thereof or trimmed therewith, down to and including the retail purchaser or consumer thereof.

PAR. 3. "Persian Lamb" is produced principally in Bokhara, Turkestan and Central Asia. It is the fur of a very young lamb. The lamb is usually killed within five days after its birth. At the birth of the lamb its fur has a gloss and curl which rapidly coarsens after five days. The fur of such young lambs, when so killed, is known to the trade and public principally as "Persian" or "Persian Lamb", "Astrakhan", "Broadtail", "Krimmer" and "Karakul."

The use of any of said names to designate a product carries to purchasers thereof and to purchasers of garments made therefrom or trimmed therewith the representation and assurance that the same is fur of the young lambs above referred to.

Respondent's said name so coined and adopted to designate its said knitted fabric constitutes a representation and assurance to purchasers thereof, and to purchasers of garments made thereof or trimmed therewith, that the same is the fur of said young lambs. Respondent's said knitted fabric closely simulates "Persian" or "Persian Lamb."

Use of the said name "Persian-Laine" has the tendency and capacity to deceive and mislead the purchasers thereof and the purchasers of garments made thereof or trimmed therewith, into the erroneous belief that the said knitted fabric is "Persian" or "Persian Lamb" and will divert trade to respondent from his competitors who are offering for sale and selling in said commerce true "Persian" or "Persian Lamb" or any fabric or product that is to be used for the same or similar purposes or that is otherwise competitive therewith in said commerce.

PAR. 4. In the public mind great good will has attached to "Persian" and "Persian Lamb", to wit, to the fur of said very young lambs and there is a public demand for, and a willingness to pay high prices for the same, or for garments made thereof or trimmed therewith.

The sale by respondent of its said product under such false and misleading name and designation, deceives and misleads the purchasing public into the erroneous belief that said knitted fabric is the fur of said young lambs, and unfairly diverts trade to itself from its competitors who offer for sale and sell the fur of very young lambs, all garments made thereof or trimmed therewith, and also from all competitors who, without misrepresentations, offer for sale and sell fabric or other products made in assimilation of such fur of said young lambs or in imitation thereof or that are otherwise competitive therewith, all to the unfair advantage of respondent and to the injury of respondent's competitors and of the public.

CONCLUSION

The practice of the said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and to the competitors of respondent and are unfair methods of competition in commerce in violation of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

Order

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ORDER TO CEASE AND DESIST

This proceeding having been heard and considered by the Federal Trade Commission upon the record, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes—

It is now ordered, That the respondent, Hugh Wallace Company, a corporation, in connection with the sale or offering for sale in commerce between and among the several States of the United States and within the District of Columbia, of a certain knitted fabric with a pile in simulation of Persian Lamb Fur, said cloth being made with a cloth back and a face of worsted composed of long staple Lincoln Luster Wool, or wool of a similar type, and in the sale or offering for sale of any other fabric or cloth simulating the fur of young Persian lambs, other than the genuine fur of such young lambs, in commerce between the several States of the United States and in the District of Columbia, do cease and desist from using the words "Persian Laine", "Persianlaine", or "Wallace Persian Lamb", "Persian Lamb", or any other word or words which import or imply that the fabrics so designated are made of or from the genuine fur of young lambs, unless the said fabric so sold or offered for sale in commerce as aforesaid, are made of the genuine Persian Lamb Fur.

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

Complaint

IN THE MATTER OF
**FIRST NATIONAL NURSERIES, INC., AND
 LELAND C. BROWN**

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

Docket 2186. Complaint, May 23, 1934—Decision, Dec. 18, 1934

Where a corporation, and the president and substantial owner thereof, engaged in the sale and distribution of nursery stock, in competition with persons and concerns engaged in the business of growing and selling, or buying and selling such stock, in which business permanence, stability, and responsibility on the part of the sellers is of special importance to customers—

Employed the words "Nursery" or "Nurseries" as a trade or corporate name and otherwise, and represented themselves as growers of nursery stock, as inducements to purchase, through such representations and statements in catalogs, and other advertising matter as "First National Nurseries, Growers of Fruit and Ornamental Trees and Plants", etc., "Grown and for sale by First National Nurseries", etc., "* * * 'The Nursery of Quality'," etc., and emphasized in its advertising the idea of purchasing "from a complete nursery carefully handled and fresh shipped stock, inspected and certified first quality, big rooted, vigorous, quick growing, free from disease and injurious insect pests, not off a store counter or from a small grower, or a catalog or mail jobber with a limited assortment and without facilities for growing, digging, storing, handling and packing", etc., and stressed the thought of having planting "backed by a recognized nursery of many years' experience", notwithstanding fact they neither owned, leased, nor controlled ground producing the stock dealt in by them, or grew any of the stock sold by them;

With capacity and tendency to mislead and deceive purchasing public into believing that it actually grew the products sold or distributed by it, and owned, operated, and controlled nurseries and farms on which said products were grown, and was a large concern of long standing and experience in the nursery business, and to induce purchase of its stock, and divert trade from and otherwise injure competitors:

Held, That such acts and practices, under the conditions and circumstances set forth, were to the prejudice of the public and competitors, and constituted unfair methods of competition.

Mr. Morton Nesmith for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that First National Nurseries, Inc., a corporation, and Leland C. Brown, have been and are using unfair methods of competition in commerce, as

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“commerce” is defined in said act, and it appearing to said 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, First National Nurseries, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having and maintaining its office and principal place of business in the city of Rochester, in the State of New York. Respondent, Leland C. Brown, is the president of and principal stockholder in said respondent company and manages the same and controls its practices and policies. Respondent, First National Nurseries, Inc., has been and is engaged in the business of purchasing for resale nursery stock consisting of shrubbery, fruit, and ornamental trees and plants, and such other things as are included in the words “nursery stock” as commonly used and understood. Said respondent has been and is also engaged in offering for sale and selling said products in commerce between and among the several States of the United States and in causing said products when so sold to be transported from its said principal place of business in the State of New York into and across the several States of the United States to the several purchasers thereof located at various places in said several States.

Said products are so sold at retail by respondent company through the medium of agents, who are employed by said respondent and who receive a commission of 25 percentum on the several amounts of the sales prices of the products sold by them respectively.

Other persons, firms, associations, and corporations have been and are engaged in offering for sale and selling in said commerce like and competitive nursery stock propagated, cultivated, grown, and produced by themselves; and still other persons, firms, associations, and corporations have been and are engaged in offering for sale and selling in said commerce like and competitive nursery stock propagated, cultivated, grown, and produced by others. In the course and conduct of its said business, respondent company has been and is in competition with all such other persons, firms, associations, and corporations so engaged in offering for sale and selling in said commerce between and among the several States of the United States and the District of Columbia, said nursery stock or any articles thereof, and with all other persons, firms, associations or corporations engaged in offering for sale or selling to the public nursery stock or any articles thereof.

PAR. 2. The purchasing public prefers to purchase nursery stock from the producer thereof, to wit, from those who own, control, and

operate the nurseries in which such nursery stock is propagated, cultivated, grown, and produced. The purchasing public greatly desires to procure nursery stock that is genuine and true to the name, kind, and quality for which it is offered for sale. The purchasing public is of the opinion that in making purchases directly from such producers thereof, there is less risk of mistakes in the true name, kind, and quality of the stock so being offered for sale and sold, and a greater probability that the product is genuine and true to the name, kind, and quality for and as which it is so offered and sold.

The use of the word "Nurseries" as a part of respondent company's name means and indicates to the purchasing public that respondent company, owns, controls and maintains nurseries in which it propagates, cultivates, grows, and produces the nursery stock so being offered for sale and sold by it to the public. The use of said word in said corporate name constitutes a representation and assurance to the public that respondent company is the producer of the nursery stock so being offered for sale and sold by it; and is so understood by the public.

In truth and in fact, respondent company does not own, control, or operate a nursery or nurseries, and is not the producer of the nursery stock so being offered for sale and sold by it to the public, but respondent company purchases the same from the producers thereof or from the dealers therein for resale to the public.

PAR. 3. In aid of respondent company's sales of its said product to the public, for use of its said sales agents in so offering for sale and selling said nursery stock to the purchasing public, and for the purpose of inducing the public to purchase the same, respondent company in and by printed catalogs, pamphlets, booklets, circulars, publications, advertisements, and various forms of advertising matter, makes to the public many false and misleading statements and representations in reference to respondent company and its said nursery stock.

Among such false and misleading statements and representations are the following and many others of like or similar tenor and effect, to wit:

Referring to respondent company; "Growers of Fruit and Ornamental Trees and Plants."

Referring to respondent company's nursery stock: "Grown and for sale by" respondent company.

"The Nursery of Quality."

"Growers and Importers of" nursery stock.

"October 25th we picked four quarts of berries from young plants growing in the nursery rows and the plants were in all stages of development."

“You know that your company grows the finest, hardiest Barberry in America.”

“It’s to your advantage * * * to get from a nursery carefully handled, fresh shipped stock, inspected and certified, first quality, big rooted, vigorous, quick growing, free from disease and injurious insect pests, not off a store counter, or from a small grower, or a catalog or mail jobber with limited assortment and without facilities for growing, digging, storing, handling, and packing.

PAR. 4. Said use by respondent company of the word “Nurseries” as a part of its corporate name, and the use by it of the false and misleading statements and representations above set forth has the capacity and tendency to deceive and mislead the purchasing public into the erroneous belief that respondent company owns, controls, and maintains a nursery or nurseries, in which it propagates, cultivates, grows, and produces the nursery stock which it so offers for sale and sells to the public; and to induce the public to purchase respondent company’s nursery stock in and because of such erroneous belief so induced. Said use of said word “Nurseries” and said false and misleading statements and representations have the tendency and capacity to divert trade to respondent company from its said competitors, to the unfair advantage of respondent company, to the unjust disadvantage of its competitors, and to the deception and injury of the public.

PAR. 5. The above alleged acts and practices of respondents are all to the prejudice of the public and of competitors of respondent company and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled “An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes”, approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, First National Nurseries, Inc., and Leland C. Brown, the first-named respondent being a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, and the second-named respondent being its president, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondents having entered their appearances and filed their joint answer to the complaint, a hearing was had before a trial examiner theretofore duly appointed, and testimony was heard and evidence

received in support of the charges stated in the complaint and in opposition thereto. Thereafter this proceeding came on regularly for final hearing before the Commission on the complaint, answer, testimony, and evidence received and briefs in support of the allegations of the complaint and in opposition thereto, and the Commission having duly considered the record and being now fully advised in the premises, makes this its report, stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, First National Nurseries, Inc., is a corporation organized in 1930 under the laws of the State of New York and is existing and doing business by virtue of said laws in said State, with its principal place of business at Rochester, N. Y. The respondent, Leland C. Brown, is the president of said corporation and the owner of all its capital stock, consisting of 100 shares of no par value except two shares outstanding in the hands of the vice president and secretary and treasurer, respectively. Said First National Nurseries, Inc., upon its organization, succeeded to the business theretofore carried on since 1897 by a partnership, and since its organization it has been engaged in the sale and distribution of nursery stock to purchasers located in the various States of the United States other than the State of New York. Since its incorporation, respondent, First National Nurseries, has caused the trees, shrubs, plants, and other items of nursery stock sold by it to be transported when sold, to the respective purchasers thereof from Rochester, in the State of New York, through and into various other States in the United States, and in the course and conduct of its said business has been and is now in active competition with various persons and partnerships and other corporations also engaged in the business of growing and selling or buying and selling nursery stock in interstate commerce. The respondent, Leland C. Brown, owns all the shares of the capital stock in said corporation except two, and is the moving spirit of said corporation.

PAR. 2. In the course and conduct of respondent corporation's business as aforesaid, respondents purchased all such nursery stock from other nurseries, viz: Brown Bros. Company, W. T. Smith Company, Webb Nursery Company, Andrews Nursery Company, Vick Seed Company, Martin Perennial Nurseries, and others. Since its incorporation, respondent, First National Nurseries, Inc., has not owned, leased, or controlled any ground which produces any of the stock which it sells in interstate commerce, and neither of the respondents

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grew or propagated any of the nursery products which they sold in such commerce. In the course and conduct of its business, from its incorporation, the respondent, First National Nurseries, Inc., distributed through the several States of the United States, catalogs, pamphlets, booklets, circulars, publications, and other advertising matter intended to aid in the sale of its nursery stock purchased as aforesaid. Among the statements made in said pamphlets, booklets, and advertising matter during said time were the following:

FIRST NATIONAL NURSERIES

Growers of Fruit and Ornamental Trees and Plants
Home Office, Rochester, N. Y. "Flower City"

Grown and for sale by

FIRST NATIONAL NURSERIES

Growers of Fruit and Ornamental Trees and Plants
Agencies Everywhere
Home Office, Rochester, N. Y.

FIRST NATIONAL NURSERIES

The Nursery of Quality
Home Office, Rochester, N. Y.
The Flower City

* * * to get from a complete nursery carefully handled and fresh shipped stock, inspected and certified first quality, big rooted, vigorous, quick growing, free from disease and injurious insect pests, not off a store counter or from a small grower, or a catalogue or mail jobber with a limited assortment and without facilities for growing, digging, storing, handling and packing * * *

* * * to feel that your planting is a profitable and permanent one, backed by a recognized nursery of many years' experience * * * (Rec. pp. 10-13)

During the period when the statements and representations set out above were made, respondent, First National Nurseries, Inc., neither owned nor controlled a nursery nor grew any stock as stated or implied in the advertisements aforesaid, circulated as inducements to customers and prospective customers in the sale of its nursery stock.

Under the rules and regulations applicable to the nursery industry adopted by the Commission of Agriculture and Markets, State of New York, dealers are defined as persons or firms not acting as agents, who are engaged in selling or peddling nursery stock and who do not themselves grow more than 25 per cent of the stock handled by them. Respondent, Leland C. Brown, acting for and on behalf of respondent, First National Nurseries, Inc., signed an appli-

cation for and received a dealer's certificate from the Commission of Agriculture and Markets of the State of New York.

PAR. 3. Among the competitors of respondent corporation in the sale of its nursery products in the several States of the United States since said respondent's incorporation in 1930, were a number of concerns who were both growers of, and dealers in, nursery stock sold by them in interstate commerce in competition with respondent, First National Nurseries, Inc. Permanence, stability, and responsibility on the part of sellers of nursery stock are of peculiar importance to their customers, as it is often some time after the sale before the stock purchased bears fruit so as to disclose whether or not the fruit is true to type or as represented. Such period in the case of fruit trees, such as apples or pears, extends from 5 to 10 years.

PAR. 4. The use of the word "Nurseries" in the corporate name of the respondent, First National Nurseries, Inc., taken in connection with the statements made in its literature, used as an inducement in the sale of its nursery products, had and has the capacity and tendency to mislead and deceive the purchasing public into the belief that respondent corporation actually grows or propagates the nursery products sold and distributed by it in several States of the United States in that it owns, operates, and controls nurseries and farms on which said nursery products sold and distributed by it are grown. Its literature also gives the impression that it is a large concern of long standing and experience in the nursery business. Such are not the facts and the false and misleading statements as to these facts contained in respondent corporation's literature and in its name had and have the capacity and tendency to induce the purchase of its nursery stock, and had and have the capacity and tendency to divert trade from and otherwise injure competitors.

CONCLUSION

The acts and practices of the respondents under the conditions and circumstances as described in the foregoing findings are to the prejudice of the public and respondent's competitors, and constitute unfair methods in competition and commerce within the intent and meaning of Section 5 of the Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the

respondents, the testimony and evidence introduced, and the briefs of counsel for the Commission and for respondents, and the Commission having made its findings as to the facts and its conclusion that respondents have violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes"—

It is now ordered, That respondents, First National Nurseries, Inc., and Leland C. Brown, and their agents, representatives, and employees, in connection with the advertising, offering for sale and sale in commerce between and among the several States of the United States and in the District of Columbia of nursery stock, do cease and desist from directly or indirectly—

(1) Using the word "Nurseries" or "Nursery" or any other word or words of like import in the corporate name of respondent, First National Nurseries, Inc., or in trade names, business signs, advertising matter or otherwise, in combination or in conjunction with any other word or words unless and until said respondent, First National Nurseries, Inc., actually owns and operates or directly and absolutely controls a nursery or farm in or on which a substantial proportion of the nursery stock sold and distributed by it in interstate commerce is grown.

Using the word "Nurseries" or "Nursery" or other words of like import as a trade name or otherwise by the respondent, Leland C. Brown, or in his business signs or advertising matter, in combination or conjunction with any other word or words, unless and until said respondent, Leland C. Brown, actually owns and operates or directly and absolutely controls a nursery or farm in or on which a substantial proportion of the nursery stock sold and distributed by him in interstate commerce is grown.

(2) Representing that First National Nurseries, Inc., or Leland C. Brown, are growers of nursery stock.

It is further ordered, That respondents, First National Nurseries, Inc., and Leland C. Brown, shall within 60 days after service upon them of a copy of this order file with the Commission a report in writing setting forth the details, amount, and form in which they have complied with and conformed to the order to cease and desist hereinabove set forth.

Complaint

IN THE MATTER OF
STEMPEL BROS., INC.COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2249. Complaint, Nov. 19, 1934—Order, Dec. 22, 1934*

Consent order requiring respondent, its officers, etc., in connection with the sale and offer of women's garments in interstate commerce, forthwith to cease and desist from submitting or transmitting to its customers or prospective customers, or the customers or prospective customers of its competitors, or to any other part of the trade or to the public, advertisements or illustrations of garments or other wearing apparel manufactured by its competitors, with the representation, express or implied, that respondent is or was the manufacturer of such garments or other wearing apparel, or in any other or similar manner representing it is the manufacturer of particular garments or other wearing apparel when such is not the fact.

Mr. Robt. N. McMillen for the Commission.

Mr. Nathan Kosseff, of New York City, for respondent.

COMPLAINT

Acting in the public interest, pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission having reason to believe that Stempel Bros., Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as commerce is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized and existing under and by virtue of the laws of the State of New York, with its place of business at the City of New York, in said State. It is, and at all times hereinafter mentioned has been, engaged in the manufacture and sale of ladies' sportswear, including dresses, coats, skirts, and guimpes. Sales are made to department stores located throughout the several States of the Union, and, pursuant to such sales, shipment is made from its place of business in New York to such purchasers.

PAR. 2. In the course and conduct of its said business respondent is in competition with other persons, firms, and corporations manufacturing and selling similar garments, and, pursuant to such sales, shipping them from their respective places of business to purchasers located in various States other than the States of the location of such competitors.

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PAR. 3. There is, and has been, during all the time herein mentioned, a custom among manufacturers of women's wear, of sending to customers and prospective purchasers throughout the United States the advertisements of their garments placed in the New York papers by leading New York merchants handling same. Many buyers who do not come frequently to the New York markets are accustomed to judge the value and popularity of garments, and are to a substantial extent influenced in their purchases, by the fact that such garments are featured in advertisements placed by well-known New York stores. Therefore, when a manufacturer sends to a customer, or prospective purchaser, an advertisement sponsored by one of these stores, it means in the trade that that manufacturer is the maker of the merchandise therein advertised, and that it has such merit and popularity as to lead the New York merchant to feature it in his advertising.

PAR. 4. In the course and conduct of its business respondent has engaged in the practice of clipping from New York newspapers advertisements sponsored by leading department stores, and has mailed them to prospective customers, who are also the customers and prospective customers of its competitors, which advertisements feature not the garments or merchandise manufactured by respondent but by its competitors. Specifically, on or about April 26, 1933, and at various other times, a leading department store of New York City, known as Wanamakers, purchased a number of garments from the manufacturer thereof, to wit, one Maiman-Sanger, Inc., and advertised them for sale in the New York Sun and in other newspapers of New York City. Thereafter, the respondent clipped such advertisement from numerous copies of said newspapers and mailed them, with its business card, to its customers and prospective customers who were also customers and prospective customers of said manufacturer, Maiman-Sanger, Inc., located in various States throughout the United States, thereby representing to all to whom it mailed said clipped advertisements that it was the manufacturer of the garments featured in said advertisement, and offered them for sale at a price lower than the price at which the real manufacturer thereof had offered and was offering them.

PAR. 5. The result of such practice on the part of respondent has been and is to deceive purchasers and prospective purchasers of ladies' sportswear into the belief that respondent was and is the manufacturer of the garments in said advertisements featured, and that its said garments are of such merit and popularity as to be featured by said leading New York stores, thus tending to divert, and diverting, business to itself from the real manufacturer thereof, and tending to divert, and diverting, business to itself from other com-

petitors whose garments are not featured by said leading New York stores, and to deceive customers and prospective customers into the belief that the garments featured in the advertisements of said leading New York stores are and were of respondent's manufacture.

PAR. 6. Respondent's conduct and practices as aforesaid constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of the Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

The Commission having the above matter under consideration upon the complaint and the answer filed by respondent; and it appearing that in accordance with paragraph (b) of Rule V of the Commission's Rules of Practice, respondent's answer states that it refrains from contesting the proceeding and it further appearing that under said rule such answer constitutes an admission of all the allegations of the complaint, a waiver of hearing, and a consent that the Commission, without a trial, without evidence, and without findings as to the facts, or other intervening procedure, may make, enter, issue, and serve upon respondent an order to cease and desist from the violations of law charged in the complaint; and the Commission having duly considered the complaint and answer and being fully advised in the premises—

It is therefore ordered, That the respondent, Stempel Bros., Inc., a corporation, its officers, agents, representatives, and employees, forthwith cease and desist, in connection with its business of selling and offering for sale women's garments in interstate commerce, from submitting or transmitting to its customers or prospective customers, or to the customers or prospective customers of its competitors, or to any other part of the trade or to the public, advertisements or illustrations of garments or other wearing apparel manufactured by its competitors with the representation, express or implied, that respondent is or was the manufacturer of such garments or other wearing apparel, or in any other or similar manner representing that it is the manufacturer of particular garments or other wearing apparel when such is not the fact.

It is further ordered, That within 30 days from the date of the service of this order upon it, respondent shall file with the Commission a report in writing setting forth in detail the manner and form in which this order has been complied with.

IN THE MATTER OF

B. M. ZIEVE AND ISRAEL DUKES, INDIVIDUALLY AND
AS COPARTNERS DOING BUSINESS UNDER THE NAME
AND STYLE OF DIAMOND PAPER & BOX COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914.*Docket 2137. Complaint, Dec. 18, 1933—Decision, Jan. 16, 1935*

Where a firm engaged in purchase of fiber board "clothing boxes", and in the sale thereof to manufacturers and shippers of clothing, in competition with persons and concerns located without the state in which so engaged, and who, as manufacturers or dealers as the case might be, offered and sold similar products within said state—

Caused the box maker's certificate, required by the railroads' classification committee to entitle shipment to substantially lower charges than otherwise effective, and containing its name and address as the maker, to be stamped on its said boxes, notwithstanding fact it was not the maker thereof, such certificate by other than the maker did not entitle shipment to the lower charges, and a substantial number of purchasers prefer, to a substantial extent, to buy such boxes direct from the maker rather than the jobber or dealer;

With capacity and tendency to mislead purchasers to believe it to be the maker of said products, and that they conformed to all the requirements and specifications of said committee and would, therefore, take the lower rates, and thereby unfairly divert business to it from competitors who make their boxes, and from those who do not do so, or thus represent themselves:

Held, That said acts and practices, under the circumstances and conditions set forth, were to the prejudice of the public and competitors, and constituted unfair methods of competition.

Mr. Robt. N. McMillen for the Commission.

Mr. I. Emanuel Sauder, of Philadelphia, Pa., for respondents.

COMPLAINT

Acting in the public interest, pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission charges that B. M. Zieve and Israel Dukes, individually and as copartners trading under the name and style of Diamond Paper & Box Company, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondents are individuals doing business as copartners under the name and style Diamond Paper & Box Company

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and have their principal office and place of business in the City of Philadelphia, State of Pennsylvania. They have for more than three years last past been engaged in the sale and distribution in interstate commerce of wrapping paper, twine, corrugated paper and fiber boxes. Said merchandise is sold and distributed to retail and wholesale merchants for the use of such purchasers and not primarily for resale. Respondents sell their merchandise by means of advertisements inserted in trade publications having an interstate circulation, by means of circulars and by means of salesmen. When orders are received, respondents forward the merchandise so ordered to the purchasers thereof at their respective points of location. Such merchandise is shipped from respondents' place of business in the State of Pennsylvania into and through other States of the United States. Respondents are in competition with other partnerships, corporations, firms, and individuals engaged in the sale and distribution in interstate commerce of like articles of merchandise, and, in the sale and distribution of such merchandise, are also in competition with the manufacturers thereof.

PAR. 2. The interstate railway companies of the United States have an organization known as the Consolidated Classification Committee. This committee has adopted certain rules regarding the containers used in interstate shipments of merchandise, and the common carriers have filed copies of such rules with the Interstate Commerce Commission. One of such rules requires that a certification be placed upon each box by the actual manufacturer thereof. Respondents place on their corrugated paper and fiber boxes the following inscription in concentric circles:

DIAMOND PAPER AND BOX CO.
PHILADELPHIA, PA.
CERTIFICATE OF BOX MAKER

THIS BOX CONFORMS TO ALL CONSTRUCTION
REQUIREMENTS OF CONSOLIDATED FREIGHT CLASSIFICATION

The above certification or statement is false and misleading. The respondents are not the manufacturers thereof but purchase the said boxes from the manufacturer and then cause the said inscription to be placed thereon.

PAR. 3. The false and misleading representation in paragraph 2 hereof has the capacity and tendency to mislead and deceive the purchasing public and the users of corrugated paper and fiber boxes and to induce them to purchase from respondents in and on account of their belief in the truth of said representation. Many purchasers

desire to purchase such boxes from the manufacturer thereof and not through a dealer or jobber, and said representation has the capacity and tendency and effect of diverting a substantial amount of trade to respondents from other dealers or jobbers and from manufacturers.

PAR. 4. The use by respondents of the false and misleading and deceptive representation, as hereinabove set forth, constitutes practices or methods of competition which tend to and do prejudice and injure the public, unfairly divert trade from and otherwise prejudice and injure respondents' competitors, and acts as a restraint upon and a detriment to the freedom of fair and legitimate competition in the business of selling and distributing corrugated paper and fiber boxes.

PAR. 5. Said false, misleading, and deceptive practices and methods of respondents, under the circumstances and conditions hereinabove alleged, are unlawful and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondents, B. M. Zieve and Israel Dukes, individually and as partners doing business under the name and style of Diamond Paper & Box Company, charging them with the use of unfair methods of competition in commerce, as "commerce" is defined in said act, in violation of the provisions of said act.

The respondents having entered their appearances and filed answers, hearings were had before a duly qualified examiner of the Commission, at which respondents were represented by Israel Dukes and by counsel, evidence was introduced by the attorney for the Commission in support of the complaint and respondents' counsel announced that they had no evidence to offer.

Thereafter this proceeding came on for final hearing before the Commission on the record and the brief of the attorney for the Commission, respondents having failed to file brief within the time prescribed by the Commission's rules of practice and waived oral argument. And the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, B. M. Zieve and Israel Dukes, are, and have been for more than four years last past, partners doing business under the name of Diamond Paper & Box Company, with their place of business in the City of Philadelphia, in the State of Pennsylvania. They have been, and now are, engaged in the sale, among other things, of fiber-board boxes suitable and used for the packing of clothing for shipment, known and generally referred to as "clothing boxes." Sales of these boxes are made by respondent direct to the users thereof, manufacturers and shippers of clothing.

PAR. 2. Other persons, firms, and corporations, with their places of business located outside the State of Pennsylvania, are engaged in selling and offering for sale similar boxes, suitable and used for the packing of clothing for shipment, to customers located within the State of Pennsylvania and pursuant to such sales shipping said boxes into said State from without. With such other persons, firms, and corporations respondents are in substantial competition. Some of said competitors are manufacturers of the boxes they sell, others are wholesalers or dealers only,

PAR. 3. The Official Classification Committee is an organization of the railroads engaged in the carriage of freight among the States in the eastern part of the United States. It is the duty and function of this committee to compile and file with the Interstate Commerce Commission and similar Commissions of the various States, tariffs which are the basis of freight rates to be charged, and charged, by said railroads. For a number of years and at the present time, a part of said tariffs has been and is rule 41 of said committee, which governs the rates of charges for goods, wares, and merchandise tendered for shipment and shipped in said fiber-board boxes. Section 1 of said rule 41 provides that goods tendered in fiber-board boxes which do not conform to all the requirements and specifications of said rule 41, shall take a substantially higher rate, to wit: 20 percent if in less than carload lots and 10 percent if in carload lots over and above the charge applying to merchandise shipped in such boxes which do conform to the requirements and specifications of said rule. Section 8 of said rule provides, as one of the requirements, that all such fiber boxes must bear a certificate of the boxmaker, labeled, printed, or stamped in ink, clearly showing that the boxes do conform to the requirements and specifications of said rule, and sets out the form such certificate shall take, as follows:

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Circular in form; inside the outer rim the name and address of the boxmaker; within the circle the words "Certificate of boxmaker. This box conforms to all construction requirements of consolidated freight classification. Resistance (bursting test) — pounds per square inch. Dimension limit — inches. Gross weight limit — pounds."

It is and has been the interpretation and application by the committee of this rule 41 that goods tendered or shipped in boxes bearing said certificate but not in the name of the actual boxmaker, take and have taken the higher rates.

PAR. 4. Respondents are not the manufacturers or makers of the clothing boxes which they sell but they are purchased by respondents from the makers thereof. Nevertheless, upon all such boxes respondent causes said certificate in the form and words prescribed by said section 8 of rule 41, to be stamped with their said business name and address in that part of the form which is to bear the boxmaker's name and address.

PAR. 5. A substantial number of, and to a substantial extent, purchasers of such boxes prefer to purchase direct from the manufacturer, rather than from jobber, wholesaler, or dealer.

PAR. 6. The said practice of respondents of stamping their business name and address upon said boxes as the manufacturers thereof has the capacity and tendency to mislead and deceive purchasers into the belief that respondents are the manufacturers of the fiber board boxes which they sell, and to deceive and mislead them into the belief that said boxes conform to all the requirements and specifications of rule 41 of the Official Classification Committee and will, therefore, take the lower rates for carriage; and thus unfairly to divert business to respondents from competitors who make the boxes they sell and from competitors who do not make the boxes they sell and do not in any way represent themselves to be the makers thereof.

CONCLUSION

The said acts and practices of respondents, under the circumstances and conditions set forth in the foregoing findings, are to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding being before the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, the evidence and the brief of the attorney for the Commission, respondents having failed to file briefs and having waived oral argument, and the Commission having considered the record and having made its findings as to the facts and its conclusion that respondents have violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes"—

It is now ordered, That respondents, B. M. Zieve and Israel Dukes, individually and as partners, their agents, representatives, and employees, in connection with the sale of fiber-board boxes in interstate commerce, or in connection with their sale in competition with other persons, firms and corporations selling and shipping fiber-board boxes into Pennsylvania from without said State, forthwith cease and desist from stamping, labeling, printing, or stenciling upon boxes not manufactured by them the certificate prescribed by rule 41 of the Official Classification Committee, as set out in the findings herein, or in any other manner representing that they are the makers of boxes not made by them, or causing said certificate in their names or their business name to be so placed thereon.

It is further ordered, That said respondents shall within 30 days from and after the date of the service upon them of this order file with this Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
PREFERRED TOILETRIES, INC., AND
HENRY SCHLACTUS

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

Docket 2173. Complaint, Apr. 27, 1934—Decision, Jan. 16, 1935

Where a corporation engaged in the sale of perfumes, cosmetics and other toilet articles; and its president, responsible for the methods employed by it in marketing its products;

Advertised and offered at 98 cents, plus postage, two combinations of toilet preparations, including such items as vanishing cream, shampoo, toilet water, etc., to each of which combinations it gave an aggregate value of \$11.50, through addition of the pretended "regular" prices assigned to the eleven items making up the same, together with the assertion that "most any item included in this sensational offer of 11 pieces alone would cost you what we are asking for the 11 alluring beauty needs pictured and described here";

The facts being the price asked constituted the usual price for which articles of the same grade were sold by competitors, the items included in said combination were never sold separately by them at any price, and the prices assigned said items were fictitious, and inflated over the items' true values, and did not represent prices intended by them for the sale of said items in the usual course of their business, aggregate purchase price for the combination sets did not exceed 39 cents, and the Gardenia perfume included as "regularly priced at \$3", was a synthetic preparation which sold at 10 cents retail;

With capacity and tendency to mislead and deceive the purchasing public into the belief that the regular combined selling price of said articles was \$11.50, and with effect of so doing, and of inducing purchase thereof in reliance on such belief, and unfairly diverting trade to them from competitors, to latter's injury and prejudice:

Held, That such acts and practices, under the conditions and circumstances set forth, were to the prejudice of the public and competitors, and constituted unfair methods of competition.

Mr. Morton Nesmith for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, Preferred Toiletries, Inc., a New York corporation engaged in the sale of perfumes, cosmetics, and other toilet articles, to purchasers in other States, and with principal office and place of business in said State, and respondent Henry Schlactus,

president thereof since its organization and responsible since such time for formulating and carrying out its merchandising practice, here involved, with advertising falsely or misleadingly as to price or value of products offered, in violation of the provisions of Section 5 of such Act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged as aforesaid, offer two combination sets, to each of which they assign a purported value of \$11.50, through the addition of the asserted regular values or prices assigned to the different items, at a pretended special reduced price of 98 cents for each,¹ the facts being the different prices assigned the items involved are grossly exaggerated and fictitious, and do not represent prices contemplated by respondents for the sale of such items, said items are never sold separately by them at any price, and the price asked, or 98 cents plus postage, constitutes their usual price for the sale of the different items, as sold in combination, and one which affords them a substantial profit.

Use by respondents, as alleged, of such false, fictitious and inflated prices in their advertising matter, "has been and is calculated to mislead and deceive, and has had the capacity, tendency and effect of misleading and deceiving the purchasing public into the belief that the regular combined selling price of the articles mentioned in respondents' said advertisements is \$11.50 and to induce the purchasing public to purchase said articles in that belief, and has unfairly diverted trade from and otherwise injured and prejudiced respondents' competitors in interstate commerce and thereby substantial injury has been done by the respondents to substantial competition in interstate commerce", and said acts and things done by respondents, as charged, "are all to the injury and prejudice of the public and of the competitors of the respondents in interstate commerce, and constitute unfair methods of competition."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued a complaint on April 27, 1934, upon the respondents, Preferred Toiletries, Inc., a corporation organized and doing business by virtue of the laws

¹The two combination sets as thus advertised, as alleged in the complaint, are set forth in the findings *infra*, at page 73.

of the State of New York, and its president, Henry Schlactus, respectively, which complaint was served on April 30, 1934, charging them with the use of unfair methods of competition in commerce as commerce is defined in said act. Respondent Henry Schlactus, acting both on his own behalf and for respondent Preferred Toiletries, Inc., filed a joint answer dated May 29, 1934, to said complaint. Thereafter, on June 20, 1934, a hearing in New York City was had before a trial examiner theretofore duly appointed and testimony was heard and evidence received in support of the charges stated in the complaint, and in opposition thereto.

Thereafter, this proceeding came on regularly for final hearing before the Commission on the complaint, answer, testimony, and evidence received, brief by counsel for the Commission and answer (letters) from the respondent, Henry Schlactus, and, respondents having waived oral argument, said cause was duly submitted, and, the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Preferred Toiletries, 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 office and place of business in New York City in said State. Respondent, Henry Schlactus, is the president of said respondent, Preferred Toiletries, Inc., and has been such president since the incorporation of said last-named respondent. Said respondent, Henry Schlactus, since the incorporation of said respondent corporation, has formulated and carried out for it the methods hereinafter described, used by said corporation in marketing its products. Respondent corporation is now, and since its organization on or about September, 1932, has been engaged in the sale of perfumes, cosmetics, and other toilet articles, which products it has caused and still causes to be transported from its place of business in the City of New York to purchasers thereof located in the State of New York and various other States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of its said business respondents have caused and still cause certain of the products of said corporation to be advertised and sold in combinations with certain others of its products, and in soliciting the sale of and in selling said products said respondents have caused and still cause the following

statements and representations, among others, to appear as advertisements in periodicals and having a wide interstate circulation:

(1)

11 ALLURING BEAUTY NEEDS

All Full Sized Nationally Advertised Products

98¢ Plus Postage Complete

(Pictorial representation of the items, accompanied by the following legends):

Baree Vanishing Cream.....	Regularly priced \$1 a jar.
Baree Shampoo.....	Regularly priced \$1.
Baree Lilac Toilet Water.....	Regularly priced at \$1.
Baree Cleansing Cream.....	Regularly priced at \$1.
Baree Face Lotion.....	Regularly priced at 50¢.
Baree Face Powder.....	Regularly priced \$1.
Purse Size Perfume.....	Regularly priced \$1.50.
Baree Brilliantine.....	Regularly priced at 50¢.
Baree Perfume Delite.....	Regularly priced \$3.
Baree Lip Rouge.....	Regularly priced 50¢.
Baree Nail Polish.....	Regularly priced 50¢.

\$11.50 WORTH OF TOILET REQUISITES 98¢ Plus Postage . . . Most any one item included in this sensational combination of 11 pieces offered alone would cost you what we are asking for the eleven alluring beauty needs pictured and described here . . .

(2)

11 ALLURING BEAUTY NEEDS

All Full Sized Vivian Vance Creations

98¢ Plus Postage Complete

(Pictorial representation of the items accompanied by the following legends):

Vivian Vance Cleansing Cream.....	Regularly priced \$1.
Vivian Vance Lilac Water.....	Regularly priced at \$1.
Vivian Vance Shampoo.....	Regularly priced \$1.
Vivian Vance Vanishing Cream.....	Regularly priced \$1 a jar.
Vivian Vance Brilliantine.....	Regularly priced at 50¢.
Vivian Vance Face Powder.....	Regularly priced at \$1.
Vivian Vance Face Lotion.....	Regularly priced at 50¢.
Vivian Vance Parfum Bouquet.....	Regularly priced at 50¢.
Vivian Vance Nail Polish.....	Regularly priced at 50¢.
Vivian Vance Gardenia Perfume.....	Regularly priced \$3.
Vivian Vance Lip Rouge.....	Regularly priced 50¢.

\$11.50 worth of toilet requisites 98¢ Plus Postage . . . Most any item included in this sensational combination of 11 pieces alone costs what we ask for the eleven alluring beauty needs offered here . . .

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PAR. 3. The alleged prices and values for the separate articles as set out in the advertising matter described in preceding paragraph are false and fictitious and inflated over the true value of said products and over the prices at which said products are intended by respondents to be sold in the usual course of their business. The combined price of 98 cents plus postage for all of said articles, as set forth in the advertisements described above, is the usual and regular price at which articles of the same grade are sold by competitors of the respondent. Respondents never sold separately any of the articles described in the above advertisements at the prices suggested therein, or at any other price. The purchase price for the combination sets as set out in said advertisements did not exceed 39 cents and that one of the articles enumerated in said advertisements, viz, Gardenia Perfume, is a synthetic perfume and similar to perfumes sold daily for 10 cents retail.

PAR. 4. The "suggested" or "regular price" employed by respondents in the advertisement of its products is false and fictitious and inflated and has been and is calculated to mislead and deceive and has had the capacity, tendency, and effect of misleading and deceiving the purchasing public into the belief that the regular combined selling price of the articles mentioned in respondents' said advertisements was \$11.50 and to induce purchasing public to purchase said articles in that belief and has unfairly diverted trade from and otherwise injured and prejudiced respondents' competitors in interstate commerce.

CONCLUSION

The acts and practices of respondents under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been duly heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, testimony in support of the charges of said complaint and opposition thereto and briefs filed by counsel for the Commission and the respondents, and, the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of an Act of Congress approved September

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26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes":

It is now ordered, That respondents, Preferred Toiletries, Inc., and Henry Schlactus, a corporation organized and existing under and by virtue of the laws of the State of New York and its president, respectively, their agents, servants, or employees, in connection with the sale of or offering for sale or distribution in interstate commerce perfumes and toilet preparations, cease and desist, directly or indirectly, from—

(1) Advertising said products for sale in combination sets or groups in which the articles comprising said groups are set out as having been previously separately sold or regularly priced at an exaggerated or inflated figure, when in truth and in fact said individual articles had never been sold either separately or at such exaggerated or inflated figures.

(2) Making any false, fictitious, or misleading statements or representations concerning the regular prices at which said products or any of them have been or are intended to be sold in the usual course of trade and commerce.

It is ordered, That respondents shall within 60 days after service of a copy of this order file with the Commission a report in writing setting forth in detail the manner and form in which they have compiled with and conformed to the order to cease and desist as above set forth by the Commission.

IN THE MATTER OF
SCIENTIFIC PRODUCTS, INC.

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

Docket 2176. Complaint, May 3, 1934—Decision, Jan. 16, 1935

Where a corporation engaged in the manufacture of can openers, and in the sale thereof through house-to-house canvassers or agents; in periodical advertising directed to securing the services of such agents, and in printed matter sent them for their use in demonstrating and soliciting the sale of its "Nu-Day Magnetic Can Opener"—

- (a) Represented that there had been "discovered" the "horrible danger of metal slivers in food from opening cans", and that such danger had been "revealed by scientific tests" and dwelt upon and elaborated such supposed danger through such statements as "are you feeding your family metal chips and slivers", "it has now been proved that ordinary can openers shave off sharp jagged metal slivers that drop into the food contents", and "it is only logical that metal chips and slivers, swallowed with food, can be just as dangerous, if not more so", as fish bones and other extraneous objects in food, pointed out by medical authorities as causes of serious injury, and called attention to the "nearly universal consumption of canned foods", and the "dangers to health" never "before realized", as lurking in the simple operation of can opening;
- (b) Represented that "a revolutionary new invention" to wit, its said Nu-Day Magnetic Can Opener "vanished" obsolete openers, and that its said product had been hailed as a safeguard to health and ended the danger of metal slivers in food through such statements as "revolutionary new invention", "hailed as a safeguard to health", and "now at last comes the safe, perfect little automatic opening machine that all America has prayed for", and "no other can opener at any price gives you this freedom from worry"; and
- (c) Included in its aforesaid advertising matter pretended depictions of other can openers and cans pretendedly opened by other openers, and a magnifying glass showing pretended slivers or particles of metal from cans opened with other openers, together with such statements as "actual unretouched microscopic photograph showing the many metal slivers shaved off by any ordinary can opener";

The facts being that said Nu-Day Magnetic Can Opener does not prevent the falling of pieces of metal, if any there be, into the food contents of cans opened therewith, statements and representations regarding the alleged danger that may result from the use of openers other than those manufactured and sold by it are exaggerated, as respects the alleged danger or hazard of gastro-intestinal stomach disturbances, which may be caused by the ingestion of such pretended or alleged metal particles in food, and other competitive products deposit smaller amount of such particles in the can than does its own said product;

With tendency and capacity to mislead and deceive the purchasing public into the belief that said representations were true, and induce purchase and use of its said openers because of such erroneous belief, and divert trade to it from competitors, to the substantial injury of substantial competition: *Held*, That such practices, under the circumstances set forth, were all to the injury and prejudice of the public and competitors, and constituted unfair methods of competition.

Mr. John W. Hilldrop for the Commission.

Eilers & Schaumberg, of St. Louis, Mo., and *Mr. John A. Nash*, of Chicago, Ill., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Missouri corporation, engaged in the manufacture of can openers and in the sale and distribution thereof through house-to-house canvassers or agents in various States, and with principal office and place of business in St. Louis, with advertising falsely or misleadingly as to properties of product, and competitive products, in violation of the provisions of Section 5 of such Act, prohibiting the use of unfair method of competition in interstate commerce, in that respondent, in periodical advertising soliciting the services of such agents to sell its aforesaid product, and in printed matter supplied them for their use in demonstrating and soliciting the sale thereof, grossly exaggerates, elaborates upon, and misstates the asserted newly discovered dangers to health from the presence in food taken from cans, of metal slivers or particles present therein, as a result of the operation of opening the can with an ordinary can opener, as compared with the freedom from such danger assertedly assured through the use of respondent's so-called "Nu-Day Magnetic Can Opener", alleged revolutionary new invention, the facts being said supposed dangers are grossly exaggerated and there are other competitive openers which deposit smaller amounts of metal particles in the can than does its own aforesaid product;¹ with tendency and capacity to mislead and deceive the purchasing public into the belief that said representations are true and induce purchase of said products by it and use thereof because of such erroneous belief, and to divert trade to it from competitors engaged in the sale in interstate commerce of other can openers, to the substantial injury of substantial competition, and to the injury and prejudice of the public and competitors, and in violation of the provisions of Section 5.

¹ Various statements made by respondent in said advertising matter as alleged in the complaint, are set forth in the findings *infra*, at page 79.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission on the 3d day of May 1934 issued, and thereafter served, its complaint against the respondent, Scientific Products, Inc., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondent having entered its appearance and filed an answer to said complaint, hearings were had before a trial examiner theretofore duly appointed, and testimony was heard and evidence taken in support of the charges stated in the complaint and in opposition thereto. Thereafter this proceeding came on regularly for hearing and the Commission, having duly considered the record, and being now fully advised in the premises, makes this its report, stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPHS 1. The said respondent, Scientific Products, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located in the city of St. Louis in said State. It is now and for more than one year last past has been engaged in the manufacture, among other articles, of can openers and in the sale and distribution thereof in commerce between and among various States of the United States, the Territories thereof and the District of Columbia. It causes and has caused said can openers, when sold, to be shipped from its place of business in the State of Missouri to purchasers thereof located in the State of Missouri and in other States of the United States, the Territories thereof, and the District of Columbia, and there is now, and has been at all times hereinafter mentioned, a constant current of trade and commerce in such can openers between and among the various States of the United States, the Territories thereof, and the District of Columbia. In the course and conduct of its said business, said Scientific Products, Inc. is now and has been at all times hereinafter mentioned in competition with other corporations and with individuals, firms, and partnerships engaged in the sale of can openers in interstate commerce.

PAR. 2. The can openers which the respondent, Scientific Products, Inc., manufactures and sells in interstate commerce, are sold and

advertised under a trade designation, to wit: "Nu-Day Magnetic Can Opener." Respondent has solicited and still solicits the sale of said "Nu-Day Magnetic Can Openers" by and through its agents engaged in house-to-house canvass in various States; and as a means to obtain the service of such agents respondent has caused, and still causes, advertising matter to be placed in periodicals having interstate circulation in which said advertising matter the following statements, among others, have appeared:

Discovered! Horrible danger of metal slivers in food from opening cans now eliminated.

Horrible danger of sharp metal slivers falling into food revealed by scientific tests! Revolutionary new invention vanishes obsolete can openers! Remarkable Nu-Day Magnetic Can Opener hailed as safeguard to health; and

Ends danger of metal slivers in food.

Printed matter has been sent and is still being sent by said respondent to its agents for their use in demonstrating and soliciting the sale of and selling said "Nu-Day Magnetic Can Openers." These are used and shown by respondent's agents to purchasers and prospective purchasers in soliciting the sale of said "Nu-Day Magnetic Can Openers." In such printed matter there have appeared, and still appear, the following statements, among others:

Are you feeding your family metal chips and slivers?

The consumption of canned foods is now so nearly universal that one or more cans are opened almost every day in nearly every home. Yet no one has ever before realized what dangers to health may lurk in this simple operation.

It has now been proved that ordinary can openers shave off sharp, jagged metal slivers that drop into the food contents.

The last quoted statement was and is followed in such advertising matter by a purported pictorial representation of other can openers, cans that had been purportedly opened by some other can opener, and of a magnifying glass showing purported slivers or particles of metal from cans opened with such various other can openers. Under this pictorial representation appeared, and still appears, the statement, among others:

Actual unretouched microscopic photograph showing the many metal slivers shaved off by many ordinary can openers.

Other statements appearing in such advertising matter were, and are, among others, the following:

This means that every time you open cans you are exposing yourself and family to dangers to health.

It has been pointed out by medical authorities that such objects as fish bones, pieces of toothpicks, fingernails, chips of glass, etc., ingested with food, have caused serious injury * * *.

Conclusion

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It is only logical that metal chips and slivers, swallowed with foods, can be just as dangerous, if not more so.

These sharp, jagged metal slivers threaten in foods opened with ordinary can opener.

Now at last comes the safe perfect little automatic can opening machine that all America has prayed for; and

No other can opener at any price gives you this freedom from worry.

PAR. 3. In truth and in fact, the said can opener, designated by respondent, "Nu-Day Magnetic Can Opener", does not prevent the falling of pieces of metal, particles, chips or slivers, if any there be, into the food content of cans opened with said device. The aforesaid statements and representations, as set out in paragraph 2 regarding the alleged danger that may result from the use of can openers other than those manufactured and sold by the said respondent and known as "Nu-Day Magnetic Can Opener" are exaggerated in respect to the alleged danger of hazard of gastro-intestinal stomach disturbances which may be caused by the ingestion of such purported and alleged metal particles with food. In truth and in fact there are other can openers manufactured and sold by competitors of respondent which deposit less amounts of metal particles in the can than does the use of said "Nu-Day Magnetic Can Opener".

PAR. 4. The representations of respondent, as set out in paragraph 2 hereof, have had, and still have the tendency and capacity to mislead and deceive the purchasing public into the beliefs that the said representations are true, and to induce the purchasing public to purchase and use the said "Nu-Day Magnetic Can Openers" because of the said erroneous belief engendered as aforesaid, and to divert trade to respondent from competitors engaged in the sale in interstate commerce of other can openers, whereby substantial injury is done by the respondent to substantial competition.

PAR. 5. The above alleged acts and things done by the respondent are all to the injury and prejudice of the public and of the competitors of the respondent in interstate commerce, and constitute unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

CONCLUSION

The practices of the said respondent under the conditions and circumstances stated in the foregoing findings are to the prejudice of the public and respondent's competitors, and constitute a violation of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

Order

ORDER TO CEASE AND DESIST¹

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of the respondent, the testimony, the evidence, briefs and oral arguments of counsel, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That respondent, Scientific Products, Inc., a corporation, its agents and employees, in connection with the selling or offering for sale, or in aid of the sale of its certain product, to wit, "Nu-Day Magnetic Can Opener", in interstate commerce between and in the several States of the United States and the District of Columbia, cease and desist from representing in advertisements through magazines, newspapers, booklets, pamphlets, pictures, letters, circulars, testimonials or otherwise, that—

(a) There has been discovered any "horrible" or real danger of metal slivers in food from opening cans and that such danger has been or can be eliminated by the use of respondent's said product, Nu-Day Magnetic Can Opener.

(b) That any "horrible" or real danger of sharp metal slivers falling into food has been revealed by any scientific tests.

(c) That a revolutionary new invention, to wit, respondent's said Nu-Day Magnetic Can Opener, vanishes obsolete can openers.

(d) That respondent's "remarkable" Nu-Day Magnetic Can Opener is or has been hailed as a safeguard to health and that said Nu-Day Magnetic Can Opener ends danger of metal slivers in food.

(e) From the circulation in interstate commerce of pictures describing or purporting to describe the dangers accruing to the public from the consumption of food eaten from cans opened by other can openers than respondent's Nu-Day Magnetic Can Opener, and by using in connection with said pictures any words, figures, or phrases which represent or have a tendency to represent and convey to the reading and buying public the idea and belief that the eating of food contained in cans opened by can openers other than respondent's Nu-Day Magnetic Can Opener is attended by serious, real danger by reason of jagged metal or other slivers or other foreign substances being deposited into the cans containing food when opened as aforesaid.

¹ Paragraph (e) of the order is published as slightly modified by order dated March 26, 1935.

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(f) From advertising in any manner whatsoever in interstate commerce that there is any serious patent and real danger to the consuming public from eating foods out of cans opened by can openers other than respondent's Nu-Day Magnetic Can Opener, and from advertising in any manner in interstate commerce false and exaggerated claims as to the alleged superiority of respondent's Nu-Day Magnetic Can Opener over other can openers being sold and delivered in interstate commerce.

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

Complaint

IN THE MATTER OF
HARRY WEISS TRADING AS WEISS SHIRT COMPANY
 COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
 OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 2195. Complaint, June 11, 1934—Decision, Jan. 16, 1935

Where an individual engaged in the manufacture of shirts and sale thereof to jobbers and retailers—

Sold shirts respectively labeled "144 x 76", and "2 x 1", notwithstanding fact that materials of which said shirts were composed were of a cheaper and inferior grade than thereby understood by a substantial number of the purchasing public, in that the "count" in the former did not contain 147 x 76 threads per square inch, but only 106 x 57 threads, and the "ply" in the latter did not consist of two strands twisted together into a single thread, but was only a "1 x 1";

With capacity and tendency to deceive and mislead jobber and retailer purchasers of said shirts, and with effect of enabling other such jobbers and retailers to mislead and deceive purchasing public into the belief that said shirts contained the "count" and "ply" thus represented, and induce purchase thereof in reliance on such erroneous belief, and unfairly divert trade from competitors, including those who sell shirts properly labeled as to "count" and "ply":

Held, That such practices, under the circumstances set forth, were all to the injury of the public and competitors, and constituted unfair methods of competition.

Mr. Morton Nesmith for the Commission.

Zukernick & Stein, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission having reason to believe that Harry Weiss, doing business as The Weiss Shirt Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Said respondent, Harry Weiss, is an individual doing business under the name and style of Weiss Shirt Company and his principal office and place of business is located in the City of New York in said State. Said respondent has been for more than one year last past, engaged in the manufacture of shirts and the

sale of same between and among the different States of the United States. Said respondent has manufactured and sold, and has caused and still causes, the said articles in which he deals to be transported from his said place of business into and through other States of the United States to various jobbers and retailers located at points in various States of the United States. In the course and conduct of his said business, the respondent is in competition with other individuals, partnerships and corporations, engaged in the manufacture, sale and transportation of shirts in commerce between and among the various States of the United States.

PAR. 2. For many years prior to the date hereof cotton cloth has been and is now graded as containing a certain "count", which indicates the number of threads per square inch, and a certain "ply", which indicates the strands or number thereof twisted together into a single thread, the latter being woven into the cloth or material; the smaller count or number of threads per square inch representing the cheaper grade of cotton cloth, and the greater count or larger number of threads per square inch representing the higher priced cotton goods; also the single "ply", or "1 x 1", being less expensive than the double "ply" or "2 x 2", or the "2 x 1" (meaning 2 strands twisted together into a single thread running the full length and a single strand or thread running the width). The consuming public has, in recent years, become cognizant of these facts, and now considers cotton cloth, and especially broadcloth, with a high "count" and "ply" to be superior to and more desirable than that containing a low "count" and "ply."

PAR. 3. (a) That the respondent, Harry Weiss, doing business as Weiss Shirt Company, in the course and conduct of his business as aforesaid has manufactured and sold to various jobbers and retailers, and still does manufacture and sell to various jobbers and retailers certain shirts which, among other things, respondent plainly labels as follows: "144 x 76."

(b) That said respondent, Harry Weiss, doing business as Weiss Shirt Company, in the course and conduct of his business as aforesaid has caused and still causes certain other of his shirts to be sold to various jobbers and retailers, which said shirts, among other things, respondent plainly labels as follows: "2 x 1."

PAR. 4. (a) In truth and in fact the shirts so manufactured, labeled, and sold as described in paragraph 3 (a) are not made from materials containing a "144 x 76" count, but to the contrary are made from materials containing a far less count, viz, "106 x 57", and the labels so spaced upon said shirts by the respondent have the capacity and tendency to, and do mislead many among the aforesaid trade

and many of the consuming public into the belief that respondent's said shirts are manufactured from material containing a count of "144 x 76" as described in paragraph 2, and causes many of the said trade and many of the consuming public to purchase respondent's products in that belief.

(b) In truth and in fact the shirts so manufactured, labeled, and sold and described in paragraph 3 (b) hereof contain not a "2 x 1" ply, but to the contrary a "1 x 1" and the label so placed upon said shirts by the respondent has the capacity and tendency to, and does mislead many among the aforesaid trade and many of the consuming public into the belief that respondent's said shirts contain a "2 x 1" ply or double strand as referred to in paragraph 2 hereof, and causes many of the said trade and many of the consuming public to purchase respondent's product in that belief.

PAR. 5. The respondent, Harry Weiss, doing business as Weiss Shirt Company, in the manufacture of his shirts as aforesaid, ships and delivers his said products so labeled to his aforesaid jobbers and retailers. Said jobbers and retailers resell said shirts so labeled to the consuming public.

PAR. 6. There are among the competitors of respondent, referred to in paragraph 1 hereof, many persons, firms and corporations who manufacture and sell shirts, and sell their products properly labeled according to the count and ply, and the use by the respondent of said mislabeling or misbranding of his products as described in paragraph 3 hereof, has unfairly diverted trade from, and otherwise injured and prejudiced respondent's competitors in interstate commerce.

PAR. 7. The above alleged acts and things done by respondent are all to the injury and prejudice of the public and of the competitors of respondent, in interstate commerce, and constitute unfair methods of competition in interstate commerce within the intent and the meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent Harry Weiss, an individual, trading under the name and style of Weiss Shirt Company, charging him with the use of unfair methods of competition in commerce in violation of said act.

Respondent, through counsel, filed his answer to said complaint within the prescribed time and thereafter a hearing was had before a trial examiner theretofore duly appointed and testimony was heard and evidence received in support of the charges stated in the complaint, and in opposition thereto.

Thereafter this proceeding came on regularly for final hearing before the Commission on the complaint, answer, testimony and evidence received, and briefs by counsel for the Commission and counsel for respondent, and, the respondent's counsel having waived oral argument, said cause was duly submitted and the Commission having duly considered the record and being duly advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Harry Weiss, an individual, doing business under the name and style of Weiss Shirt Company, is a resident of the City of New York, State of New York, with his principal office and place of business located in the City of New York in said State, and is now and has been for more than one year last past engaged in the manufacture of shirts and the sale of same to various jobbers and retailers located in the State of New York and various jobbers and retailers in States other than the State of New York. He has caused and still causes said shirts when sold to be shipped from his place of business in New York to purchasers thereof located in the State of New Jersey and other States, and in the course and conduct of said business respondent was at all times hereinbefore referred to in competition with other individuals, firms, partnerships, and corporations likewise engaged in the sale and distribution in interstate commerce of shirts.

PAR. 2. For many years prior to the issuance of said complaint cotton cloth has been and is now graded as containing a certain "count", which indicates the number of threads per square inch and a certain "ply" which indicates the strands or number thereof twisted together into a single thread, the latter being woven into the cloth or material; such materials with the smaller "count" and "ply" constitute the inferior or cheaper grades and the materials with the higher "count" and "ply" constitute the better and more expensive grades; that the purchasing public has become cognizant of these facts and prefer the materials of the higher "count" and "ply".

PAR. 3. The respondent in the course and conduct of his said business manufactured and sold to various jobbers and retailers in interstate commerce certain shirts which, among other things, re-

spondent plainly labeled "144 x 76", said figures indicating the "count" of the materials from which his shirts were manufactured and a substantial number of the purchasing public were cognizant of this manner of grading.

PAR. 4. Respondent in the course and conduct of his said business manufactured and sold to various jobbers and retailers in interstate commerce certain shirts which, among other things, respondent plainly labeled "2 x 1", said figures indicating the "ply" of the materials from which respondent's shirts were manufactured and the purchasing public were cognizant of this manner of grading.

PAR. 5. In truth and in fact the shirts said respondent manufactured, labeled and sold as described in paragraph 3, were not made from materials containing a "144 x 76" "count" but to the contrary were made from materials containing a far less "count" viz: "106 x 57".

PAR. 6. In truth and in fact the shirts so manufactured, labeled and sold as described in paragraph 4 hereof were not made from materials containing a "2 x 1" "ply" but to the contrary were made from materials containing a "1 x 1" "ply".

PAR. 7. There are among the competitors of respondent many persons, firms and corporations who manufacture and sell shirts, and sell their products properly labeled according to the "count" and "ply" and the practice by respondent of said mislabeling and misbranding of his products as described in paragraphs 3 and 4 hereof, has unfairly diverted trade from, and otherwise injured and prejudiced respondent's competitors in interstate commerce. That the use of said practices by the respondent has had and has the capacity and tendency to mislead and deceive certain jobbers and retailers to whom said shirts are sold and has furnished to certain other jobbers and retailers means whereby they have been and are enabled to mislead and deceive the purchasing public into the belief that said shirts offered for sale and sold by the respondent contain the "count" and "ply" as represented by said labels and to induce the purchase of said shirts in reliance on such erroneous belief.

CONCLUSION

The practices of respondent under the conditions and circumstances described in the above and foregoing findings as to the facts are all to the injury and prejudice of the public and respondent's competitors, and are unfair methods of competition in commerce, and constitute a violation of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

Order

20 F. T. C.

ORDER TO CEASE AND DESIST

This proceeding having been duly heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony in support of the charges of said complaint and in opposition thereto, and briefs filed by counsel for the Commission and counsel for respondent, and, the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties and for other purposes":

It is now ordered, That respondent Harry Weiss, doing business under the name and style of Weiss Shirt Company, his agents, servants or employees, in connection with the manufacture and sale or offering for sale or distribution in interstate commerce of shirts, cease and desist directly or indirectly from:

First.—Labeling, branding, designating, describing, or representing shirts as contained "144 x 76" count or using the figures "144 x 76" in any way so as to import or imply that the materials from which said shirts are made contain "144 x 76" count when such is not the fact.

Second.—Labeling, branding, designating, describing, or representing shirts as containing "2 x 1" ply or using the figures "2 x 1" in any way so as to import or imply that the materials from which said shirts are made contain "2 x 1" ply when such is not the fact.

Third.—Misrepresenting by labels, brands, or in any other way, the count or ply of the materials from which his shirts are manufactured.

It is further ordered, That respondent shall within 60 days after service of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with and conformed to the order to cease and desist hereinabove set forth.

Complaint

IN THE MATTER OF
 CREOMULSION COMPANY, INC.

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

Docket 2244. Complaint, Oct. 31, 1934—Decision, Jan. 21, 1935

Where a corporation engaged in the sale and distribution of a medicinal preparation; in its advertisements thereof in various publications, and through radio broadcasts, advertising literature, and otherwise—

- (a) Represented that it constituted a cure for colds that hang on and that it would check the growth of germs, and that coughs or colds could be stopped by the use thereof, through such statements as "coughs from colds may lead to serious trouble. You can stop them now with Creomulsion. * * * attacks the seat of the trouble and checks the growth of the germs", "For the cough from colds that hang on", "developed as a maximum help for colds that hang on", "Coughs—Don't let them get a strangle hold. Flight germs quickly"; and
- (b) Represented said preparation as a preventive of pneumonia, and as having a tonic effect through such statements as "Colds may develop into pneumonia", "coughs from colds may lead to serious trouble. You can stop them now with Creomulsion", etc., as above set forth, and "Beware of the cough from colds that hang on", "Colds that develop into pneumonia", "goes farther and reaches the cause of the cough from inside", and "excellent for building up the system after colds or flu";

The facts being that said statements were incorrect, exaggerated, and misleading, and had the capacity and tendency to mislead and deceive purchasers and prospective purchasers of said products into the erroneous belief that it constituted a competent treatment for coughs from colds that hang on and could be relied upon to prevent flu or pneumonia, and constituted a germicide:

Held, That such practices, under the circumstances set forth, were to the prejudice of the public and competitors, and constituted an unfair method of competition.

Mr. John W. Hildrop for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that Creomulsion Company, Inc., a corporation, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said 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:

Complaint

20 F. T. C.

PARAGRAPH 1. Respondent, Creomulsion Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, having and maintaining its principal office and place of business in the city of Atlanta in the State of Georgia. Said respondent has been and is engaged in the business of manufacturing and offering for sale and selling a certain medical preparation by the name and under the designation of "Creomulsion."

Said respondent, Creomulsion Company, Inc., offers for sale and sells said Creomulsion to jobbers to be by them resold to retail merchants, and to retail merchants to be by them resold to the public. Said respondent, Creomulsion Company, Inc., has been and is causing said Creomulsion when sold to be transported into and through the several States of the United States and the District of Columbia to the respective purchasers thereof located in various portions of said several States and the District of Columbia. In the course and conduct of said business said respondent, Creomulsion Company, Inc., is in substantial competition with other persons, firms, associations and corporations engaged in offering for sale and selling like and competitive products to jobbers, retail merchants, and the public in said commerce between and among said several States and the District of Columbia, and of causing the same when sold to be transported into and through said several States and the District of Columbia to the respective purchasers thereof located in various portions of said several States and the District of Columbia. Said competitors of said respondent, Creomulsion Company, Inc., are so engaged in offering for sale and selling in said commerce said like or competitive products for use by the purchasers thereof as remedies for, or to give relief from, the same diseases and ailments for which said Creomulsion is represented by respondent to be useful and for which said like or competitive products are sold and are intended to be used by purchasers thereof.

PAR. 2. In connection with the sale of its said product, and in aid thereof, and for the purpose of creating a public demand therefor, respondent, Creomulsion Company, Inc., has been and is causing exaggerated, inaccurate, false and misleading statements as to the characteristics and therapeutic properties, action and powers of said Creomulsion to be published in various newspapers, magazines, and other publications published and circulated in, between, among and throughout the several States of the United States and the District of Columbia.

Such exaggerated, inaccurate, false and misleading statements and representations have been and are in the words hereinafter set forth

Complaint

or in similar words or in words which have the same or equivalent or like tenor and effect, to wit:

Colds may develop into Pneumonia;

Coughs from colds may lead to serious trouble. You can stop them now with Creomulsion, an emulsified creosote that is pleasant to take;

Creomulsion is a medical discovery with two-fold action; it soothes and heals the inflamed membranes and inhibits germ growth;

Of all known drugs creosote is recognized by high medical authorities as one of the greatest healing agencies for coughs from colds and bronchial irritations;

Creomulsion contains, in addition to creosote, other healing elements which soothe and heal the inflamed membranes and stop the irritation, while the creosote goes on to the stomach, is absorbed into the blood, attacks the seat of the trouble and checks the growth of the germs;

Creomulsion is guaranteed satisfactory in the treatment of coughs from colds, bronchitis and minor forms of bronchial irritations, and is excellent for building up the system after colds or flu;

Money refunded if not relieved after taking according to directions. Ask your druggist;

Creomulsion for the cough from colds that hang on;

Creomulsion is guaranteed satisfactory in the treatment of coughs from colds, bronchitis, and minor forms of bronchial irritations, and is excellent for building up the system after colds or flu;

Money refunded if any cough or cold, no matter of how long standing, is not relieved after taking according to directions. Ask your druggist.

Coughs. Don't let them get a strangle hold. Fight germs quickly. Creomulsion combines the 7 best helps known to modern science. Powerful but harmless. Pleasant to take. No narcotics. Money refunded if any cough no matter of how long standing is not relieved. Ask your druggist for Creomulsion;

Beware of the cough from colds that hang on;

Coughs from colds may lead to serious trouble. You can stop them now with Creomulsion;

An Emulsion with Creosote, Syrup of Pine Tar, Cascara, Ipecac, Wild Cherry and Menthol. It is pleasant to take;

A medical discovery with twofold action. Soothes and heals the inflamed membranes, helps to inhibit germ growth and acts as a mild laxative. Endorsed by highest authorities;

Of all known drugs, creosote is recognized by high medical authorities as one of the greatest healing agencies for coughs from colds and especially soothing to membranes affected by chest colds. Creomulsion contains, in addition to creosote, other healing elements which soothe and heal the inflamed membranes and stop the irritation, while the creosote goes on to the stomach, is absorbed into the blood, attacks the seat of the trouble and helps to check the growth of the germs;

Creomulsion guaranteed satisfactory in the treatment of coughs from colds, bronchitis, and bronchial irritations due to colds and chest colds, and is excellent for building up the system after colds or flu. It combines seven of the best helps in one—it is a super help. It is for those who want to do the utmost for safety's sake. All druggists are authorized to promptly refund the price if not entirely satisfied. Ask your druggist.

In truth and in fact said preparation is merely a treatment for some classes of coughs only, to wit, for coughs due to colds or to minor irritations of the bronchial tubes and throat; and is not a cure for coughs due to incipient tuberculosis or to any cause or causes other than those above enumerated. Said preparation has no other characteristics or therapeutic properties, action or powers.

Each of the following statements and representations so made by said respondent, Creomulsion Company, Inc., either expressly or by implication, in the language above alleged referred to or set forth is exaggerated, inaccurate, false and misleading to the purchasing public, to wit:

1. That said preparation is a competent treatment for coughs from colds that hang on.
2. That all coughs or colds or coughs and colds generally can be stopped by the use of said preparation.
3. That said preparation will attack the "seat of the trouble" or that it will check the growth of germs.
4. That said preparation is a germicide.
5. That said preparation has any tonic property or effect.
6. That said preparation is useful for building up the system after colds or flu.
7. That said preparation will prevent pneumonia, flu or other serious ailment.
8. That said preparation reaches the cause of the cough from the inside.
9. That said preparation affords the user thereof a sure relief.
10. Generally, that said preparation has therapeutic properties, action or powers greater than, or other than, those herein above enumerated.

PAR. 3. Certain of the said competitors of said respondent, Creomulsion Company, Inc., in connection with or in aid of the sale of their said like or competitive products, refrain from making the same or like or equivalent exaggerated, inaccurate, false and misleading statements and representations as to the characteristics or therapeutic properties, action and powers of their said respective like and competitive products. The use by respondent, Creomulsion Company, Inc., of the method of competition above described and set forth, and the making by said respondent of said exaggerated, inaccurate, false and misleading statements and representations, and the publication by respondent, Creomulsion Company, Inc., of the exaggerated, inaccurate, false and misleading statements and misrepresentations in certain newspapers and magazines and by other methods of advertising, and the sending of same through the

United States mail and otherwise to the several States in interstate commerce, have the tendency and capacity to induce the public and prospective purchasers to believe that said statements and representations are true and to purchase Creomulsion in, and because of, such belief and in preference to said like and competitive products so offered for sale and sold by said respondent's said competitors above referred to.

Said exaggerated, inaccurate, false and misleading statements and representations so made by respondent, Creomulsion Company, Inc., and published and advertised as aforesaid, have the tendency and capacity to divert trade and custom to respondent, Creomulsion Company, Inc., from its said competitors, to the substantial injury of such competitors; to lessen competition between and among those who offer for sale and sell said Creomulsion, and said like and competitive products; all to the substantial injury of said competitors and of the public.

PAR. 4. The above acts and practices of respondent, and of each of them, are all to the prejudice of the public and of the competitors of respondent, Creomulsion Company, Inc., and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission on the 31st day of October 1934 issued and thereafter served its complaint against the respondent named in the caption hereof, charging it with the use of unfair methods of competition in commerce in violation of the said act. Respondent, after entering its appearance and filing its answer and demurrer to said complaint, thereafter, to wit, on the 10th day of January 1935 entered into a stipulation as to the facts with W. T. Kelley, chief counsel for the Federal Trade Commission, in which it was stipulated and agreed that the statement of facts in said agreement between respondent and chief counsel may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto; and that the Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclu-

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sion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs.

The Commission, being fully advised in the premises, now approves, ratifies, and confirms the said stipulation and agreement entered into as aforesaid by and between respondent and W. T. Kelley, chief counsel of the Federal Trade Commission, and, having duly considered the same, makes this its report in writing and states its findings as to the facts and conclusion drawn therefrom, as follows, to wit:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized and existing under and by virtue of the laws of the State of Georgia, with its principal office and place of business located in the city of Atlanta, State of Georgia. Respondent is now and for more than three years last past has been engaged in the business of selling and distributing a medicinal preparation designated as "Creomulsion". Respondent causes said medicinal preparation, when so sold, to be transported from its place of business in the city of Atlanta, State of Georgia, into other States of the United States to purchasers thereof at their respective locations. In the course and conduct of said business respondent is in competition with other corporations, partnerships, and individuals likewise engaged in the sale and transportation in commerce between and among the various States of the United States of similar articles of commerce.

In the aid of the sale of such commodities, respondent has made the following statements and representations, by advertisements inserted in various publications, including the Newark Ledger, issue of January 29, 1931, by radio broadcasts, advertising literature, and otherwise:

COLDS MAY DEVELOP INTO PNEUMONIA

Coughs from colds may lead to serious trouble. You can stop them now with Creomulsion. * * * attacks the seat of the trouble and checks the growth of the germs. * * * is excellent for building up the system after colds or flu * * *.

CREOMULSION

For the Cough from Colds that Hang On

BEWARE THE COUGH FROM COLDS THAT HANG ON

A THREE DAYS' COUGH IS YOUR DANGER SIGNAL

COLDS THAT DEVELOP INTO PNEUMONIA

Creomulsion was developed as a maximum help for coughs from colds that hang on. * * *

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* * * So experts combine in Creomulsion all the best helps known to give quick and sure relief.

* * * Creomulsion not only acts just as quickly in soothing the membranes by direct contact, but goes farther and reaches the cause of the cough from inside.

COUGHS

Don't let them get a strangle hold. Fight germs quickly. * * *

PAR. 2. The foregoing statements and representations made by the respondent in aid of the sale of its product, "Creomulsion", are incorrect, exaggerated, and misleading, and have the capacity and tendency to mislead and deceive purchasers and prospective purchasers of respondent's said product into the erroneous belief that said product is a competent treatment "for coughs from colds that hang on", and that it can be relied upon to prevent flu or pneumonia, and that it is a germicide.

CONCLUSION

The practices of the said respondent under the conditions and circumstances described in the foregoing findings of fact are to the prejudice of the public and to the competitors of respondent, and are unfair methods of competition in commerce in violation of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued its complaint against the respondent, Creomulsion Company, Inc., charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act. Thereafter the respondent filed its answer to the charges set forth in the complaint and on, to wit, the tenth day of January 1935, a stipulation as to the facts was entered into by and between the chief counsel for the Federal Trade Commission and the respondent, wherein it was stipulated and agreed that the statement of facts thus agreed to might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and the Commission having accepted and approved the said stipulation as to the facts and having made its findings as to the facts and conclusion that the respondent has violated the

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provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes"—

It is now ordered, That the respondent, Creomulsion Company, Inc., a corporation, its agents, representatives, and employees, in connection with the sale and the advertising and offering for sale in interstate commerce of its medicinal preparation designated as "Creomulsion" do cease and desist from representing:

(1) That said preparation is a competent treatment for coughs from colds that hang on, unless the word "colds" as thus used be prefaced by the word "common" or the word "ordinary";

(2) That coughs or colds can be stopped by the use of said preparation;

(3) That said preparation will check the growth of germs;

(4) That said preparation has any tonic effects;

(5) That said preparation is useful for building up the system after colds or flu;

(6) Directly or by inference that the use of said preparation will prevent pneumonia or flu; and

(7) From making any other claims or assertions of like effect or import.

It is further ordered, That the respondent, Creomulsion Company, Inc., shall, within 60 days after the date of service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with and is complying with the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF

PABST PHARMACEUTICAL COMPANY, INC., DOING BUSINESS UNDER THE NAME AND STYLE OF PABST CHEMICAL COMPANY

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

Docket 2210. Complaint, July 19, 1934—Decision, Jan. 22, 1935

Where a corporation engaged in carrying on under the same trade name long theretofore employed (with the management of which corporation there was actively associated the owner of the former business, who became its president and treasurer), the sale to wholesale and retail druggists, of its "Pabst's Okay Special", a preparation theretofore long and extensively advertised on tin signs, in the papers, periodicals, circulars, directions and otherwise, and widely sold through hundreds of jobbers and thousands of druggists, as "Pabst's Okay Specific", as a definite and positive cure for various venereal diseases and ailments, and thereby associated by the trade and public, through said long used trade names, with such claims, notwithstanding fact it was not a specific, and had no direct curative effect on the diseases for which principally offered, and was not efficacious or beneficial in the treatment of a certain woman's ailment, for which recommended—

Advertised said preparation over the old business trade name, continued by it, as aforesaid, as "Pabst's Okay Specific", and, as later changed as "Pabst's Okay Special", by means of said signs, framed placards, and gummed stickers displayed in public places, and on pocket match packets distributed to the public, as a cure, remedy or competent and adequate treatment for the aforesaid diseases and ailments, through such statements as "Has the reputation of giving satisfactory results, no matter whether used in new cases or those of long standing * * * take it strictly according to directions and you *will not be disappointed*", etc., "When in trouble use the Okay Specific", "It does the work", "Chronic cases * * * is especially beneficial in * * *", "These cases * * * which frequently refuse to yield to other kinds of treatments, generally disappear after using the Okay Specific", and thus designated and referred to its said product in letterheads used in correspondence, and in said letterheads and in folders of directions sent to those making inquiry, or enclosed with the product, set forth and displayed the old well known trade name of the former business, thus continued by it.

Facts being said change in name was of such character as still to suggest to the trade and purchasing public the old name of the product, especially as used by it in connection with the previously established trade name of the business, and said product did not constitute a specific, cure, remedy, or competent and adequate treatment for the diseases and ailments for which recommended, as aforesaid, and to represent it as such was inaccurate, exaggerated and untrue;

With tendency and capacity to mislead and deceive members of the public as to the qualities or properties of said medicine and induce purchase and use

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thereof by them, because of such erroneous belief, and divert trade to it from competitors engaged in the sale in interstate commerce of preparations intended and used for the treatment of the same diseases and ailments, including among such competitors those who in nowise misrepresent the therapeutic effects of their products, and with effect of so diverting, to said competitors, substantial injury and prejudice:

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

Mr. Harry D. Michael for the Commission.

Langworthy, Stevens & McKeag, of Chicago, Ill. and *Mr. Daniel R. Forbes*, of Washington, D. C., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Illinois corporation engaged in the business of compounding a medical preparation, known and described as "Pabst's Okay Special", and in the sale thereof to wholesale and retail druggists for ultimate resale to the purchasing public, and with principal office and place of business in Chicago, with advertising falsely or misleadingly as to qualities or properties of product, in violation of the provisions of Section 5 of such Act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged in carrying on the sale of said product under the same trade name theretofore used for many years by its president and principal owner in selling said product as "Pabst's Okay Specific" through hundreds of jobbers and thousands of retail druggists, associated by the aforesaid names through long and extensive advertising on public signs and in papers, periodicals, and circulars, with the claims made therefor as a definite cure and remedy for certain venereal diseases and ailments, advertised said preparation as "Pabst's Okay Specific" and as a positive, definite and unfailing cure for the aforesaid remedies and ailments, on said tin signs, and on letterheads, and in circulars of directions, sent to those making inquiry or enclosed with the package, displayed the trade name of the old business, thus continued by it.¹

Said preparation, as alleged, is not such a cure, remedy or competent and adequate treatment, and its representation as such is grossly inaccurate, greatly exaggerated, and not a true statement of the therapeutic uses and effects of said preparation, and aforesaid change in name of product to "Pabst's Okay Special", in view of prior sale

¹ Respondent's advertisements, as alleged and quoted in the complaint, are set forth in the findings, *infra*.

and advertising under the old name, and association of trade and public therewith, and the claims long made therefor, as such, is of such a character as still to suggest the former name, especially when taken in connection with corporation's continued use of the previously established trade name used by the old business.

Respondent's representations, as alleged, have "the tendency and capacity to confuse, mislead, and deceive members of the public into the belief that respondent's said medicine is a cure, remedy, or competent and adequate treatment for the diseases and ailments of the human body for which said preparation is recommended by respondent, as aforesaid, and to induce them to buy and use the same because of such erroneous belief so engendered, and to divert trade to respondent from competitors engaged in the sale in interstate commerce of medicinal preparations intended for and used for the treatment of the diseases and ailments for which respondent represents its said preparation to be a cure, remedy, or competent and adequate treatment as aforesaid"; all to the injury and prejudice of the public and competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served its complaint upon the respondent, Pabst Pharmaceutical Company, Inc., a corporation, doing business under the name and style of Pabst Chemical Company, charging said respondent with the use of unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

Respondent having entered its appearance and filed its answer to said complaint, hearings were had and evidence was introduced in support of the allegations of said complaint. At the conclusion of said hearings on behalf of the Commission, respondent elected in writing not to introduce any evidence in its behalf and asked that the case be submitted to the Commission on the record without further proceedings.

Thereupon, this proceeding came on for final hearing, briefs and oral argument having been waived by counsel for respondent and counsel for the Commission, and the Commission, having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Pabst Pharmaceutical Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, and has its office and principal place of business in the city of Chicago in said State.

PAR. 2. Respondent is now and has been engaged for more than two years last past in the business of compounding a certain medical preparation known and described as "Pabst's Okay Special" and of selling the same to wholesale and retail druggists located in various States of the United States for ultimate resale to members of the purchasing public. Said respondent, in the course and conduct of its said business, causes its said preparation to be transported in interstate commerce from its said place of business in Illinois to, into and through States of the United States other than Illinois, to the buyers thereof to whom or to which it is, or has been sold.

PAR. 3. During the time above mentioned, other individuals, firms, and corporations in various States of the United States are and have been engaged in the compounding, sale and distribution in interstate commerce of medicinal preparations intended and used for the same general purposes and for the treatment and alleviation of the diseased conditions of the human body for which respondent represents its said medicine to be a treatment as hereinafter set out, and such other individuals, firms, and corporations have caused and do now cause their said preparations, when sold by them, to be transported from various States of the United States to, into and through States other than the State of origin of the shipment thereof. Said respondent has been, during the aforesaid time, in direct and substantial competition in interstate commerce in the sale of its said preparation with such other individuals, firms, and corporations.

PAR. 4. Said preparation, compounded and sold by respondent as aforesaid, was formerly known as "Pabst's Okay Specific" and was compounded and sold for many years under said name by one Edmund Friedolin Pabst doing business under the name and style of Pabst Chemical Company until the name of said preparation was changed to "Pabst's Okay Special". The sale of said preparation under said new name began on January 1, 1931, and was continued by said Pabst under said trade name until December 1931, when the respondent corporation was formed and took over the ownership, compounding and sale of said preparation and continued said business under the same trade name, Pabst Chemical Company, formerly used by said Pabst. Said Pabst is now the president and treasurer of respondent corporation, and is actively identified with

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the management of said business. Respondent herein represents as hereinafter set out that said preparation is a cure, remedy, or a competent and adequate treatment for gonorrhoea and gleet, for chronic seminal and mucous discharges of the sexual organs, and also for leucorrhoea. Since the organization of respondent company the public advertising of said preparation has been done by means of tin signs and gummed stickers displayed in public places, usually in public or semi-public water closets, in various States of the United States. These signs and stickers are seen and read by the purchasing public. Pocket match packets with advertising matter thereon have also been distributed to the purchasing public and are yet used by respondent as an advertising medium.

Said tin signs are the same as used by said Pabst before the name of the preparation was changed and before said corporation was formed. The wording on said sign is as follows:

YOU KNOW
PABST'S OKAY (O. K.) SPECIFIC
HAS THE REPUTATION OF GIVING
SATISFACTORY RESULTS
NO MATTER WHETHER USED IN
NEW CASES OR THOSE OF LONG STANDING

It is an internal remedy and will not cause complications. No other treatment required with this remedy. Contains nothing injurious to the constitution and can be taken without inconvenience or detention from business.

TAKE IT STRICTLY ACCORDING TO DIRECTIONS AND YOU

WILL NOT BE DISAPPOINTED

PRICE \$3.00

FOR SALE AT

ALL FIRST-CLASS DRUG STORES

EVERYWHERE

MANUFACTURERS AND PROPRIETORS

PABST CHEMICAL Co.,

CHICAGO, ILL.

Recently, the word "Specific" on said tin signs has been changed to "Special."

The wording on said gummed stickers until recently was as follows:

YOU KNOW PABST'S OKAY (O. K.) SPECIFIC
TAKE IT STRICTLY ACCORDING TO DIRECTIONS AND

YOU WILL NOT BE DISAPPOINTED

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It is an Internal Remedy and can be taken without inconvenience or detention from Business.

PRICE \$3.00. FOR SALE AT
ALL FIRST-CLASS DRUG STORES
MANUFACTURERS AND PROPRIETORS
PABST CHEMICAL Co.
CHICAGO, ILL.

Recently, respondent has had new gummed stickers printed for general use as aforesaid on which the word "special" is used instead of "specific" and at the bottom a space is provided for the name and address of the druggist who has the product for sale under the heading, "for sale by." Otherwise the wording is the same as quoted above.

The wording on the match packets referred to above was formerly as follows:

WHEN IN TROUBLE
USE PABST'S OKAY SPECIFIC
PABST CHEMICAL COMPANY, CHICAGO, ILL.

which was printed on the front while on the back the wording was as follows:

WHEN IN TROUBLE
USE THE OKAY SPECIFIC

On the top fold of the match packet the following statement appeared:

IT DOES THE WORK

Recently the word "Specific" has been changed to the word "Special" on said match packets but otherwise the wording remains the same.

In addition to the above, respondent makes use of a printed framed cardboard sign under glass with the same wording as the tin signs above referred to but with a space for the name and address of the local drug store where the product is sold.

In addition, respondent uses letterheads having at the top thereof said trade name "Pabst Chemical Company" underneath which is the following statement: "Owned and operated by Pabst Pharmaceutical Co., Inc." In addition to other printed matter, said letterhead also has thereon the following statement: "Proprietors of the Celebrated Pabst's Okay Specific." Said letterheads are used by respondent in its correspondence with its customers.

Respondent sends out to members of the public, who inquire about its preparation, copies of its folder containing directions. This

folder is also enclosed in the package containing the medicine. Said directions are given over the trade name "Pabst Chemical Co."

Said preparation has been manufactured, advertised and sold for more than forty years. During such time the trade name "Pabst Chemical Co." has been used to designate the manufacturer of said medicine and the proprietor of said business and such trade name became associated in the minds of the trade and the consuming public with "Pabst's Okay Specific" as well as with its purported uses and effects. There was formerly distributed to the general public and also included in the package a folder of directions headed "Pabst's Okay Specific" and containing among other statements the following:

CHRONIC CASES

Pabst's Okay Specific is especially beneficial in chronic cases. These cases, which are usually of long standing, and which frequently refuse to yield to other kinds of treatments, generally disappear after using the Okay Specific.

During the period of time said preparation has been on sale as aforesaid, it has been handled by at least 300 jobbers and at least 12,000 druggists located in the various States of the United States. Said product has had a wide and extensive sale. It was formerly advertised in the newspapers and magazines. At one time a circular was used to advertise said product to the public which, in addition to using the trade name "Pabst Chemical Co." and the name of the product "Pabst's Okay Specific" in various places therein, also contained, among other statements, the following:

PABST'S OKAY SPECIFIC
THE ONLY RELIABLE AND SAFE REMEDY FOR
GONORRHOEA AND GLEET
CHRONIC, SEMINAL AND MUCCOUS DISCHARGES, ALSO
LEUCORRHOEA IN WOMEN

Pabst's Okay Specific has an unparalleled record as a medicine of the highest curative merits. It stands absolutely unequalled among all known medicines for Gonorrhoea and Gleet. While others pretend to cure, Pabst's Okay Specific never fails to cure completely and permanently. It has never failed to cure the most stubborn cases . . .

You are not trying an experiment by taking this remedy for you are taking an absolute cure . . .

By such prior sales and advertising the trade and members of the public became familiar with the name of said company under which respondent has conducted its said business as well as with the name of the said product and its represented purposes and effects. The change in name of the preparation, as referred to above, was of such

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a character as to still suggest the former name to the trade and purchasing public, especially when taken in connection with the previously established trade name used by respondent.

The word "specific" imports a cure and the use of said term by respondent as aforesaid implies to the purchasing public that respondent's preparation is a cure. The prior advertising of the product above referred to together with the wording on the tin signs quoted above and the usual place of their display indicate to the public that the so-called "specific" is intended for the treatment and cure of venereal disease.

PAR. 5. In truth and in fact, said preparation is not a cure, remedy or competent and adequate treatment for gonorrhoea, gleet, chronic seminal and mucous discharges of the sexual organs, leucorrhoea or of any venereal disease. To represent it as such is inaccurate, exaggerated and not a true statement of the therapeutic effects of said preparation.

An internal medication containing oleoresins and oils such as respondent's may be and is often used in the treatment of gonorrhoea as an adjunct to other measures or treatment such as local treatment. Such a medication taken internally will not kill the gonococcus, the germ present in gonorrhoea. Such a medication would tend to relieve pain and burning in some cases and to act as a diuretic but would have no direct curative effect on the disease of gonorrhoea. It would not be efficacious or beneficial in the treatment of leucorrhoea.

PAR. 6. The representations of respondent, as aforesaid, have the tendency and capacity to confuse, mislead and deceive members of the public into the belief that respondent's said medicine is a cure, remedy, or competent and adequate treatment for the diseases and ailments of the human body for which said preparation is recommended by respondent, as aforesaid, when in truth and in fact such is not the case, and to induce them to buy and use the same because of such erroneous belief so engendered, and to divert trade to respondent from competitors engaged in the sale in interstate commerce of medicinal preparations intended for and used for the treatment of the diseases and ailments for which respondent represents its said preparation to be a cure, remedy, or competent and adequate treatment, as aforesaid.

PAR. 7. There are among the competitors of respondent in the sale of its said medicine those who in nowise misrepresent the therapeutic effects of their medicines, and respondent's acts and practices as hereinbefore set forth tend to and do divert business to respondent from its competitors, to the substantial injury and prejudice of such competitors.

CONCLUSION

The practices of said respondent, under the conditions and circumstances described in the foregoing findings are all to the injury and prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and are in violation of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been duly heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent and testimony in support of the charges of said complaint, respondent having elected not to introduce any evidence in its behalf, and the filing of briefs and the presentation of oral argument having been waived by the attorney for the Commission and the attorneys for respondent, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes"—

It is ordered, That respondent, Pabst Pharmaceutical Company, Inc., a corporation, doing business under the name and style of Pabst Chemical Company, or doing business under any other trade name or under its own name, its officers, directors, agents, representatives, servants, and employees, in connection with the sale, offering for sale or distribution in interstate commerce and the District of Columbia, of its preparation known and described as "Pabst's Okay Special" or of the same or substantially the same preparation under any other name or names, cease and desist from representing directly or indirectly, in advertisements or by radio, or in any manner or mode, that said preparation is a specific, cure, remedy or competent and adequate treatment for gonorrhoea, gleet, chronic seminal or mucous discharges of the sexual organs, leucorrhoea, or of any venereal disease.

It is further ordered, That respondent, within 60 days from and after the date of the service upon it of this order, shall file with the Commission a report in writing, setting forth in detail the manner and form in which it is complying with the order to cease and desist hereinabove set forth.

Complaint

20 F. T. C.

IN THE MATTER OF
**WASHINGTON SEA FOOD DEALERS' ASSOCIATION, ITS
 OFFICERS AND MEMBERS**

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

Docket 2189. Complaint, May 29, 1934—Decision, Jan. 23, 1935

Where an association of brokers, commission merchants, and wholesale and retail dealers engaged in the sale of sea foods in the District of Columbia, together constituting a large and influential factor therein in the sale, and purchase for resale, of said products; and aforesaid brokers, etc., in competition between and among themselves and with other brokers, commission merchants, and wholesale or retail dealers similarly engaged; with intent of eliminating price competition among themselves, and between themselves and other persons and concerns so engaged, entered into and carried out an agreement, combination and conspiracy to fix and maintain prices of said products; and, in pursuance of aforesaid agreement, etc.—

- (a) Fixed and established from time to time, and for designated periods of time, minimum prices to be charged by all association members for various articles of sea food, to designated purchasers or groups or classes of purchasers; and
- (b) Agreed, on the part of the association officers or certain members, to furnish, and furnished, statements or schedules of minimum prices to each association member, and not to sell said articles to any such purchasers or group or class at a price below the aforesaid minimums;

With intent and effect of lessening and restraining competition in said business between and among themselves, and denying to purchasers the benefit thereof, and of lessening, hindering, restraining, and preventing price competition in said business between themselves and all other persons and concerns similarly engaged:

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

Mr. John W. Hilldrop for the Commission.

Brandenburg & Brandenburg, of Washington, D. C., for R. W. Claxton, Inc., Harry L. Claxton, S. W. Russell, John Neitzey, Mrs. George W. Carroll, Robert M. Meehan, and J. H. Neitzey.

Peysner, Strasburger & Jacobson, of Washington, D. C., for W. H. Carter, Daisy Carter Lanhardt, Potomac Fish Market, Inc., R. L. Faunce, Inc., and Mrs. Emma Thomford.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged

respondent association, an unincorporated association of brokers, commission merchants, and wholesale and retail dealers engaged in the District of Columbia in the sale of sea foods, together constituting a large and influential factor in the purchase and sale of sea foods therein; and respondent members, engaged as aforesaid in the sale of said products to hotels, restaurants, other users thereof, and the consuming public¹; with combining and conspiring to stifle, hinder, and restrain competition in the sale of said products among themselves and between themselves and others, through fixing and establishing from time to time and for designated periods, minimum prices to be charged by all members to designated purchasers or groups or classes thereof, agreeing to furnish and furnishing on the part of the officers or certain members, schedules of such minimum prices, to be thus observed, and not to sell said products to any such purchasers, etc., at lower prices, and agreeing that all members will refuse business dealings with any broker, etc., selling below said minimum prices or with any broker, etc., selling to such price cutting broker, etc.,² with intent and effect of lessening and restraining competition among themselves, and depriving purchasers of the benefit thereof, and of lessening, hindering, restraining, and preventing price competition between themselves, and all other persons, concerns, and associations similarly engaged; all to the injury and prejudice of the public and competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission on the 29th day of May 1934 issued and thereafter served its complaint against 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 act.

¹ Respondents joined in the complaint are set forth in the findings, *infra*, at pages 108, 109.

² Section 3 of paragraph 3 of the complaint relating to boycotting, as to which complaint was dismissed, reads as follows:

3. Have agreed that if any broker, commission merchant, wholesale dealer or retail dealers in sea foods at and within the District of Columbia shall sell any article of sea foods to any such purchasers, or group or class of purchasers, at a price below the minimum price thereof indicated by said statement or schedule of prices, all members of said association will refuse to have business dealings with such broker, commission merchant, wholesale dealer or retail dealer; and will refuse to have business dealings with any broker, commission merchant, wholesale or retail dealer in sea foods, doing business within or without the District of Columbia, who thereafter sells sea foods to the person, firm, association or corporation so selling articles of sea food below said minimum prices, or who continues to have business dealings with such person, firm, association or corporation, and respondents and each of them, acting pursuant to said agreement, have so refused.

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Respondents having entered their appearance and filed their answers to said complaint a hearing was had before a trial examiner theretofore duly appointed and testimony and evidence received in support of the charges stated in the complaint as well as evidence and testimony received for the respondents. Thereafter this proceeding came on for final hearing before the Commission on the complaint, answers, testimony, and evidence and briefs in support of the complaint and on behalf of respondent and oral arguments, and the Commission having duly considered the same makes this its report in writing and states its findings as to the facts and conclusion drawn therefrom as follows, to wit:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Washington Sea Food Dealers' Association is an unincorporated association of brokers, commission merchants, wholesale dealers and retail dealers in the business of offering for sale and selling at and within the District of Columbia fish, oysters, clams, shrimp, and other food products that are usually kept and offered for sale and sold along with them under the name and designation of "sea foods", all of which food products are herein and hereinafter designated and referred to by and under the general designation of "sea foods".

Certain of respondents are from time to time, or from time to time act as or perform the duties and exercise the powers usually incident to, officers of such association.

All other respondents hereto are members of said association and all are at and within said District of Columbia, engaged respectively and severally as brokers, commission merchants, wholesale dealers or retail dealers in the business of offering for sale and selling sea foods. They are more particularly designated as follows:

Respondent R. W. Claxton, Inc., is a corporation organized under the laws of the State of Delaware.

Respondent Harry L. Claxton is president of said corporation and is also acting president of respondent Washington Sea Food Dealers' Association.

Respondent S. W. Russell is a wholesale dealer in sea foods.

Respondent John Neitzey is secretary of respondent Washington Sea Food Dealers' Association, and is a broker in the sale of sea foods.

Respondents John F. Javins and Francis H. Javins are partners trading under the firm name and style of Charles H. Javins & Sons, and are retail dealers in sea foods and poultry.

Respondent William B. Spinks is a broker in the sale of sea foods.

Respondents W. H. Carter and Daisy Carter Lanhardt are partners trading under the firm name and style of Lanhardt Sea Food Company and are wholesalers and retailers of sea foods.

Respondent L. C. Atkins is a broker and wholesaler of sea foods trading under the name and style of Buckroe Fish Company.

Respondent Potomac Fish Market, Inc., is a corporation organized under the laws of the District of Columbia, and is a wholesaler and retailer of sea foods.

Respondent Mrs. George W. Carroll is a wholesaler and retailer of sea foods, trading under the name and style of George W. Carroll Company.

Respondent R. L. Faunce, Inc., is a corporation organized under the laws of the District of Columbia.

Respondent Mrs. Sarah E. Faunce is a wholesaler and retailer of sea foods, trading under the name and style of D. M. Faunce Company.

Respondent Mrs. Emma Thomford is a wholesaler and retailer of sea foods, trading under the name and style of E. Thomford & Company.

Respondents Al Lipshultz and Harry Mensh are partners trading under the firm name and style of National Fish Market, and retailers of sea foods.

Respondent Emory Ellis is a wholesaler and retailer of sea foods, trading under the name and style of A. J. Ellis & Son.

Respondent Mrs. Anna Lansburgh is a wholesaler and retailer of sea foods.

Respondent Eacho & Company, Incorporated, is a corporation organized under the laws of the State of Virginia.

Respondents Reilly H. White and Frank Adams are partners trading under the firm name and style of Evans & White, and are wholesalers and retailers of sea foods.

Respondent Albert W. Woodfield is a wholesaler of sea foods trading under the name and style of Albert W. Woodfield & Company.

Respondent J. H. Neitzey is a wholesaler and retailer of sea foods.

Respondent Ludwig Driefer is a retailer of sea foods.

Respondent F. A. Biddle is a broker and wholesaler of sea foods.

PAR. 2. The respondents hereto, other than Washington Sea Food Dealers' Association, organized and created said Washington Sea Food Dealers' Association, for use in the accomplishment of certain purposes of mutual interest to the members thereof, among which purposes is the making and entering into, and the accomplishment

of the purposes of, the certain conspiracy, agreement and understandings hereinafter alleged.

Respondents hereto, other than said association, have been and are engaged as brokers, commission merchants, wholesale or retail dealers, in offering for sale and selling sea foods at and within the District of Columbia to dealers in sea foods, to hotels and restaurants and other users of sea foods, and to the consuming public. In said business said respondents, except as herein otherwise alleged, have been and are in competition between and among themselves and with other brokers, commission merchants, wholesale or retail dealers, in sea foods who at and within the District of Columbia have been and are likewise engaged in the sale of sea foods to dealers in sea foods, to hotels and restaurants and other users of sea foods, and to the consuming public.

PAR. 3. Said respondents, for the purpose of eliminating price competition among themselves, and between themselves and other persons, firms, associations, and corporations likewise engaged in said business at and within the District of Columbia, entered into, have since carried out, and are still carrying out an agreement, combination, and conspiracy among themselves to fix and maintain and by which they have fixed and maintained prices in sea foods. Pursuant to and for the purpose of carrying out said agreement, combination, understanding, and conspiracy, the said respondents and each of them, have acted and done, among other acts and things, the following, to wit:

(a) Fixed and established from time to time, and for designated periods of time, minimum prices to be charged by all members of said association for said several articles of sea food to designated purchasers or groups or classes of purchasers thereof.

(b) The officers of said association or certain members thereof designated for that purpose have agreed to furnish and have furnished statements or schedules of said minimum prices to each member of said association, and have agreed not to sell any of said articles of sea food to any such purchasers, or group or class of purchasers, at a price below the minimum price thereof indicated by said statement or schedule of prices.

PAR. 4. Respondents combined constitute a large and influential factor in the business of selling sea foods at and within the District of Columbia. The effect of said conspiracy, agreement and understanding between and among respondents is by them and each of them intended to be, and is, to lessen and restrain competition in said business between and among respondents, and to deny to purchasers the benefit thereof.

Respondents combined constitute a large and influential factor in the purchase of sea foods for resale at and within the District of Columbia. The effect of said conspiracy, agreement and understanding between and among respondents is by them and each of them intended to be, and is, to lessen, hinder, restrain and prevent price competition in said business between respondents and all other persons, firms, associations and corporations engaged in the same, like or similar business in the District of Columbia.

PAR. 5. The Commission finds that the charge of boycotting as contained in section 3 of paragraph 3 of the complaint is not sustained by the testimony.

CONCLUSION

The above acts and practices of respondents are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the pleadings, testimony, and evidence introduced, and the brief of counsel for the Commission and of the respondent, and the Commission having made its findings as to the facts and its conclusion drawn therefrom:

It is now ordered, That the respondents in the caption set out, their agents, representatives, servants, employees, and officers in connection with the buying, offering to buy, selling, offering for sale and distributing in the District of Columbia, or in interstate commerce between and among the several States of the United States, of fish, oysters, clams, shrimp, and other food products that are usually kept and offered for sale and sold along with them under the name and designation of "sea foods", cease and desist from entering into and carrying out any agreement, combination, and conspiracy among themselves and each other to fix and maintain prices in sea foods and from establishing and fixing from time to time or for designated periods of time minimum prices to be charged by all of the respondents herein for any article of sea food to designated purchasers or groups or classes of purchasers thereof and from printing, writing, mimeographing, circulating, distributing, or furnishing statements or schedules of set minimum prices to and among the respondents mentioned in the caption hereof and from

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agreeing among themselves or one with the other not to sell any of said articles of sea food to any purchaser or group or class of purchasers at a price below the minimum price thereof, indicated by said statement or schedule of prices and also from conspiring and agreeing among themselves or with each other to, by any means or methods, lessen and restrain competition in said business between and among respondents and to deny to purchasers the benefit thereof or to restrain and prevent price competition in said business between respondents and all persons, firms, associations and corporations engaged in the same, like or similar businesses in the District of Columbia.

The Commission being of the opinion that the charge of boycotting as contained in section 3 of paragraph 3 of the complaint is not sustained by the testimony, it doth so decide and doth order that said charge as contained in said section 3 of paragraph 3 of the complaint be and the same is hereby dismissed as to all of the respondents mentioned in the caption hereof.

It is further ordered, That the respondents shall within 60 days after service upon them of a copy 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 hereinabove set forth.

Complaint

IN THE MATTER OF
UNITED REMEDIES, INC.COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2245. Complaint, Nov. 8, 1934—Order, Jan. 25, 1935*

Consent order requiring respondent, its officers, etc., in connection with the sale or offering in interstate commerce of a hair dye, to cease and desist forthwith from representing through radio broadcasts, labels, printed advertisements, or otherwise, that said preparation or any other preparation for coloring the hair can cause gray hair to disappear like magic and end gray hair handicaps, and from using words of similar tenor, unless in conjunction therewith and in equally conspicuous fashion, it is explained that the preparation is a hair dye and that the effect of its use can be maintained only by repeated and regular applications, in accordance with the natural growth of the hair.

Mr. James M. Brinson for the Commission.

Soelke, Koehn & Loewy, of Chicago, Ill., for respondent.

COMPLAINT

Acting in the public interest, pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that United Remedies, Inc., a corporation, hereinafter referred to as respondent, has been and is now using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, states its charges as follows:

PARAGRAPH 1. Respondent is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its place of business in the city of Chicago, in said State.

PAR. 2. Respondent is and for some time past has been engaged in the business of selling a preparation for coloring the human hair, to which it has given the trade name of "Kolor-Bak", and which is a part of a trade mark registered in the Patent Office. Respondent sells its preparation to and through retail drug stores, department stores, and other retail outlets located throughout the United States in States and Territories other than the State of Illinois. When such sales are made, it is contemplated that shipment shall be made,

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and shipment is regularly made, to said purchasers from respondent's place of business in the State of Illinois.

PAR. 3. There are in the United States various other persons, firms, and corporations engaged in selling preparations for dyeing and otherwise artificially coloring the hair, particularly gray hair, and such other persons, firms and corporations sell and ship their respective products in interstate commerce, as hereinbefore defined. Respondent, in the sale of its said product, is in substantial competition with such other persons, firms, and corporations.

PAR. 4. To advertise and create a consumer demand for its preparation, respondent employs, in addition to other methods, radio programs, consisting of representations and claims concerning its said product, interspersed with music and other entertainment. Said programs are broadcast from and by radio stations located in Chicago, in Los Angeles, in Dallas, and in other parts of the United States, and may be and are heard by persons within the States surrounding such broadcasting stations.

PAR. 5. In its advertising, and particularly in the course of such radio broadcasts, respondent refers to and designates its said preparation by the trade name "Kolor-Bak" and makes the following representations and assertions concerning it:

To end gray hair handicaps, all you now have to do is comb it once a day for several days with a few drops of Kolor-Bak sprinkled on your comb.

Kolor-Bak imparts color and charm and abolishes gray hair worries.

Grayness disappears like magic and users report the change is so gradual and so perfect that their friends forget they ever did a thing to it.

Here is Kolor-Bak's special offer to everyone who wants to get rid of gray hair handicaps forever.

and other and similar claims and representations of the same tenor and to the same effect.

PAR. 6. Respondent's trade name for its said product, "Kolor-Bak" is phonetically the same as the words "color back" and is intended as the phonetic spelling of said words to permit their registration as a trade mark. Such name has the capacity and tendency to deceive and mislead prospective customers into the belief that the effect of respondent's preparation is to restore the original color of the hair. In truth and in fact the action of said preparation is to artificially color the hair and it must be periodically used, as the hair grows, to continue its effect as a coloring agent.

PAR. 7. The use of the representations and statements hereinabove quoted in connection with the trade name Kolor-Bak, has the capacity and tendency to deceive and mislead prospective pur-

chasers into the belief that not only does the preparation restore the original color to the hair, but that the effect of its use is permanent.

PAR. 8. The said false and misleading trade name and the false and misleading claims, representations, and statements by respondent of and concerning its said preparation, as hereinbefore alleged, and the resulting deception of prospective purchasers, have the capacity and tendency of diverting business from respondent's competitors and constrain the public to purchase respondent's preparation in preference to that of its competitors who correctly advertise their preparations as hair dyes or coloring agents, to the prejudice and injury of such competitors, and are to the injury and prejudice of the public in that purchasers and prospective purchasers of respondent's preparation are misled into the belief that it is not a hair dye or a hair coloring agent but is a preparation for restoring gray hair to its original color.

PAR. 9. The false and misleading trade name and false and misleading representations, claims, and statements made by respondent, as hereinabove alleged, constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

The respondent, United Remedies, Inc., by its answer filed herein, having waived hearing, having stated that it refrains from contesting the matter, and consented that, as provided in Rule V, paragraph (b) of the Commission's Rules of Practice, without evidence and without findings as to the facts or other intervening procedure, the Commission might make, enter and serve upon respondent an order that it cease and desist from the methods of competition alleged in the complaint; and the Commission having considered the complaint and answer and being fully advised in the premises—

Now, therefore, it is hereby ordered, That respondent, United Remedies, Inc. its officers, agents, employees, and representatives, in or in connection with selling or offering for sale in interstate commerce a preparation for coloring the hair, forthwith cease and desist from the use of the following practices and methods of advertising, whether by radio broadcasts, by labels, written or printed advertisements, circular letters, or otherwise—

From representing that such product or any other hair dye or solution or preparation for coloring hair can end gray hair handicaps,

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abolish gray hair worries, cause gray hair to disappear like magic, get rid of gray hair handicaps forever, and from using words of similar significance or effect, unless in connection and immediate conjunction therewith, and equally as conspicuous, there appears an explanation that the product so represented is a hair dye or solution or preparation for coloring hair, and that the effect of its use can be maintained only by its repeated and regular application in accordance with the natural growth of the hair.

It is further ordered, That respondent shall, within 60 days from and after the service of this order, file with the Commission a report in writing setting forth in detail the manner and form of its compliance with the order.

Complaint

IN THE MATTER OF
EOPA COMPANY

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

Docket 2184. Complaint, May 21, 1934—Order, Jan. 23, 1935

Consent order requiring respondent in connection with the sale of its so-called Eopa Neuritis Tablets and Eopa Phytolberry Tablets in interstate commerce, to cease and desist from representing by advertisements or in any other way that—

- (a) Said Neuritis Tablets are a sure remedy for painful and diseased or undernourished nerves, or severe nerve pains, sciatica, neuralgia, acute rheumatism, lumbago, or neuritis, or constitute a specific remedy for any of such ailments or conditions and will bring about permanent relief; or
- (b) Its last named tablets will reduce weight swiftly or restore one to one's normal weight and benefit health, or cause one to shed disfiguring fat, or that the action thereof is directly upon the fatty tissues and causes a dissolution of the fat cells.

Mr. Morton Nesmith for the Commission.

Brittain & Weise, of San Francisco, Calif., and *Mr. W. Bruce Philip*, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that Eopa Company, a corporation, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said 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, Eopa Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, having and maintaining its laboratories, offices, and principal place of business at 880 Folsom Street in the city of San Francisco in the State of California. Respondent has been and is engaged in the production of homeopathic medicines and pharmaceutical preparations. Respondent has been and is also engaged in offering for sale and selling homeopathic medicines and pharmaceutical preparations in commerce between and among the

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several States of the United States and in causing said products when so sold to be transported from respondent's said principal place of business in the State of California into and across the several States of the United States to the several purchasers thereof located at various places in said several States.

Respondent has been and is offering for sale and selling said products to and through wholesale and retail dealers in medicines and pharmaceutical preparations, and also directly through the United States mails and otherwise to retail purchasers thereof.

Other persons, firms, associations, and corporations have been and are engaged in offering for sale and selling in said commerce medicines and pharmaceutical preparations for use by purchasers thereof as remedies for, or to give relief from, the same diseases and ailments for which respondent's corresponding products are represented to be useful and are sold and are intended to be used by purchasers thereof. In the course and conduct of its said business, respondent has been and is in competition with such other persons, firms, associations, and corporations so engaged in offering for sale and selling in said commerce said medicines and pharmaceutical preparations above referred to, and with all other sellers of like or competitive products.

PAR. 2. Respondent has been and is so offering for sale and selling in said commerce a certain pharmaceutical preparation under the designation and name of "Eopa Neuritis Tablets" and another certain pharmaceutical preparation under the designation and name of "Eopa Phytolberry Tablets."

In order to aid respondent in the sale of its said products and to create a public demand for the same, respondent, upon labels attached to the bottles in which said products are sold, in advertising folders, in booklets, in advertising matter furnished to merchants to be used as counter-displays, in newspapers, magazines, and periodicals, and in other advertising matter, respondent has made and makes to the public certain inaccurate, exaggerated, false and misleading statements and representations with reference to its said products and each of them, as hereinafter specifically alleged.

PAR. 3. In said ways and by said means respondent has made and makes the following statements and representations with reference to its said product so offered for sale and sold by the designation or name of "Eopa Neuritis Tablets", to wit:

Stinging, torturing nerves are diseased or undernourished. Tone them up with a safe, sure remedy, free from narcotics. Eopa Neuritis Tablets.

This remedy is Guaranteed to be Absolutely Safe and Harmless.

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EOPA NEURITIS TABLETS

For Nerve Pain, Sciatica, Neuralgia,
Rheumatism and Neuritis.

These tablets are a specific remedy for neuritis; they help nature to correct nerve-injury by nourishing and building up the structure of the nerve cells, thus treating the cause of neuritis instead of merely relieving its effects.

The great general remedy for the various forms of Neuritis, relieves the severe pain of Sciatica, acute rheumatism, pain in the back and lumbago.

Inflamed nerves, stinging, piercing pains in shoulders, arms, legs, neck, face or head are symptoms of Neuritis. For quick and permanent relief, take EOPA Neuritis Tablets.

In truth and in fact, said product is not a remedy or cure for neuritis, sciatica, neuralgia, rheumatism, lumbago, or similar ailments or diseases. It contains no ingredient or ingredients with properties capable of producing the effects set forth in said statements and representations. Certain ingredients contained therein are such that long continued use thereof, except under the direction and oversight of a physician, may endanger or injure the user's health.

PAR. 4. In said ways and by said means respondent has made and makes the following and many similar statements and representations with reference to its said product so offered for sale and sold by the designation and name of "Eopa Phytolberry Tablets", to wit:

HOW TO REDUCE SAFELY

Eopa Phytolberry Tablets reduce flesh safely, swiftly and pleasantly. Reduction is often truly remarkable—in some cases as much as 15 to 20 pounds within a single month. One patient reports a loss of 40 pounds in three months—and suffered not the slightest discomfort or inconvenience . . .

NORMAL WEIGHT—BETTER HEALTH

Eopa Phytolberry Tablets tend to bring you to your normal weight, and at the same time to benefit your health. They do not weaken you . . . They retain and enhance your natural beauty.

This is true because Eopa Phytolberry Tablets causes your body to shed disfiguring fat, but at the same time tends to make the flesh firmer and more compact. They also tend to relieve shortness of breath and to benefit asthmatic conditions, while the heart action is improved and dizziness and fainting cease. Constipation, indigestion, rheumatism, high blood pressure, and all the other ailments common to stout people are greatly modified and often disappear entirely under Eopa Phytolberry Tablet treatment . . .

Their action is directly upon the fatty tissues; a dissolution of the fat cells takes place, which is eliminated by the kidneys.

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The result of the treatment is a gradual and continued reduction of the fatty accumulations as manifested by a decrease in weight and girth. The flesh becomes more firm and compact, the shortness of breath and asthmatic conditions are relieved, heart action is improved, and dizziness and fainting cease; indigestion, constipation, rheumatism, and all the other distressing symptoms are greatly modified or even disappear entirely . . .

Fat girls. It's the Berries. Be slender. Reduce Safely with Phytolberry Tablets.

Make yourself as slender, lovely and alluring as your favorite movie star by merely taking a tasty Phytolberry Tablet or two at mealtime and being reasonable in your diet . . . nothing drastic, unpleasant or harmful. You actually gain strength and energy in the process.

Eopa Phytolberry Tablets is the safe, healthy way to lose burdensome, disfiguring fat. These tablets, made from the fresh, frosted juice of the Pokeberry and pure tablet sugar, have reduced the weight of thousands of women who rejoice today in wearing fashionable frocks and share in popular sports which vulgar "fat" once denied them. Make up your mind to be thin and fashionable. Know the Freedom of slenderness.

In truth and in fact, said product is not a remedy or cure for obesity. It contains no ingredient or ingredients with properties capable of producing the effects set forth in said statements and representations. Certain ingredients contained therein are such that long continued use thereof, except under the direction and oversight of a physician, may endanger or injure the user's health. Many persons are by nature physically so constituted that they cannot be made as slender as a favorite movie star, or slender at all, without injury to health. For such persons even an efficient remedy can do no more than to aid in removing abnormal and excessive flesh.

PAR. 5. The use by respondent of said false and misleading statements and representations with reference to its said products has the tendency and capacity to deceive and mislead the public into the erroneous belief that said statements and representations are true, and to induce the public to purchase said products in, and because of, such erroneous belief. Respondent's said use of said false and misleading statements and representations have the tendency and capacity to divert trade to respondent from its said competitors, to the unfair advantage of respondent, to the injury of respondent's competitors, and to the injury of the purchasing public.

PAR. 6. The above alleged acts and practices of respondent are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

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ORDER TO CEASE AND DESIST

This proceeding coming on for final hearing by the Federal Trade Commission on the record, including the complaint of the Commission and the answer of the respondent thereto, that it waives hearing on the charges set forth in the complaint, refrains from contesting the proceedings, and, pursuant to paragraph 2 of rule III of the Rules of Practice of the Commission as amended and revised August 20, 1934, consents that the Commission may make, enter, and serve upon the respondent, without evidence and without findings as to the facts or other intervening procedure, an order to cease and desist from the method or methods of competition alleged in the complaint; and the Commission having duly considered the matter and being fully advised in the premises:

It is now ordered, That the respondent, Eopa Company, a corporation, in connection with soliciting the sale of and selling its products, known and designated as Eopa Neuritis Tablets and Eopa Phytolberry Tablets in interstate commerce, cease and desist from:

(1) Representing by advertisements or in any other way that its product, known and designated as Eopa Neuritis Tablets are a sure remedy for stinging, torturing nerves which are diseased or undernourished, or for severe nerve pain, sciatica, neuralgia, acute rheumatism, lumbago or neuritis, or that such tablets are a specific remedy for any of such ailments or conditions and will bring about permanent relief.

(2) Representing by advertisements or in any other way that its product, known and designated as Eopa Phytolberry Tablets, will reduce the flesh of a human being swiftly or that the use of such tablets will restore one that is overweight to his or her normal weight and at the same time benefit his or her health, or that the use of such tablets will cause one's body to shed disfiguring fat or that the action of such tablets is directly upon the fatty tissues and causes a dissolution of the fat cells.

It is further ordered, That respondent, the Eopa Company, a corporation, shall, within 60 days after the service upon it of a copy of this order, file with the Federal Trade Commission, a report in writing setting forth in detail, the manner and form in which it has complied with the order to cease and desist, hereinabove set forth.

IN THE MATTER OF
THE AKRON LAMP COMPANY

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

Docket 2235. Complaint, Sept. 27, 1934—Order, Jan. 28, 1935

Consent order requiring respondent, its officers, etc., in connection with the offer or sale of irons in interstate commerce, to cease and desist forthwith from representing through advertisements in catalogs, bulletins, or otherwise, that—

- (a) It gives prospective agents a genuine Diamond iron without cost, until it does so or makes it clear that it will furnish an iron for the sale of a given number of said product or the performance of services by agents or prospective agents;
- (b) Its said iron has been sold to thousand upon thousands for \$5.95, or that five thousand of such irons have been set aside, for advertising, for free distribution to secure additional business, when such are not the facts;
- (c) A prospective purchaser does not risk a single penny, unless it gives him an iron without requiring anything in payment therefor, or purchase of anything additional, or performance of services, or sells its irons upon a guarantee of refund, should the product be unsatisfactory, and abides thereby;
- (d) An agent in Montana made \$25 in one day in the sale of said irons, and another made \$30 or the making of other misrepresentations relative to earnings of its agents in the sale of said products;
- (e) It furnishes its agents an outfit without cost to them, until it does so, or they are not required to perform services therefor, or it makes it clear that for the sale by them of a given number of its irons or the performance of services, it will furnish them such outfit; and
- (f) It limits the time for the acceptance of offers made by it, or offers two irons for the price of one, when such are not the facts.

Mr. Edward L. Smith for the Commission.

Mr. John M. Jarboe and *Mr. James Olds*, of Akron, Ohio, and *Hon. Dow W. Harter*, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that the Akron Lamp Company, hereinafter referred to as respondent, has been or is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest,

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hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, The Akron Lamp Company, is now and for several years last past has been a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its principal office and place of business in the city of Akron, State aforesaid. Respondent has for several years last past, used the trade name Akron Lamp & Manufacturing Company, and has been engaged in the business of selling a self-heating iron. It has caused such product, when sold, to be transported to purchasers thereof from its place of business in the city of Akron, State of Ohio, into and through the various other States of the United States. In the course and conduct of its said business, respondent has been, and is, in competition with individuals, partnerships and corporations engaged in the sale and transportation of irons in commerce among and between the various States of the United States.

PAR. 2. It has been, and is, the practice of respondent under and by the name Akron Lamp & Manufacturing Company, to advertise its self-heating iron, described or designated as the Diamond self-heating iron, in pamphlets, booklets, circulars, leaflets, and other forms of advertising matter which it has caused to be distributed, and now causes to be distributed among purchasers and prospective purchasers in the various States of the United States. In the course and conduct of such business it has been, and is, the practice of respondent falsely to advertise for dealers or purchasers for its product under the pretense and guise of seeking agents; it represents that it gives to the prospective agents a genuine so-called Diamond iron without cost, that such iron has been sold to thousands upon thousands for the retail price of \$5, that 5,000 irons have been set aside for advertising purposes to be distributed free of charge to secure additional volume of business, that the prospective purchaser does not risk one single penny, that two irons are furnished the purchaser for the price of one.

Particularly has respondent appealed, and now appeals for agents to promote the distribution and sale of its Diamond self-heating iron. In its advertisements for agents, it has made, and now makes, false and misleading representations to the effect that such agency is a golden opportunity, since it is easy for an agent to earn up to \$25 each day in selling the new self-heating Diamond iron; that one agent in Montana actually made \$25 in one day and another one in Ohio \$30 in one day; that there is furnished an elaborate outfit to agents which costs them nothing whatever; that respondent advertises a time limit for acceptance of its offers, or some of them.

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In truth and in fact, none of the so-called free trials or free offers made by respondent are actually free trials or free offers, nor are the agents' outfits or demonstrating outfits furnished without charge or cost. In each and every instance, the prospective purchaser or prospective agent is required to remit or pay money and to render service to the respondent in the distribution of its product. In offering two irons for the price of one, respondent requires a sufficient payment for the one to include the cost of both, together with a profit to respondent. There is no benefit or profit of any kind or character accruing to purchasers or agents from acceptances of any of the offers of respondent except, perhaps, profit resulting from their sale or sales of Diamond self-heating irons so purchased. Respondent receives and fills acceptances of offers regardless of its time limits, and in practice ignores such limits.

Neither the agent mentioned as a resident of Montana nor the one located in Ohio earned in any one day in the sale of Diamond self-heating irons, the amount of money attributed to them by the false and misleading representation of respondent. Agents of respondent do not usually or normally earn the amount of money mentioned by respondent in its advertisements, nor any substantial portion thereof.

PAR. 3. There are, and have been for several years past, individuals, partnerships and corporations offering for sale and selling in interstate commerce self-heating irons, electric irons, and irons of various characters truthfully advertised and described.

PAR. 4. The above and foregoing practices of respondent, described in paragraph 2 hereof, have had and each of them has had, and they have and each of them has the capacity and tendency to mislead and deceive the public into the purchase of respondent's self-heating iron in erroneous reliance on its false and misleading representations.

Such false and misleading representations of respondent have also had and have, and each of them has had and has, the capacity and tendency to divert trade to respondent from competitors selling in interstate commerce irons of various character by means of truthful representations.

PAR. 5. The practices of respondent, described in paragraph 2, have been and are all to the prejudice of the public and the respondent's competitors and constitute unfair methods of competition in interstate commerce within the intent and meaning of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

Order

ORDER TO CEASE AND DESIST

The respondent herein having filed its answer to the complaint in this proceeding and having subsequently filed with this Commission its motion that it be permitted to withdraw its said answer and that it be permitted to file in lieu thereof as a substituted answer, the draft of a proposed substituted answer annexed to the said motion; and the Commission having duly considered the said motion—

It is hereby ordered, That the said motion be and the same is hereby granted; that the said answer be and the same is hereby withdrawn; and that the said proposed substituted answer be, and the same is hereby filed in lieu of the said answer so withdrawn.

And the said respondent in and by its said substituted answer having waived hearings on the charges set forth in the complaint in this proceeding, and having stated in its said substituted answer that it does not contest the said proceeding, and having consented in its said substituted answer that the Commission, without a trial, without evidence, and without findings as to the facts or other intervening procedure, might make, enter, issue and serve upon the said respondent, an order to cease and desist from the methods of competition charged in the complaint; and the Commission being fully advised in the premises—

It is hereby further ordered, That the respondent, the Akron Lamp Company, its officers, agents, servants, and employees in connection with the sale or the offering for sale, by said Akron Lamp Company of irons in interstate commerce, forthwith cease and desist from representing in and by advertisements, catalogs, bulletins, or in any other way:

1. That it gives to prospective agents a genuine Diamond Iron without cost, until and unless it actually furnished a Diamond Iron to its prospective agents without cost, and/or until and unless respondent makes it clear in its advertisements that for the sale of a given number of its irons or for the performance of services by such agents and prospective agents, the respondent will furnish a Diamond Iron to such agents and prospective agents;

2. That the aforesaid Diamond Iron has been sold to thousands upon thousands for the retail price of \$5.95, until and unless it actually has sold the aforesaid Diamond Iron to thousands and thousands for the retail price of \$5.95;

3. That 5,000 Diamond Irons have been set aside for advertising purposes to be distributed free of charge to secure additional volume of business, until and unless 5,000 Diamond Irons have actually been set aside for advertising purposes to be distributed free of charge to secure additional volume of business;

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4. That a prospective purchaser does not risk a single penny or any other amount of money in obtaining a Diamond Iron, until and unless respondent actually furnishes to a prospective purchaser a Diamond Iron without requiring anything in payment therefor, without requiring the purchase of any additional Diamond Iron and without requiring the performance of services in order to secure such iron; provided that nothing in this paragraph shall prohibit respondent from advertising that a prospective purchaser does not risk a single penny or any other amount of money, if respondent sells such irons upon a representation or guarantee to refund to the purchaser the money paid therefor should the iron be unsatisfactory and if the respondent abides by and adheres to its said representation or guarantee;

5. That an agent in Montana made \$25 in one day in selling said Diamond Iron and another one in Ohio made \$30 in one day selling such Diamond Iron; and from making any other representation regarding the earnings made by its agents in the sale of said Diamond Iron until and unless the amounts represented to have been made by such agents have actually been made by them;

6. That it furnishes to its agents an outfit which costs such agents nothing, until and unless such outfits are furnished to such agents without cost and without their being required to perform services therefor, and/or until and unless respondent makes it clear in its said advertisements that for the sale of a given number of its irons or the performance of services by such agents and prospective agents, the respondent will furnish such outfit to such agents and prospective agents;

7. That it limits the time for the acceptance of offers made by it in its advertisements, until and unless it actually limits such time and refuses to accept offers beyond the time limited in and by said advertisements;

8. That it offers two irons for the price of one until and unless in the ordinary course of its business it offers to sell two irons for the price of one.

It is hereby further ordered, That the said respondent shall within 60 days from the day of the date of the service upon it of this order, file with this Commission its report in writing stating the manner and form in which it shall have complied with this order.

Complaint

IN THE MATTER OF
PEANUT SPECIALTY COMPANY

COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3 OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933

Docket 2273. Complaint, Dec. 24, 1934—Order, Feb. 5, 1935

Consent order requiring respondent, its officers, etc., in connection with the manufacture, sale, and distribution in interstate commerce of candy and candy products to jobbers, wholesalers, and retailers direct, to cease and desist from the sale and distribution of candy or packages or assortments thereof arranged and planned for resale to the general public through schemes or devices of chance, and from supplying therewith or separately, display cards for retailer's use in advising of the nature of the particular plan, including the sale of candies of uniform size, shape and quality, but with different colored center, packed with larger pieces or packages of candy to be given as prizes to chance purchasers of particular colored centers; and

Ordered further, That respondent, its officers, etc., in connection with the manufacture, sale and distribution in the state of Illinois of its aforesaid products, cease and desist from the sale thereof through the means above set forth.

Mr. Henry C. Lank for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that Peanut Specialty Company, a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said Act of Congress, and in violation of the Act of Congress approved June 16, 1933, known as the National Industrial Recovery Act, and it appearing to said 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:

Count 1

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Illinois, with its principal office and place of business in the city of Chicago, State of Illinois. Respondent, for

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more than one year last past, has been engaged in the manufacture of candy and in the sale and distribution thereof to wholesale dealers and jobbers located at points in the various States of the United States, and causes said products when so sold to be transported from its principal place of business in the city of Chicago, Ill., to purchasers thereof in other States of the United States and in the District of Columbia, at their respective places of business, and there is now and has been for more than a year last past a course of trade and commerce by the said respondent in such candy between and among the States of the United States and in the District of Columbia. In the course and conduct of the said business, respondent is in competition with other corporations, individuals and partnerships engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States and within the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 herein, respondent sells and has sold to wholesale dealers and jobbers certain packages or assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

Certain of said assortments of candy are composed of a number of pieces of chocolate covered candies of uniform size, shape and quality, together with a number of larger pieces of candy or packages of candy which larger pieces of candy or packages of candy are to be given as prizes to purchasers of said chocolate covered candies of uniform size, shape, and quality in the following manner:

The majority of said chocolate covered candies in said assortment have centers of the same color, but a small number of said chocolate covered candies have centers of a different color. The color of the center of these chocolate covered candies is effectively concealed from the prospective purchaser until a selection or purchase has been made and the piece of candy broken open. The said candies of uniform size, shape and quality in said assortment, retail at the price of 1 cent each but the purchasers who procure one of the said candies having a center of a different color than the majority of said candies are entitled to receive and are to be given free of charge one of the said larger pieces of candy or packages of candy heretofore referred to. The aforesaid purchasers of said candies who procure a candy having a center colored differently from the majority of said pieces of candy are thus to procure one of the said larger pieces of candy or packages of candy wholly by lot or chance.

Respondent furnishes to said wholesale dealers and jobbers with said assortment of candies, display cards to be used by retail dealers

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in offering said candies for sale, which display cards bear a legend or statement informing the prospective purchaser that the said assortments of candies are being sold in accordance with the sales plan above described.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells its assortments, resell said assortments of candy to retail dealers and said retail dealers expose said assortments for sale in connection with the aforesaid display cards and sell said candies to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plan hereinabove set forth, as a means of inducing purchasers thereof to purchase respondent's said product in preference to candies offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public as above alleged involves a game of chance or the sale of a chance to procure such larger pieces of candy or packages of candy in the manner alleged. Such game of chance and the sale along with the sale of such candy of such chance to procure such larger pieces of candy or packages of candy in the manner alleged are contrary to the established public policy of the several States of the United States and the District of Columbia and of the Government of the United States, and in many of the States of the United States are contrary to local criminal statutes.

By reason of the said facts, many persons, firms and corporations who make and sell candy in competition with respondent as above alleged are unwilling to offer for sale or sell candies so packed and assembled as above alleged, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, or the sale with such candy of a chance to procure larger pieces of candy by chance; and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candies are attracted by respondent's said method and manner of packing said candy and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said candy so packed and sold by respondent in preference to candies offered for sale and sold by said competitors of the respondent who do not use the same or an equivalent method. Many dealers in candies are induced to purchase said candies so offered for sale and sold by respondent in preference to all others because said ultimate purchasers thereof give preference to respondent's said candies on account of said game of chance so involved in the sale thereof.

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PAR. 6. The use of said method by respondent has the tendency and capacity unfairly, and because of said game of chance alone, to divert to respondent trade and custom from its said competitors who do not use the same or an equivalent method; to exclude from said candy trade all competitors who are unwilling to and do not use the same or an equivalent method; to lessen competition in said candy trade, and to tend to create a monopoly of said candy trade in respondent and such other distributors of candy as use the same or an equivalent method, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by respondent has the tendency and capacity unfairly to eliminate from said candy trade all actual competitors, and to exclude therefrom all potential competitors, who do not adopt and use said method or an equivalent method that is contrary to public policy and to criminal statutes as above alleged. Many of said competitors of respondent are unwilling to adopt and use said method, or any method involving a game of chance or the sale of a chance to win something by chance, because such method is contrary to public policy or to the criminal statutes of certain of the States of the United States, or because they are of the opinion that such a method is detrimental to public morals and to the morals of the purchasers of said candy, or because of any or all of such reasons.

PAR. 7. The aforementioned method, acts and practices of the respondent are all to the prejudice of the public and of respondent's competitors as hereinabove alleged. Said method, acts and practices constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

Count 2

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Illinois, with its principal office and place of business in the city of Chicago, State of Illinois. Respondent for more than one year last past has been engaged in the manufacture of candy and in the sale and distribution thereof to wholesale dealers and jobbers located at points in the State of Illinois and at points in various other States of the United States, and causes said products when so sold to be transported from its principal place of business in the city of Chicago, Ill., to the purchasers thereof in the State of Illinois and to other purchasers thereof in other States of the United States and in the District of Columbia at their respective places of

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business, and there is now and has been for more than one year last past a course of trade and commerce by the said respondent in such candy in the State of Illinois and between and among the States of the United States and in the District of Columbia. In the course and conduct of said business respondent is in competition with other corporations, individuals and partnerships engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States and within the District of Columbia.

PAR. 2. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 2 of count 1 of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 2 of count 1 of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 2 of said count 1 were repeated verbatim.

PAR. 3. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 3 of count 1 of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 3 of count 1 of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 3 of said count 1 were repeated verbatim.

PAR. 4. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 4 of count 1 of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 4 of count 1 of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 4 of said count 1 were repeated verbatim.

PAR. 5. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 5 of count 1 of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 5 of count 1 of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as

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though the several averments of said paragraph 5 of said count 1 were repeated verbatim.

PAR. 6. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 6 of count 1 of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 6 of count 1 of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 6 of said count 1 were repeated verbatim.

PAR. 7. Under and pursuant to the provisions of section 2 of said National Industrial Recovery Act, the President of the United States on the 16th day of June 1933 by his executive order in writing appointed Hugh S. Johnson to be the administrator for Industrial Recovery under Title I of said act.

Under and pursuant to the provisions of said National Industrial Recovery Act, National Confectioners' Association of the United States, Inc., a corporation, as a representative of the Candy Manufacturing Industry, submitted to the President of the United States on application for the approval of a code of fair competition for the Candy Manufacturing Industry.

Said application was duly referred to said Hugh S. Johnson, as such administrator, by and before whom such further action was taken and proceedings were had that on the 9th day of June 1934 said Johnson, as such administrator, submitted a certain code of fair competition for the Candy Manufacturing Industry to the President of the United States, together with his written report containing an analysis of said code of fair competition, and with his recommendations and findings with respect thereto, wherein said administrator found that the said code of fair competition complies in all respects with the pertinent provisions of Title I of the National Industrial Recovery Act, and that the requirements of classes (1) and (2) of subsection (a) of Section 3 of said Act had been met. The concluding paragraphs of said report are in the following words, to wit:

I find that—

(a) Said code is well designed to promote the policies and purposes of Title I of the National Industrial Recovery Act, including removal of obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof and will provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among the trade groups, by inducing and maintaining united action of labor and management under adequate governmental sanctions and supervision, by eliminating unfair competitive practices, by promoting the fullest possible utilization of the pres-

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ent productive capacity of industries, by avoiding undue restriction of production (except as may be temporarily required), by increasing the consumption of industrial and agricultural products through increasing purchasing power, by reducing and relieving unemployment, by improving standards of labor, and by otherwise rehabilitating industry.

(b) The code as approved complies in all respects with the pertinent provisions of said title of said act, including without limitation subsection (a) of section 3, subsection (a) of section 7, and subsection (b) of section 10 thereof; and that the applicant association is a trade association truly representative of the aforesaid industry; and that said association imposes no inequitable restrictions on admission to membership therein.

(c) The code is not designed to and will not permit monopolies or monopolistic practices.

(d) The code is not designed to and will not eliminate or oppress small enterprises and will not operate to discriminate against them.

(e) Those engaged in other steps of the economic process have not been deprived of the right to be heard prior to approval of said code.

It is recommended, therefore, that this code be approved.

Respectfully,

HUGH S. JOHNSON,
Administrator.

June 9, 1934.

Thereafter, and on the 11th day of June 1934 the President of the United States made and issued his certain written executive order wherein and whereby he adopted and approved the report, recommendations and findings of said administrator, and ordered that the said code of fair competition be, and the same thereby was, approved, and by virtue of said National Industrial Recovery Act the provisions of said code became, and still are, the standard of fair competition for the Candy Manufacturing Industry, and became and still are binding upon every member thereof, except that said code of fair competition when so approved was approved with a proviso that Rule 19, Article VIII thereof, was stayed for a period of 10 days. Successive subsequent administrative orders were severally duly made and entered by which the provisions of said Rule 19, Article VIII, were stayed for fixed periods designated in several orders, the latest date to which said Rule 19 was stayed being July 30, 1934. On July 30, 1934, said Rule 19, Article VIII, became in full force and effect. On and since said July 30, 1934, the said code of fair competition, including said Rule 19, Article VIII, has been and is in full force and effect and became, and still is, binding upon every member of said industry.

Rule 19, Article VIII, of said Code provides as follows:

No member of the industry shall sell or distribute the type of merchandise commonly referred to as "break and take", "picks", or "draws", or merchandise of a like character, serving the same purposes.

Among persons engaged in said trade and among the purchasing public the language of said Rule 19 is understood to refer to and include candies offered for sale and sold by the method used by respondent as above alleged. The language of said Rule 19 does refer to and include candies so offered for sale and sold. Candies offered for sale and sold by the method so used by respondent are of the type of merchandise commonly referred to as "break and take", "picks", or "draws", and are merchandise of a like character, serving the same purpose, within the intent and meaning of said Rule 19, Article VIII.

Notwithstanding said provisions of said Rule 19, Article VIII, of said code of fair competition, respondent has continued to, and does, use said method of competition hereinabove alleged and described, and has been and is offering for sale and selling to wholesale dealers, jobbers, and retail dealers certain packages or assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof, as hereinabove alleged and set forth.

PAR. 8. The above alleged method, acts and practices of the respondent are and have been in violation of the standard of fair competition for the Candy Manufacturing Industry of the United States. Such violation of such standard in the aforesaid transactions in interstate commerce and in other transactions which affect interstate commerce in the manner set forth in paragraph 6 of count 1 hereof, are in violation of section 3 of the National Industrial Recovery Act and they are unfair methods of competition in commerce within the meaning of the Federal Trade Commission Act as amended.

ORDER TO CEASE AND DESIST

This proceeding having been considered by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent filed herein, wherein respondent states that it does not desire to contest the proceeding and consents that the Commission make, enter and serve upon it an order to cease and desist from the violations of law charged in the complaint:

It is now ordered, That the respondent, Peanut Specialty Company, its officers, agents, representatives, and employees, in the manufacture, sale, and distribution in interstate commerce of candy and candy products, do cease and desist from:

(1) Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, candy so packed

Order

and assembled that sales of such candy to the general public are by means of a lottery, gaming device, or gift enterprise.

(2) Supplying to or placing in the hands of wholesale dealers and jobbers or retail dealers packages or assortments of candy which may be or which are used, without alteration or rearrangement of the contents of such packages or assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy or candy products contained in said package or assortment to the public.

(3) Packing or assembling in the same package or assortment of candy for sale to the public at retail pieces of candy of uniform size, shape and quality, having centers of different colors, together with larger pieces or packages of candy, which larger pieces or packages of candy are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color.

(4) Furnishing to wholesale dealers, jobbers, and retail dealers display cards, either with packages or assortments of candy or separately, bearing a legend or legends or statements informing the purchaser that the candy is being sold to the public by lot or chance or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

(5) Furnishing to wholesale dealers, jobbers, and retail dealers display cards or other printed matter for use in connection with the sale of its candy or candy products, which said advertising literature informs the purchasers and purchasing public that upon the obtaining by the ultimate purchaser of a piece of candy having a center of a particular color, a larger piece or package of candy will be given free to said purchaser.

It is further ordered, That the respondent Peanut Specialty Company, its officers, agents, representatives, and employees, in the manufacture, sale, and distribution in the State of Illinois of candy and candy products, do cease and desist from:

(1) Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are by means of a lottery, gaming device, or gift enterprise.

(2) Supplying to or placing in the hands of wholesale dealers and jobbers or retail dealers packages or assortments of candy which may be or which are used, without alteration or rearrangement of the contents of such packages or assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy or candy products contained in said package or assortment to the public.

(3) Packing or assembling in the same package or assortment of candy for sale to the public at retail pieces of candy of uniform size, shape and quality, having centers of different colors, together with larger pieces or packages of candy, which larger pieces or packages of candy are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color.

(4) Furnishing to wholesale dealers, jobbers, and retail dealers display cards, either with packages or assortments of candy or separately, bearing a legend or legends or statements informing the purchaser that the candy is being sold to the public by lot or chance or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

(5) Furnishing to wholesale dealers, jobbers and retail dealers display cards or other printed matter for use in connection with the sale of its candy or candy products, which said advertising literature informs the purchasers and purchasing public that upon the obtaining by the ultimate purchaser of a piece of candy having a center of a particular color, a larger piece or package of candy will be given free to said purchaser.

It is further ordered, That the respondent, Peanut Specialty Company, within 30 days after the service upon it of this order shall file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

Syllabus

IN THE MATTER OF

NORWOOD SOLLY AND CHARLES B. SOLLY, COPARTNERS,
TRADING UNDER THE NAME OF NORWOOD
PHARMACEUTICAL LABORATORIES

COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 23, 1914

Docket 2281. Complaint, Jan. 14, 1935—Order, Feb. 14, 1935

Consent order requiring respondents, their agents, etc., in connection with the sale or offer of cosmetics in interstate commerce, to cease and desist from representing and advertising through magazines, newspapers, pamphlets, labels, testimonials, or by radio or otherwise, that—

- (a) Their sales people are dermaticians, and they employ pharmaceutical chemists and chemists, and have consulting chemists;
- (b) Cosmetics should be selected for the particular type of skin and their representatives take a skin analysis for chemists and doctors prescribe from analysis records for each particular customer, and their prescriptions are specially made up to fit the particular needs of the customer;
- (c) Their massage cream can truly be called a cream rejuvenator, their creams contain no grease or casein, and are the results of scientific study of dermatologists and pharmaceutical chemists, selected for the individual customer, and their face powders are medicated and will help to alleviate and, in some cases, cure skin diseases and irritations, and that through the use thereof sufferers from eczema, acne, and blackheads will find relief and pimples can be made to vanish;
- (d) They send out information to customers from time to time about their skin, and the hair, and their formulas are helpful in treating and, in some cases, curing an ailment, and they are experts in building, formulating, and selecting corrective beauty services, and give each patron individual, satisfactory service; and

Ordered further, That respondents cease and desist from use on letterheads, or in labels, or any other advertising media of (1) the staff of Hermes, insignia of the Army Medical Corps, (2) the words "Formula Number", referring to their creams, or (3) the words "Reg. U. S. Pat. Off." or other words of like import, until their trade name has been registered in the Patent Office, and they have a legal right to use said words; and

Ordered further, That respondents cease and desist from—

- (a) Use of the word "Pharmaceutical" in their corporate or trade name, or any other word of like import, or use thereof upon or in their labels, booklets, stationery, letters, or otherwise; or
- (b) Use of symbol "R" in the word "Norwood" of their trade name and on letterheads, and in pamphlets, labels and other advertising media; and

Ordered further, That respondents, their agents, etc., cease and desist from substituting and passing off to the public, competitors' products as their own, and advertising and representing that they manufacture all of the products sold and distributed by them.

Mr. Astor Hogg for the Commission.

Complaint

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COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission charges that Norwood Solly and Charles B. Solly, copartners doing business under the trade name and style of Norwood Pharmaceutical Laboratories, hereinafter referred to as respondents have been and are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents are copartners doing business under the trade name and style of Norwood Pharmaceutical Laboratories, with their place of business in the city of Philadelphia, State of Pennsylvania. Said copartnership, trading under the name of Norwood Pharmaceutical Laboratories is now and has been since March 1933 engaged in the business of manufacturing or causing to be manufactured face creams and cosmetics and in the sale and distribution of said products in interstate commerce to the purchasing and consuming public throughout the several States of the United States. Respondents offer for sale and sell their creams and cosmetics through and by means of salesmen and salesladies and agents who, on behalf of respondents, solicit purchase orders for said creams and cosmetics from the purchasing and consuming public throughout the several States of the United States. As the result of said solicitation and offering for sale, many members of the purchasing public throughout the United States are thereby induced from time to time to purchase said creams and cosmetics from respondents, to transmit their purchase orders for said products and to make their remittances therefor from their respective points of location in States other than the State of Pennsylvania to, and which are received by respondents at their place of business in, Philadelphia, Pa.

To complete the sale and distribution of their products and acting pursuant to said purchase orders, respondents cause their creams and cosmetics so ordered or sold to be transported and delivered from their place of business in Philadelphia, Pa., through and into other States of the United States to the respective purchasers thereof in such other States, and in so carrying on their business respondents maintain a constant current of trade and commerce in said products between the State of Pennsylvania and other States of the United States. Throughout the course and conduct of said business, re-

spondents have been engaged in and continue to engage in interstate commerce and in direct, active competition with many individuals, partnerships and corporations engaged in the sale and distribution of creams and cosmetics in commerce between and among the several States of the United States.

PAR. 2. Respondents have included in their trade name the symbol \mathcal{R} which symbol is recognized by the consuming public and the druggist trade as standing for the word prescription or prescribe. The tail of the letter R in the word Norwood is extended and crossed thus incorporating into the name the well-known and generally understood medical insignia \mathcal{R} . Also included in the trade name is the word Pharmaceutical. In the use of the symbol \mathcal{R} the purchasing and consuming public are led to believe that respondents have in their employment a doctor or doctors who prescribe for the needs of the various individuals comprising the purchasing public, and in the use of the word Pharmaceutical in the trade name the purchasing and consuming public is led to believe that connected with the respondents are Pharmaceutical doctors who compound and dispense medicine according to prescriptions of physicians.

In truth and in fact respondents do not have in their employment and do not use any doctors or physicians who prescribe for individuals and do not have in their employment doctors of pharmacy who compound and make up medicines or any other sort of preparations for the members of the purchasing public. So that, the medical symbol \mathcal{R} and the word Pharmaceutical as used in the trade name of respondents are grossly false, deceptive, confusing, and misleading to the consuming public. Immediately beneath the word NoR wood in the trade name Norwood Pharmaceutical Laboratories, respondents place in small type the words "Reg. U. S. Pat. Off." which words mean to the purchasing public that the word NoR wood is a trade mark registered in the United States Patent Office, when in truth and in fact it is not registered in the United States Patent Office, and such words are misleading and deceptive to the public. The trade name as described herein is used by respondents on their letterheads, bills and other literature put out by them which are seen and read by the purchasing public.

PAR. 3. On the labels, letterheads, and advertising matter of respondents is the Caduceus or the staff of Hermes or Mercury, but which insignia is known and generally understood by the purchasing public as the insignia of the Army Medical Corps. In the use of said medical insignia prospective buyers are led to believe that physicians and medical officers are connected with respondents. Such insignia appearing as it does appear upon the labels, letterheads,

and advertising matter is grossly misleading, deceptive, and false because no physicians or medical officers are associated in any manner with the respondents. Advertising matter is contained on the labels themselves that are wrapped around the jars which show that the word NoR wood is registered in the United States Patent Office.

On the labels of respondents the same Catenation of the prescription symbol \mathcal{R} , the Caduceus and the words Pharmaceutical Laboratories appear, and in addition thereto the word "name" and the words "formula number", which, set up on the labels, lead the prospective customers and purchasing public to believe that the preparation was a prescription especially prepared by a formula submitted by a dermatologist or physician and that the purchaser was receiving a specially prepared product to fit his or her particular requirements. In truth and in fact respondents do not offer or furnish specially prepared prescriptions from a formula submitted by a dermatologist or physician and the purchaser does not receive a specially prepared product to fit his or her particular need.

PAR. 4. Respondents in the further aid of the sale of their face creams and cosmetics advertise in magazines and newspapers, published in many of the States of the United States, and also in letters, on stationery, in circulars and in pamphlets, which advertising reaches their customers and prospective customers residing in the several States of the United States. In and through such media respondents represent that—The salesmen or salesladies are "dermaticians". The word "dermatician" does not appear in any of the standard dictionaries in common use, but the word "dermatologist" is one of common usage in the English language and appears in all the standard dictionaries, and it has the well understood meaning of skin specialist, a physician specially trained in the treatment of skin disorders. The use of the word "dermatician" is confusing and misleading to the general public and to prospective purchasers, and the public is thereby led to believe that respondents employ skin specialists when such is not the fact. The word "dermatician" is found on all the order blanks of respondents and on the back of such order blanks is a blank for the analysis of the person's skin, and this leads the prospective purchasers and the general public to believe that the salesman or saleslady taking the analysis was specially trained and qualified to take the analysis and to prescribe the proper kind of face creams for his or her condition. In truth and in fact the salesmen or salesladies are not specially trained and are not qualified to take the analysis or to prescribe the proper kind of face creams for his or her condition.

On the back of the order blank appears a form for analysis record of each individual. It is the practice of the salesmen or salesladies

who contact the public to go about giving prospective purchasers a free skin analysis. The salesmen or salesladies fill out the analysis record on the back of the order blank. It is transmitted, along with the order, to the place of business of respondents. Respondents represent in various pamphlets, circulars and different literature that from the analysis record physicians and doctors prescribe for each particular customer his or her particular needs as gleaned from the analysis record, and, that then this prescription is specially made up to fit the prescription and then is sent to the customer. Such representations are grossly false, misleading and untrue and a fraud, because respondents do not make up any prescription from such analyses and neither do they furnish their customers and prospective customers any specially prepared product to fit any particular need. On the contrary they fill the order from a common source of supply.

Respondents give to their agents what they term "Dermatologist's Instructions", which is contained in a pamphlet. The agents and salesmen or salesladies verbally give to the purchasers and prospective purchasers the contents thereof. In said pamphlet is contained such expressions as these: "Numbered among our consulting chemists we find Pharmaceutical Chemists associated with some of the very largest concerns in the world." "It is our intention to work just as closely as possible with the medical profession. Many of the leading doctors today state that cosmetics should be selected for the individual's particular type of skin, and from the analysis we accomplish this important feat." Such representation contained in said pamphlet and repeated to prospective purchasers leads such prospective purchasers to believe that the products were selected for the individual's particular type of skin, due to the analysis furnished by the prospective purchaser herself.

In truth and in fact the products are not selected for the individual's particular type of skin and it is impossible to prescribe from the analysis submitted for the particular needs of any particular customer. The above quoted matter also leads the public to believe that employed with respondents are a number of consulting chemists, which is false and untrue. On page 3 of the pamphlet is found, "Remember at all times you are not giving anyone a facial, you are simply taking a skin analysis for our chemists and instructing in the daily care of the skin in the home." In truth and in fact the agent or salesman or saleslady in reporting on the order blank is the one who gives the order for the type of cosmetic to be sold to the person in question. In truth there is but one chemist in the employment or connected with respondents in any way, and no chemist of respondents selects or prepares specially the products in filling the order, but

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orders are filled from a general supply of the various products. Such forms of representations are grossly false, deceptive and misleading to the purchasing public. It is set out in the pamphlet that respondents have in their employment pharmaceutical chemists and their associates, when in truth and in fact they have but one chemist.

On page 9 of the pamphlet is found the representation that "this cream is the result of scientific study by dermatologists and pharmaceutical chemists. It is selected for the individual." That statement induces the agent to rely thereon, and said agent, in turn, repeats the same statement to prospective purchasers, that the creams are selected for the individual, when in truth and in fact the creams are not selected for each individual. On page 12 of the pamphlet regarding Norwood's Vita-Derma Massage Cream, it is stated "that it can be truly called a skin rejuvenator." Such a statement is false, deceptive and misleading because the Vita-Derma Massage Cream does not have the semblance of a skin rejuvenator and does not and will not rejuvenate the skin. On page 12 of the pamphlet, in speaking of Norwood's cleansing cream, the statement, "contains no grease, wax or casein," is found. Said statement is false, misleading and deceptive because Norwood's cleansing creams are made from white mineral oil and beeswax.

On page 13 is found this statement, "because our face powders are medicated, and absolutely pure, they will do much to alleviate and in some cases cure a multitude of skin diseases and irritations so prevalent today. Sufferers of eczema, acne and blackheads will many times find permanent relief when all other medicines have failed. Pimples too can be made to vanish by the use of our face powder in conjunction with our other formulations for this purpose." Said statements are utterly false and untrue and misleading and deceptive to the purchasing public because such face powders are not medicated and are not absolutely pure and do not alleviate skin diseases or irritations, and in no case will they cure any skin disease. Sufferers of eczema, acne and blackheads do not find permanent relief or any relief from the use thereof. Pimples will not vanish by the use thereof. Moreover, the use of the word "cure" in the statement leads the agents and in turn the public to believe that the preparation had been made up by a doctor when such is not the case.

On page 20 of the pamphlet is found this representation:

We will from time to time send you information about the skin and hair in our bulletin. This information will be compiled by the very best medical authorities and should be very helpful to you.

In truth and in fact respondents do not send out any bulletins to their salesmen or salesladies containing information about the skin

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and hair. No information is compiled by the very best medical authorities and sent to the agents. The agents repeat the substance of these statements to their prospective customers and such statements are misleading and deceptive to the prospective purchasers and consuming public.

On page 20 of the pamphlet is found this representation:

Norwood's formulations are especially helpful in taking care of an ailment and their use will be very helpful and, in some instances, effect a cure.

That statement is misleading, deceptive, and confusing to the agents and in turn to the public because it would lead the agents and public to believe that physicians and dermatologists are employed by respondents to prescribe for ailments of individuals which is not a fact.

On page 23 of the pamphlet is found this representation:

We are experts in building, formulating and selecting complete corrective beauty services and we are therefore able to give each and every patron individual satisfactory services.

Such statements are false, misleading, and deceptive. They lead the agents of respondents to make misrepresentations to prospective customers that the creams are made up for the individual which is not the fact.

Further advertising is done by respondents by placing in the hands of customers and prospective customers throughout the United States a pamphlet known and designated by it as "aids to beauty", and on the back of such pamphlet appears the trade name of respondents along with the Army Medical Corps insignia or caduceus. Contained in this pamphlet are found these words:

Our Dermatician may in your case deviate from this suggested treatment, in which case our instructions should be carefully followed.

This statement in said pamphlet is extremely misleading to the purchasers and prospective purchasers because the words "our dermatician" leads purchasers and prospective purchasers to believe that the agents making the skin analyses possess unusual skill and are specialists in skin treatment, when in truth and in fact the agents of respondents are not specialists in skin treatment and neither do they possess any uncommon skill in making their analyses. Respondents also advertise by passing out through their agents to prospective purchasers and the consuming public cards which they term "complimentary skin analyses" course, upon which cards is the trade name of respondents with the B symbol, the Army Medical Corps insignia and the words, "Reg. U. S. Pat. Off." Also included on the card is a line under which is written "Dermatician Specialist

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of Norwood." Such advertising is false, misleading and deceptive to purchasers and prospective purchasers.

PAR. 5. Mr. D. H. Moore is the sales manager for respondents and as such controls, manages and operates a part of the business activities and transactions of said partnership. The relation of D. H. Moore to said partnership and its business is such that Moore is able to, and does, use said partnership as an instrumentality to accomplish such things as respondents' purpose and plan. The acts, practices, and transactions of said Moore are deemed to be and are alleged and charged as the acts and practices of said respondents as shall be hereinafter alleged and charged. In the course and conduct of the business of respondents through and upon the suggestions and recommendations of said sales manager, D. H. Moore, the agents of respondents have indulged in the practice of substituting and passing off to the public products of respondents' competitors as and for the exclusive products of respondents. Moreover, respondents hold out to the public by advertising and representations that they manufacture all of the products sold by them to the public. Such advertising and representations are false and misleading, because in truth and in fact respondents do not manufacture all the products which they sell to the public. They do sell to the public products that have been manufactured by other manufacturing concerns.

PAR. 6. The said description and representations made by respondents as to their products, and each of them, set forth in paragraphs 2, 3, 4, and 5 hereof, and the use of the trade name and trade marks, insignia, symbols and words in connection with the trade name have the capacity and tendency to deceive the purchasing public and induce purchasers to buy the products of respondents in and on account of the belief that said representations and descriptions are true. Said representations and statements have had and do have the tendency and capacity to induce purchasers of respondents' product because of the erroneous belief that they are true, and thus divert trade to respondents from competitors of respondents engaged in the sale in interstate commerce of face creams and cosmetics who truthfully and honestly advertise and represent their products. There are competitors of respondent who actually and in truth prescribe creams and cosmetics for the use of particular individuals and to meet their individual requirements and who employ doctors of pharmacy to compound such cosmetics and creams after they have been prescribed by duly registered physicians.

PAR. 7. The acts and things done by respondents are to the injury and to the prejudice of the public and the competitors of respond-

ents in interstate commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 717), the Federal Trade Commission, on January 14, 1934, issued its complaint against the above-named respondents, in which it is alleged that the respondents are, and have been using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act. On February 1, 1935, the respondents filed their answer to the said complaint wherein the respondents consent that the Federal Trade Commission may make, enter, and serve upon them in accordance with the provisions of paragraph (b) of Rule V of the Rules of Practice of the Commission, an order to cease and desist from the practices alleged in the complaint in connection with the sale in interstate commerce of cosmetics manufactured, sold and distributed by them, and the Commission being now fully advised in the premises:

It is ordered, That respondents, Norwood Solly and Charles B. Solly, copartners, trading under the name of Norwood Pharmaceutical Laboratories, their agents, representatives, and employees in connection with the selling or offering for sale or in the aid of the sale of their cosmetics in interstate commerce between and among the several States of the United States, and in the District of Columbia, cease and desist from representing and advertising through magazines, newspapers, booklets, pamphlets, labels, letters, circulars, order blanks, testimonials by means of radio or otherwise that—

(a) Respondents' salesmen or salesladies are dermaticians.

(b) Doctors or physicians, from any analysis record, prescribe for each particular customer and that any prescription is especially made up to fit the particular needs of a customer.

(c) Pharmaceutical chemists and chemists are employed by respondents and that respondents have consulting chemists, and that doctors state that cosmetics should be selected for the particular type of skin, and from the analysis submitted respondents accomplish this feat.

(d) Respondents' representatives take a skin analysis for chemists.

(e) The creams sold and distributed are the result of scientific study by dermatologists and pharmaceutical chemists and are selected for the individual customer.

(f) Vita-Derma massage cream can truly be called a skin rejuvenator and that their creams contain no grease or casein.

(g) Their face powders are medicated and will help to alleviate and, in some cases, cure skin diseases and irritations, and that by the use of said powders sufferers of eczema, acne, and blackheads will find relief, and that pimples can be made to vanish by the use of said face powders.

(h) Information is sent out to customers by respondents from time to time about their skin and the hair.

(i) Norwood formulas are helpful in taking care of an ailment and, in some instances, effect a cure, and that respondents are expert in building, formulating, and selecting corrective beauty services and give each patron individual, satisfactory service.

(j) Respondents' representatives take analysis of skin.

It is further ordered, That respondents, their agents, representatives, and employees cease and desist from using any words, devices, or means which import or imply any of the creams or cosmetics sold and distributed by respondents in interstate commerce have therapeutic virtues or values or that respondents prescribe or compound their creams or cosmetics for particular needs of particular customers, or that respondents employ doctors or chemists to prescribe or compound their cosmetics, or that they have in their employment dermatologists or skin specialists.

It is further ordered, That respondents cease and desist from using on their letterheads, pamphlets, labels, magazines, and other advertising media:

(a) the caduceus or the staff of Hermes, known as the insignia of the Army Medical Corps;

(b) the words "Formula Number" referring to their creams;

(c) the words "Reg. U. S. Pat. Off." or any other words of like import in connection with their trade name, unless and until they register their said trade name in the U. S. Patent Office and procure the legal right to use such words.

It is further ordered, That respondents cease and desist from the use of the word "Pharmaceutical" in their corporate or trade name, or any other word of like import and from using the word "pharmaceutical" upon their labels or any booklets or on their stationery or letters or otherwise.

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It is further ordered, That respondents cease and desist from the use of the symbol \mathfrak{B} in the word "Norwood" of their trade name and on their letterheads, pamphlets, labels, and other advertising media.

It is further ordered, That respondents, their agents, representatives, and employees cease and desist from substituting and passing off to the public products of respondents' competitors as the products of respondents and from advertising and representing that respondents manufacture all of their products sold and distributed by them to the public.

It is further ordered, That the said respondents, Norwood Solly and Charles B. Solly, copartners, trading under the name of Norwood Pharmaceutical Laboratories, shall within 60 days after the date of service on 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 and are now complying with the order to cease and desist hereinbefore set forth.

IN THE MATTER OF
ELI DANE, TRADING UNDER THE FIRM NAME AND
STYLE OF YORK RADIO COMPANY

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

Docket 2268. Complaint, Dec. 18, 1934—Order, Feb. 15, 1935

Consent order requiring respondent, his agents, etc., or successors, in connection with the manufacture, sale and offer in interstate commerce of radio sets, to cease and desist from—

- (a) Applying directly or indirectly or attaching or using on any radio set made, assembled and sold by or for him, escutcheon plates, or marks or other means of identification bearing the name "Edison" or "Victor", whether used alone or with prefixes or suffixes or with other names or markings;
- (b) Marking or branding, or directly or indirectly making or using any representations or assertions in advertisements, trade literature, wrappers, cartons or containers, or in signs or sales talks, radio broadcasts or other wise with the words "Edison" or "Victor", whether alone or with prefixes or suffixes or with other names or markings, or to the effect that said sets are the products of "Edison" or "Victor" or are made, assembled and sold, or sponsored, approved, licensed, authorized or consented to by said Edison, or Edison or Victor companies, as specified, or persons or concerns legally qualified to act for them in such matters.

Mr. Carrel F. Rhodes for the Commission.

Dane & Weinstein, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission having reason to believe that Eli Dane, trading under the firm name and style York Radio Company, hereinafter referred to as respondent, has been or is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said 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, Eli Dane, owns and has caused to be registered with the New York County Clerk's Office, New York City, the trade name "York Radio Company", under which name respondent operates.

PAR. 2. Respondent, Eli Dane, now is and for more than one year last past has been engaged under the name and style of "York Radio

Company" with his office and principal place of business at 135 Liberty Street, New York City, State of New York, in the business of manufacturing or assembling radio sets and selling them to the retail trade. Respondent conducted his said business in the name of "York Radio Company" in partnership or association with Bernard Buchwald from December 18, 1933, to April 17, 1934, when the partnership or association was dissolved. Since April 17, 1934, respondent has continued the conduct of said business in the name of York Radio Company. Respondent sells said radio sets to retail dealers and customers located in the various States of the United States other than in the State of New York, and when so sold respondent causes said radio sets to be transported from the City of New York, State of New York, through and into other States of the United States, other than the State of New York, to the purchasers thereof at their respective locations. In the course and conduct of his said business respondent is in competition with various other persons, partnerships, and corporations engaged in the business of manufacturing or assembling radio sets, and selling them to retail dealers and the public in interstate commerce.

PAR. 3. Respondent, Eli Dane, in the course and conduct of his business has adopted and followed the scheme and method of appropriating the names of well-known manufacturers and applying them to the radio sets manufactured or assembled and sold by him as aforesaid, thereby appropriating to himself their goodwill by the sale of his said radio sets to the purchasing public as sets made by said manufacturers.

PAR. 4. For more than thirty years prior to his death on October 18, 1931, Thomas A. Edison had been known and recognized throughout the various States of the United States and foreign countries as the inventor, patentee, owner, and manufacturer of numerous electrical devices of various kinds and descriptions, and of machines for the reproduction of the human voice, which have acquired a wide and favorable reputation, and are in great demand by the trade and purchasing public who desire Edison products. Among the machines for the reproduction of the human voice manufactured by companies which the said Thomas A. Edison organized and controlled are phonographs, dictaphone and transcribing machines, radios, combination radios and phonographs, and many other articles of various kinds and character such as storage batteries, spark plugs, ignition coils, and household electrical appliances. Many of the machines and articles above referred to bear the name "Edison" as part of their brand names, and said name "Edison" has acquired

a valuable goodwill as identifying the manufacturer of such machines or articles.

Among the companies organized and controlled by the said Thomas A. Edison before his death, is Thomas A. Edison, Inc., which said company is still engaged in the manufacture of many of the machines and articles invented and developed by Thomas A. Edison. Thomas A. Edison, Inc., during the years 1928 to 1930, inclusive, manufactured and sold radio sets valued at many millions of dollars, and during the said period spent several millions of dollars in advertising its said radio products. All of the radio sets manufactured and sold by Thomas A. Edison, Inc., featured the name "Edison" as part of their brand name.

PAR. 5. Respondent, Eli Dane, in the course and conduct of his said business conducted in the name of York Radio Company has purchased what are known as escutcheon plates, which plates bear various names and which are attached in a prominent place to radio sets. Respondent has purchased and attached to radio sets manufactured or assembled, and sold by him, escutcheon plates bearing the name "Edison Stores". Respondent has no authority or license from Thomas A. Edison, Inc., to use the name "Edison" on the radio sets manufactured, assembled and sold by him, and his said use of that name has the capacity and tendency to, and does, mislead and deceive the trade and purchasing public into the erroneous belief that the radio sets manufactured or assembled, and sold by respondent are radio sets which have been manufactured by Thomas A. Edison, Inc., and to cause the trade and purchasing public to buy said radio sets in that belief.

PAR. 6. For many years last past the Victor Talking Machine Company, Camden, N. J., has been manufacturing and selling phonographs and phonograph records, which phonographs have acquired a wide and favorable reputation and have been in great demand by the trade and purchasing public. During all this period the phonographs, phonograph records, and other articles manufactured and sold by said company have featured the name "Victor" as part of their trade name, which said name has been attached in a prominent place to said machines. In 1929 the Radio Corporation of America obtained control of said Victor Talking Machine Company, and organized a company under the corporate name of "R. C. A.-Victor Company", which company is engaged in the manufacture and sale of radio sets and combination radio and phonograph sets, among other articles. All of said sets bear the name "Victor" either alone or in combination with other letters or words, in a prominent place on said sets. Said radio sets and combination radio and phonograph

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sets are sold to the purchasing public by retail dealers throughout the United States. During the past twenty-five years the Victor Talking Machine Company have spent approximately \$70,000,000 in advertising, and the word "Victor" has always prominently appeared in said advertising. At the present time, R. C. A.-Victor Company is advertising its radio sets in a number of magazines having a large national circulation, and in other publications and newspapers.

PAR. 7. Respondent, Eli Dane, in the course and conduct of his said business conducted in the name of York Radio Company, has purchased escutcheon plates bearing various names which he has attached in a prominent place to radio sets manufactured or assembled, and sold by him. Among the escutcheon plates which respondent has purchased and attached to said radio sets are plates bearing the name "Victor International". Respondent has no authority or license from R. C. A.-Victor Company to use the name "Victor" on the radio sets manufactured, assembled and sold by him, and the use of said name "Victor" by respondent on said radio sets manufactured or assembled, and sold by him has the capacity and tendency to, and does mislead and deceive the trade and purchasing public into the erroneous belief that the radio sets manufactured or assembled, and sold by respondent are radio sets which have been manufactured by the R. C. A.-Victor Company, and to cause the trade and the purchasing public to buy said radio sets in that belief.

PAR. 8. The use by respondent, Eli Dane, on radio sets manufactured, assembled and sold by him of the names "Edison" and "Victor", in the manner set forth, hereinabove, is false, deceptive and misleading to the trade and purchasing public, and tends to, and does divert trade to respondent from his said competitors who do not use such false, deceptive and misleading names for radio sets manufactured, assembled and sold by them.

PAR. 9. The above alleged acts and things done by respondents are each and all of them to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

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the Federal Trade Commission on the 18th day of December 1934 issued its complaint against Eli Dane, doing business under the name and style of York Radio Company, respondent herein, and caused the same to be served upon him as required by law, in which complaint it is charged that respondent has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

On January 9, 1935, said respondent filed herein an answer in writing to said complaint. Subsequently, said respondent filed herein a petition to withdraw its said answer and asking that a new answer, therewith submitted, be filed in lieu thereof, which said petition was granted by the Commission and said new answer was accordingly filed. By said new answer respondent elected to refrain from contesting this proceeding and consented to the issuance of an order to cease and desist from the practices set forth in the complaint herein.

Therefore, this proceeding came on regularly for disposition and decision by the Commission under Subdivision (2) of Rule III of the Rules of Practice and Procedure adopted by the Commission, and the Commission being fully advised in the premises:

It is ordered, That the respondent, Eli Dane, his agents, representatives, employees, or successors in connection with the manufacture, sale, offering for sale, and distribution in interstate commerce between and among the several States of the United States and the District of Columbia or any territory of the United States, of radio sets, cease and desist:

1. From directly or indirectly applying, attaching to or using or causing to be applied, attached to or used on any radio set manufactured, assembled and sold by or for respondent, escutcheon plates, brands, marks or other means of identification in any manner whatsoever bearing the names "Edison" or "Victor", whether said names "Edison" or "Victor" are used alone or with prefixes or suffixes or together with other names or markings.

2. From marking or branding or directly or indirectly making or using any representations, statements or assertions in advertisements, trade promotional literature, on wrappers, cartons or containers, or signs, or in any sales talks, radio broadcasts, or in any other manner whatsoever with the name "Edison" or "Victor", whether said names "Edison" or "Victor" are used alone or with prefixes or suffixes or together with other names or markings, or to the effect that the said radio sets manufactured, assembled and sold by respondents in interstate commerce are the products of "Edison" or

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"Victor" or are products manufactured, assembled and sold, or sponsored, endorsed, and approved, or licensed, authorized, or consented to, by:

(a) 1. Thomas A. Edison; 2. Thomas A. Edison, Inc.; 3. Companies which Thomas A. Edison organized and controlled; or 4. Any person, corporation, or partnership licensed, authorized or empowered by Thomas A. Edison or Thomas A. Edison, Inc., so to do.

(b) 1. Victor Talking Machine Company, Camden, N. J.; 2. R. C. A.-Victor Company; or 3. Any person, corporation, or partnership licensed, authorized, or empowered by them or either of them so to do.

It is further ordered, That said respondent shall, within 60 days after the service upon him of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinabove set forth.

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IN THE MATTER OF
MALLORY CLOTHES, INC.

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

Docket 2197. Complaint, June 13, 1934—Decision, Feb. 13, 1935

Where a corporation engaged in the sale of men's clothing direct to wearer, through salesmen or solicitors compensated by receipt as their commission of the customer's down payment with his order—

- (a) Represented in advertising for such salesmen in trade journals and other papers and publications that it was in the business of making clothing to measure and stated in letters to prospective salesmen, that it had "been making shipments of clothing and selling it direct to the wearer for many years", facts being that the great bulk of its business consisted in selling ready-made clothes which it kept in stock and used in filling customers' orders, and only a very small percentage of its clothing was made to measure; with tendency and capacity to mislead many persons engaged in the business of taking orders for clothing, and with intent and effect of so doing, and enticing persons to enter its employ and sell its clothing, and represent in reliance upon said statements and inducements that all of the clothing sold by them for it was tailor made by it for the individual purchaser and to his measurement;
- (b) Set forth upon cards supplied its said agents or salesmen and bearing the name of the particular agent that it had "representatives in all principal cities", and factories in Brooklyn, Newark, and New York, facts being that it had no such representatives other than the casual or itinerant salesmen or agents working on a commission basis, or such factories, and its aforesaid ready-made clothing was made in factories neither owned nor controlled by it, and the small percentage of its clothing actually made to measure, was made by certain tailors engaged by it from time to time for such purpose; with intent of creating in the minds of prospective purchasers the belief that its business was of such proportions that it maintained representatives and places of business in all of the principal cities of the United States, and that it owned and maintained factories in which it manufactured the cloth and material out of which its clothing was made, as added inducements to prospective purchasers and the public;

With effect of diverting trade from competitors to it through such false and misleading advertising and agents' statements, and with tendency so to do: *Held*, That such acts and things were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition.

Mr. John W. Hilldrop for the Commission.

Mr. Ralph Nathan, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged

respondent, a New York corporation engaged in the sale of men's clothing direct to wearer through solicitors or agents, and with office and principal place of business in New York City, with advertising falsely or misleadingly as to business status, in violation of the provisions of Section 5 of such Act, prohibiting the use of unfair methods of competition in interstate commerce; in that respondent, engaged as aforesaid, in advertising for such agents or solicitors, and in letters sent prospective agents, falsely represents that its business is making clothing to measure, and that it has been making men's clothing and selling it direct for many years, and represents through advertising cards supplied its agents, with the agent's name thereon, that it has factories in several large cities and agents in all the principal cities, facts being it buys most of its clothing ready made, and has no such factories, or representatives;¹ with intent of persuading agents to enter its employ and effect of causing them, in reliance upon such representations, to sell its said clothing as made to measure, and with intent and effect of inducing purchase of said garments in such belief, and as made by a concern of such proportions that it has representatives in principal cities, and by a concern which owns and maintains factories making the cloth and material out of which its clothing is made; to the injury and prejudice of the public and competitors from whom trade is thereby diverted.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served a complaint upon the respondent, Mallory Clothes, Inc., a corporation, charging the said respondent with the use of unfair methods of competition in interstate commerce, in violation of the provisions of the said act. Respondent filed its answer to the said complaint and hearings were had before an examiner of the Commission, theretofore duly appointed, and testimony was heard and evidence received in support of the charges stated in the complaint, as well as testimony for the respondent. Thereupon this proceeding came on for final hearing on the briefs of the Commission and of respondent and oral argument

¹ A more comprehensive idea of the allegations of the complaint may be had from the findings, which follow them closely.

of counsel for the Commission, respondent having been duly notified and no attorney appearing for respondent to present oral argument. The Commission, having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. That said respondent, Mallory Clothes, Inc., is a corporation chartered under the laws of the State of New York, and has its office and principal place of business in the City of New York, State of New York.

PAR. 2. That the capital stock of said corporation is \$1,000, the majority of which is owned by one Louis Goldstein. In fact all of the capital stock is owned by said Louis Goldstein except the number of shares necessary, under the laws of the State of New York, to qualify the necessary directors. Said Louis Goldstein is president of the respondent corporation and his wife is secretary thereof. It does not appear that said corporation has, or ever had, a vice president or treasurer. The said Louis Goldstein and wife have the sole and exclusive charge of the management of the affairs of respondent corporation, and are in full and complete charge of its principal office and the conduct of its business.

PAR. 3. That said respondent is now, and has been at all times since its incorporation, engaged in the business of selling suits of clothing for men in interstate commerce, shipping its said clothing from its place of business in New York City to various other States of the United States, and is in competition with other firms, individuals, and corporations doing an interstate business similar to the business of respondent.

PAR. 4. That the manner in which respondent conducts its said business and sells its said clothes, is, in substance, as follows:

It advertises for salesmen in the different trade journals and other papers and publications, to sell its clothing by personal solicitation and to the wearer. The method by which respondent compensates its salesmen is as follows:

When the purchaser of a suit of clothes from respondent's salesmen gives an order therefor, he makes a deposit or down payment to the salesman taking the order, the size of such deposit or down payment varying according to the price of the suit ordered. This deposit or down payment constitutes and is the commission of the salesman taking the order. For the remainder of the purchase price of such suit of clothes, the purchaser signs a form of written order

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promulgated by respondent and by it furnished its salesmen, wherein the purchaser agrees that the suit of clothes may be sent him C. O. D. for the balance of the purchase price due and unpaid. Almost all of these C. O. D. shipments are sent through the United States mails.

PAR. 5. That the respondent corporation advertises in trade journals and other publications for salesmen to sell its clothing and, as an inducement to prospective salesmen to enter the employ of respondent and sell its clothing, it represents to them that it is in the business of making clothing to measure, and in its letters to prospective salesmen who have answered its advertisements and which letters are sent through the United States mail, respondent writes as follows:

We have been making men's clothing and selling it direct to the wearer for many years.

As a matter of fact none of the clothing sold by respondent is "made" by it, and a very small percentage of the clothing sold by respondent is made to the measure of its customers, but the great bulk of its business consists in selling ready-made clothes which it keeps in stock and which it uses in filling the orders of customers sent in by salesmen and agents.

Respondent has never since its incorporation, except for a short time in 1934, made any clothes of any kind or description but, to the contrary, as before stated, the great bulk of its orders are filled out of a ready-made stock, which respondent keeps at its place of business but does not manufacture, for the purpose of filling orders sent in as aforesaid by its agents and salesmen. These misrepresentations and false statements in advertisements for salesmen have a tendency and capacity to, and do, mislead many persons who engage in the business of taking orders for clothing by leading them to believe that the clothes sold by respondent are tailor-made and that same are manufactured or tailor-made by respondent, which statements are not true and were known to respondent and its officers not to be true and were made for the purpose of persuading and enticing persons to enter its employ and sell its clothing. The salesmen, thus misled by respondent and having a right to rely upon the statements and inducements in writing held out to them by respondent and, relying thereon, represent to the buying public that all of the clothing they sell for respondent are tailor-made clothes made by respondent especially for the individual purchaser and to his measurement.

PAR. 6. Respondent supplies its agents or salesmen with advertising cards bearing the name of such agent or salesman and to be

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by such agent or salesman distributed among prospective customers and the public generally for the purpose of advertising the business of respondent. Said cards contain the following false and misleading statements:

SUITS—TOPCOATS—OVERCOATS

REPRESENTATIVES IN ALL PRINCIPAL CITIES

<p>MALLORY CLOTHES, INC. BUILT TO A STANDARD 15 West 17th Street, New York</p>
--

Factory Salesman

Factories:

Brooklyn, Newark, New York

The statements contained in the foregoing advertisements of respondent are false, misleading and unfair, and were known by the respondent corporation and its officers to be false, misleading and unfair, in the following particulars, to wit:

(a) The respondent has no representatives in "all principal cities" or in any city except its place of business in the City of New York, other than casual or itinerant salesmen or agents working on a commission basis. The purpose of this false and misleading advertising is to create in the minds of a prospective purchaser that respondent's business is of such proportions that it maintains representatives and places of business in all the principal cities of the United States, and therefore it is an added inducement used in persuading prospective customers to sign orders for clothing from respondent.

(b) The respondent has no factory in Brooklyn, Newark, New York, or elsewhere, but, to the contrary, has its ready-made clothing which it keeps in stock in its place of business in New York and from which it, as aforesaid, fills most of the orders sent in to it for tailor-made clothing, manufactured in other factories which respondent neither owns nor over which it has any control, and the small percentage of its clothing sent to customers actually made to measure is not made by respondent but by certain tailors in the City of New York who are from time to time engaged by respondent to make suits of clothing for it.

The purpose of these false and misleading statements is to create in the minds of the public the impression that respondent owns and maintains factories in which it manufactures the cloth and material

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out of which its clothing is made, and as an inducement held out to prospective purchasers, and the public to sign orders for and buy the clothing of respondent.

PAR. 7. The actions of respondent as hereinbefore set out, are to the prejudice of its competitors in business, for the reason that said false and misleading advertising and the statements made by the agents and salesmen of respondent to the buying public, have a tendency to and do divert trade from such competitors to respondent.

CONCLUSION

The above acts and things done by respondent are all to the injury and prejudice of the public and competitors of respondent and constitute unfair methods of competition in interstate commerce, within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Commission, upon the complaint of the Commission, the answer of the respondent, the briefs both for the Commission and respondent, and the oral argument of counsel for the Commission, no counsel appearing to make oral argument for the respondent, although due notice was given that this proceeding was set for argument before the Commission on January 9, 1935, and the Commission having made its findings as to the facts and conclusion that the respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes"—

It is now ordered, That the respondent, Mallory Clothes, Inc., a corporation, its agents, representatives, and employees, in connection with the sale or offering for sale in interstate commerce of suits of clothing, or trousers, coats, or vests, either as suits or singly and alone, do cease and desist:

(1) From using the words "factory", "factories", "manufacture", "manufacturing", and "factory salesmen", until such time as respondent is the owner or the operator of a factory or factories making the clothes it sells, offers to sell, or distributes in interstate commerce.

(2) From advertising and representing in any manner, either by labels, cards supplied to its salesmen and agents, circular letters, in magazines, newspapers, journals and other publications having an

interstate circulation, or otherwise representing directly or indirectly that the clothing it sells or offers for sale in interstate commerce is made to the order and measure of the purchaser, when in fact the clothing sold by respondent is what is known as "ready made", or made for stock in standard sizes to be later offered for sale and sold, and is not clothing made to fill an order previously obtained from the purchaser, in accordance with the measurements of the purchaser taken before the clothing ordered is manufactured.

(3) From the use of the words "tailor", "tailored", or "tailoring" in connection with its order blanks containing measurements for different portions of the human body and blanks to be filled out when the orders for clothing are taken from the customer by the agents and representatives of respondent, unless it plainly appears on said order blank that the customer is buying a suit to be taken from stock and not to be cut and made to his individual measurements, unless in truth and in fact the respondent shall make the customer clothing cut and fitted to the individual measurements of such customer taken before the clothing is manufactured.

(4) From representing or advertising, in any manner, that it has and maintains "representatives in all principal cities", when in truth and in fact it has not such representatives but only itinerant and transient agents or salesmen soliciting for respondent orders for clothing.

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

Syllabus

IN THE MATTER OF

NATIONAL ASSOCIATION OF LADIES' HANDBAG MANUFACTURERS, ITS OFFICERS, EXECUTIVE COMMITTEE, AND MEMBERS

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

Docket 2226. Complaint, Aug. 23, 1934—Order, Feb. 20, 1935

Consent order requiring members of respondent association, their respective officers, agents, servants and employees, forthwith to cease and desist from—

- (a) Carrying out a certain agreement, combination, understanding and conspiracy by and through respondent association, its officers, agents and executive committee, by which they fixed and maintained, (1) uniform prices to be exacted by them from purchasers in interstate commerce of their ladies imitation leather handbags, and (2) uniform prices to be exacted by retailers of handbags purchased by said retailers in interstate commerce from them, or from any other person or concern, and resold to the purchasing public; or
- (b) Entering into and carrying out any other agreement, combination, understanding and conspiracy among themselves or with any other manufacturer of retail handbags to (1) fix or maintain uniform prices for said articles sold by them or any other person or concern in interstate commerce, or (2) fix or maintain uniform prices to be exacted by retailers of such articles purchased by said retailers in interstate commerce from them or from any other person or concern, and resold by such retailers to the purchasing public; and

Ordered further, That respondent association and respondent officers, agents and executive committee, and each of them, forthwith cease and desist from assisting respondent members in entering into and carrying out aforesaid agreements, combinations, understandings and conspiracies and from being the means or instrumentality by and through which such, or any similar agreements, combinations, understandings, and conspiracies are entered into.

Mr. Edward L. Smith for the Commission.

Schlesinger & Krinsky, of New York City, for National Association of Ladies' Handbag Manufacturers and various officers and members thereof.

Mr. Archibald Palmer, of New York City, for Morris White Manufacturing Co., Inc., and Style Craft Leather Goods Co.

Mr. Charles W. Newmark, of New York City, for Paragon Bag Co., Inc.

Mr. Maxwell E. Verlin, of Philadelphia, Pa., for Ingber Co.

Mr. Bernard I. Levine, of Boston, Mass., and *Mr. Julian A. Berghoffen*, of New York City, for Geffen-Weene Bag Co.

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Mr. David Mancovitz, of Boston, Mass., for Elite Leather Goods Co.

Mr. Ralph J. Gutman, of New York City, for Uneeda Leather Goods Supply Mfg. Co., Inc.

Mr. Gabriel Kirzenbaum, of New Brunswick, N. J., for Petite Handbag Co.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", having reason to believe that National Association of Ladies' Handbag Manufacturers, its officers as follows: Abraham C. Fisher, director and general manager; Ira Rosenzweig, president; Morris Aarenau, vice president; Henry Meyers, treasurer; Ethel Nagel, secretary; its executive committee as follows: Jack Margolin, Jerry Goldberg, David A. Ingerber, Aaron Landis, Murray Resnick, George Meyers, Joseph Rudolph, Hyman Burstein, Samuel R. Goldsmith, Jimmy Goldberg, Jos. Malino; and its members as follows: Aarenau & Wolf, Inc., H. Margolin & Co., Morris White Manufacturing Co., Inc., Style Craft Leather Goods Co., Beacon Leather Goods, Inc., Paragon Bag Co., Inc., Nu Mode Bag Co., Ingber Co., M. J. Fox, trading as M. J. Fox & Co., International Leather Goods Co., Gitlin Bros. & Rush Co., Geffen-Weene Bag Co., Elite Leather Goods Co., Crescent Leather Goods Co., Max Brill & Sons, Inc., Sol Mutterperl, Inc., Hudson Leather Goods Co., Inc., The Meeker Company, Uneeda Leather Goods Supply Mfg. Co., Inc.,¹ Licht & Kaplan, The Phoenix Leather Goods Co., Inc., Royal Leather Goods, Christo J. Scumniotalen, trading as Phoenix Novelty Co., Petite Handbag Co., Hamilton Leather Goods Co., Goldberg Bros. Handbag Co., Katz Leather Goods Co., R. & K. Leather Goods Co., Paragon Novelty Bag Co., George Meyers, Samuel Meyers and Henry Meyers, trading as Meyers Manufacturing Co., Resnick Bros. Ladies' Handbags, Springfield Ladies' Handbag Company, Harlic Bag Co., Strand Leather Goods Co., Inc., Classy Leather

¹ The Commission on October 5, 1934, dismissed the complaint as to this respondent by the following order:

Uneeda Leather Goods Supply Manufacturing Company, Inc., one of the respondents herein, having represented to this Commission that it was improperly named as one of the respondents herein, and having, for the reason aforesaid, moved this Commission that this proceeding is discontinued as to said Uneeda Leather Goods Supply Manufacturing Company, Inc., and the Commission having duly considered the same and being fully advised in the premises:

Now, therefore, it is hereby ordered, That the said motion be, and the same is hereby, granted, and that the complaint in this proceeding to said Uneeda Leather Goods Supply Manufacturing Company, Inc., be, and the same is hereby, dismissed.

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Goods, Corp., Charles Burstein & Bros., Inc., Landis Leather Goods, Inc., Joseph Forst, trading as Forst Co., Goldsmith Bros. Manufacturing Co., trading as Lucky Styles Co., Goldberg & Seltzer, Inc., Ryan Cushing Co., Mrs. Ruel Pierce, trading as Dyer Manufacturing Co., Julius Herz and Jack M. Kory, partners, trading as Herz & Kory and Capital Leather Goods Co., respondents herein, have been and are using unfair methods of competition in commerce as "commerce" is defined in said act and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, National Association of Ladies' Handbag Manufacturers, is a voluntary unincorporated trade association, organized in or about September 1933. It is hereinafter designated as respondent association. Its officers are, and continuously since its organization have been, the following, who are hereinafter referred to as respondent officers: Abraham C. Fisher, director and general manager; Ira Rosenzweig, president; Morris Aarenau, vice president; Henry Meyers, treasurer; Ethel Nagel, secretary. The executive committee of said respondent association continuously since its organization, has been the following respondents, who will be hereinafter referred to as respondent executive committee: Jack Margolin, Jerry Goldberg, David A. Ingerber, Aaron Landis, Murray Resnick, George Meyers, Joseph Rudolph, Hyman Burstein, Samuel R. Goldsmith, Jimmy Goldberg, and Jos. Malino.

The members of said respondent association are now, and since its organization have been, the following, who are hereinafter referred to as respondent members: Aarenau & Wolf, Inc., H. Margolin & Co.; Morris White Manufacturing Co., Inc.; Style Craft Leather Goods Co.; Beacon Leather Goods, Inc.; Paragon Bag Co., Inc.; Nu Mode Bag Co.; Ingber Co.; M. J. Fox, trading as M. J. Fox & Co.; International Leather Goods Co.; Gitlin Bros. & Rush Co.; Geffen-Weene Bag Co.; Elite Leather Goods Co.; Crescent Leather Goods Co.; Max Brill & Sons, Inc.; Sol Mutterperl, Inc.; Hudson Leather Goods Co., Inc.; The Meeker Company, Uneeda Leather Goods Supply Mfg. Co., Inc.; Licht & Kaplan; The Phoenix Leather Goods Co., Inc.; Royal Leather Goods; Christo J. Scumniotalen, trading as Phoenix Novelty Co.; Petite Handbag Co.; Hamilton Leather Goods Co.; Goldberg Bros. Handbag Co.; Katz Leather Goods Co.; R. & K. Leather Goods Co.; Paragon Novelty Bag Co.; George Meyers, Samuel Meyers and Henry Meyers, trading as Meyers Manufacturing Co.; Resnick Bros. Ladies' Handbags; Springfield Ladies' Handbag Com-

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pany; Harlic Bag Co.; Strand Leather Goods Co., Inc.; Classy Leather Goods, Corp., Charles Burstein & Bros., Inc.; Landis Leather Goods, Inc.; Joseph Forst, trading as Forst Co.; Goldsmith Bros. Manufacturing Co., trading as Lucky Styles Co.; Goldberg & Seltzer, Inc.; Ryan Cushing Co.; Mrs. Ruel Pierce, trading as Dyer Manufacturing Co.; Julius Herz and Jack M. Kory, partners, trading as Herz & Kory; Capital Leather Goods Co.

PAR. 2. Of the said respondent members, the following are corporations respectively organized, existing, and doing business under and by virtue of the laws of the following named States with their respective principal office and place of business in the following designated cities:

Name of corporation	State of incorporation	Location of principal office
Aarenau & Wolf, Inc.	New York	New York, N. Y.
H. Margolin & Co.	New York	Fitchburg, Mass.
Morris White Mfg. Corp., Inc.	New York	New York, N. Y.
Style Craft Leather Goods Co. (subsidiary of Morris White Mfg. Co., Inc.)	Connecticut	Bridgeport, Conn.
Beacon Leather Goods, Inc.	New York	Bridgeport, Conn.
Paragon Bag Co., Inc.	Pennsylvania	Schwenksville, Pa.
Nu Moda Bag Co.	Connecticut	South Norwalk, Conn.
Ingber Co.	Pennsylvania	Philadelphia, Pa.
M. J. Fox, trading as M. J. Fox & Co.	Baltimore, Md.	Baltimore, Md.
International Leather Goods Co.	Pennsylvania	Philadelphia, Pa.
Gitlin Bros. & Rush.	Pennsylvania	Philadelphia, Pa.
Geffen-Weena Bag Co.	Massachusetts	Boston, Mass.
Elite Leather Goods Co.	Massachusetts	Boston, Mass.
Crescent Leather Goods Co.	Rhode Island	Providence, R. I.
Max Brill & Sons, Inc.	New York	Pittsfield, Mass.
Sol Mutterperl, Inc.	New York	New Bedford, Mass.
Hudson Leather Goods Co., Inc.	New York	New York, N. Y.
The Meeker Co.	Missouri	Joplin, Mo.
Unesda Leather Goods Supply Mfg. Co., Inc.	New York	New York, N. Y.
Licht & Kaplan	New York	Newburgh, N. Y.
The Phoenix Leather Goods Co., Inc.	New York	New York, N. Y.
Royal Leather Goods	New York	Nowark, N. J.
Christo J. Scumniotalen, trading as Phoenix Novelty Co.		Haverhill, Mass.
Petite Handbag Co.	New Jersey	New Brunswick, N. J.
Hamilton Leather Goods Co.	Pennsylvania	Boyertown, Pa.
Goldberg Bros. Handbag Co.	New York	New York, N. Y.
Katz Leather Goods Co.	New York	Nyack, N. Y.
R. & K. Leather Goods Co.	New York	New York, N. Y.
Paragon Novelty Bag Co.	New York	New York, N. Y.
Resnick Bros. Ladies' Handbags	New York	New York, N. Y.
Harlic Bag Co.	Connecticut	New York, N. Y.
Strand Leather Goods Co., Inc.	New York	New York, N. Y.
Classy Leather Goods Corp.	New York	New York, N. Y.
Charles Burstein & Bros., Inc.	New York	New York, N. Y.
Landis Leather Goods, Inc.	New York	Perth Amboy, N. J.
Goldsmith Bros. Manufacturing Co., trading as Lucky Styles Co.	New York	New York, N. Y.
Goldberg & Seltzer, Inc.	New York	Poughkeepsie, N. Y.
Ryan Cushing Co.	Massachusetts	Boston, Mass.
Capital Leather Goods Co.	New York	New York, N. Y.

PAR. 3. Respondent, Christo J. Scumniotalen, is an individual doing business at Haverhill, Mass., under the trade name Phoenix Novelty Co. Respondents George Meyers, Henry Meyers and Samuel Meyers are copartners trading in New York City, State of New York, as Meyers Manufacturing Co. Respondent M. J. Fox is an

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individual doing business in Baltimore, in the State of Maryland, as M. J. Fox & Co. Respondent Mrs. Ruel Pierce, is an individual engaged in business at Lewiston, Me., under the trade name Dyer Manufacturing Co. Respondents Julius Herz and Jack M. Kory are copartners trading in New York City, State of New York, as Herz & Kory.

PAR. 4. The aforesaid respondent members named in paragraphs 1, 2, and 3 hereof are now and for more than two years last past have been engaged in the business of manufacturing at their respective places of business ladies' imitation leather handbags generally designated as "one dollar handbags" and in the sale thereof throughout the various States of the United States and in the District of Columbia; in the course and conduct of their businesses, all the said respondent members for more than two years last past have caused and still cause such handbags when sold by them, to be transported in interstate commerce from their respective places of business to, into and through various States of the United States other than the States in which they respectively have their factories and places of business, to the purchasers thereof in such other States to whom such handbags are and have been sold and there is now and has been for more than two years last past a constant current of trade and commerce in such handbags by the said respondent members. Substantially all of such purchasers are retailers, who resell such handbags to the purchasing public. The amount of imitation leather handbags known, as hereinbefore stated as "one dollar handbags" manufactured by the said respondent members now constitutes and for more than two years last past has constituted at least 90 percent of all of that class of handbags sold in the United States.

PAR. 5. In May 1934 or thereabouts, the said respondent members named in paragraphs 1, 2, and 3 hereof for the purpose of eliminating price competition among themselves, entered into, have since carried out, and are still carrying out an agreement, combination, understanding, and conspiracy among themselves entered into through and by means of said respondent, National Association of Ladies' Handbag Manufacturers, its aforesaid officers and its aforesaid executive committee to fix and maintain, and by which they have fixed and maintained and still fix and maintain uniform prices to be exacted by them from their purchasers of imitation leather handbags known as "one dollar handbags" and to fix and maintain, and by which they have fixed and maintained and still fix and maintain uniform prices to be exacted by their customers in the resale by such customers of such imitation handbags purchased by

such customers from the said respondent members. Pursuant to and for the purpose of carrying out the said agreement, combination, understanding, and conspiracy entered into by the said respondent members among themselves and through the aforesaid National Association of Ladies' Handbag Manufacturers, its aforesaid officers and aforesaid executive committee, the said respondent members among other things have done the following:

(a) By agreement among themselves have fixed and maintained and still fix and maintain uniform prices for imitation leather handbags sold by them and by each of them;

(b) By agreement among themselves have fixed and maintained and still fix and maintain uniform prices to be exacted by retailers of such handbags purchased by them from the said respondent members and resold by such retailers to the purchasing public.

PAR. 6. The aforesaid alleged acts and practices of all the said respondents are all to the prejudice of the public; have a dangerous tendency to and have actually hindered and prevented price competition in the sale between and among the various States of the United States and in the District of Columbia of imitation leather handbags known as "one dollar handbags" and price competition in the resale thereof in the United States of substantially all of the imitation leather ("one dollar") handbags made in the United States and sold therein; have increased the prices paid by retailers of "one dollar handbags" and the prices paid by the purchasing public for the same; have unreasonably restrained interstate commerce in imitation leather ("one dollar") handbags and constitute unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

Respondents herein, National Association of Ladies' Handbag Manufacturers (hereinafter referred to as respondent Association) its officers and agents (hereinafter referred to as respondent officers and agents) as follows:

Abraham C. Fisher, director and general manager; Ira Rosenzweig, president; Morris Aarenau, vice president; Henry Meyers, treasurer; and Ethel Nagel, secretary.

The following members of the executive committee of respondent association (hereinafter referred to as respondent executive committee):

Jack Margolin, Jerry Goldberg, Aaron Landis, George Meyers, Joseph Rudolph, Hyman Burstein, Samuel R. Goldsmith, Jimmy Goldberg and Joseph Malino; and its following members (hereinafter referred to as respondent members):

Aarenau & Wolf, Inc., H. Margolin & Co., Beacon Leather Goods, Inc., Nu Mode Bag Co., Crescent Leather Goods Co., Max Brill & Sons, Inc., Royal Leather Goods, Goldberg Bros Handbag Co., R. & K. Leather Goods Co., Paragon Novelty Bag Co., George Meyers, Samuel Meyers and Henry Meyers, trading as Meyers Manufacturing Co., Harlic Bag Co., Strand Leather Goods Co., Inc., Classy Leather Goods Corp., Charles Burstein & Bro. Inc., Landis Leather Goods Inc., Goldsmith Bros. Manufacturing Co., trading as Lucky Styles Co., Goldberg & Seltzer Inc., Julius Herz and Jack M. Kory, partners trading as Herz & Kory, and Capitol Leather Goods Co., having filed their answer to the complaint in this proceeding and having subsequently filed with this Commission their motion, that they be permitted to withdraw their said answer and that they be permitted to file in lieu thereof, as a substituted answer, the draft of proposed substituted answer annexed to the said motion; and the Commission having duly considered the said motion,

It is hereby ordered, That the said motion be and the same is hereby granted; that the said answer be and the same is hereby withdrawn; and that the said proposed substituted answer be, and the same is hereby filed in lieu of the said answer so withdrawn.

And the said respondents, in and by their said substituted answer, have waived hearing on the charges set forth in the complaint in this proceeding, and having stated in their said substituted answer that they do not contest the proceeding, and having consented in the said substituted answer that the Commission, without trial, without evidence, and without findings as to the facts or other intervening proceedings, might make, enter, issue, and serve upon the said respondents, an order to cease and desist from the methods of competition charged in the complaint; and the Commission, being fully advised in the premises—

It is hereby further ordered, That respondent members, their respective officers, agents, servants and employees forthwith cease and desist:

1. From carrying out an agreement, combination, understanding, and conspiracy entered into among themselves in May 1934 or thereabouts, by and through respondent association, respondent officers and agents and respondent executive committee, to fix and maintain, and by which they have fixed and maintained uniform

prices to be exacted by them from purchasers from them in interstate commerce of imitation ladies handbags. .

2. From carrying out an agreement, combination, understanding, and conspiracy among themselves, entered into in May 1934 or thereabouts by and through said respondent association, respondent officers and agents, and respondent executive committee, to fix and maintain uniform prices to be exacted by retailers of handbags purchased by such retailers in interstate commerce from the said respondents, or from any of them or from any other person, firm, partnership or corporation and resold by such retailers to the purchasing public.

3. From entering into and/or carrying out any other agreement, combination, understanding, and conspiracy among themselves or by any of them with any other of them; or with any other manufacturer of ladies handbags to fix and/or maintain uniform prices for imitation leather handbags sold by them or by any of them, or by any other person, firm, partnership or corporation in interstate commerce.

4. From entering into and/or carrying out any other agreement, combination, understanding, and conspiracy among themselves or by any of them with any other of them, or with any other person, firm, partnership, or corporation to fix and/or maintain uniform prices to be exacted by retailers of imitation leather handbags purchased by such retailers in interstate commerce from the said respondents, or from any of them, or from any other person, firm, partnership, and/or corporation, and resold by such retailers to the purchasing public.

And it is hereby further ordered, That respondent association, respondent officers and agents and respondent executive committee and each of them, forthwith cease and desist from assisting the aforesaid respondent members in entering into and carrying out the agreements, combinations, understandings, and conspiracies from which said respondent members are hereby ordered to cease and desist, and from being the means or instrumentality by and through which such, or any similar agreements, combinations, understandings and conspiracies are entered into.

And it is hereby further ordered, That the said respondent association, the said respondent officers and agents, the said respondent executive committee, and the said respondent members, shall within 30 days from the date of service upon it of this order, file with this Commission a report in writing setting forth the manner in which they shall have complied with this order.

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ORDER DISMISSING COMPLAINT AS TO CERTAIN RESPONDENTS

This matter coming on to be heard on the complaint of the Commission, the answer of the respondents hereinafter named; and this Commission having this day entered and served its order to cease and desist upon all the other respondents in this proceeding, compliance with which said order to cease and desist will in the opinion of this Commission terminate and dissolve the conspiracies, combinations, agreements, and understandings described in the complaint in this proceeding, and will prevent any such conspiracy, understanding, agreement or understanding in the future; and the Commission being fully advised in the premises—

Now, therefore, it is hereby ordered, That the complaint in this proceeding be, and the same is hereby, dismissed as to the following named respondents:

- | | |
|--|--|
| David A. Ingerber, | Unecda Leather Goods Supply Mfg. Co., |
| Murray Resnick, | Inc., |
| Morris White Manufacturing Co., Inc., | Licht & Kaplan, |
| Style Craft Leather Goods Co., | The Phoenix Leather Goods Co., Inc., |
| Paragon Bag Co., Inc., | Christo J. Scumnotalen, trading as |
| Ingber Co., | Phoenix Novelty Co., |
| M. J. Fox, trading as M. J. Fox & Co., | Petite Handbag Co., |
| International Leather Goods Co., | Hamilton Leather Goods Co., |
| Gitlin Bros. & Rush Co., | Katz Leather Goods Co., |
| Geffen-Weene Bag Co., | Resnick Bros. Ladies' Handbag, |
| Elite Leather Goods Co., | Springfield Ladies' Handbag Company, |
| Sol Mutterperl, Inc., | Joseph Forst, trading as Forst Co., |
| Hudson Leather Goods Co., Inc., | Ryan Cushing Co., |
| The Meeker Company, | Mrs. Ruel Pierce, trading as Dyer Man- |
| | ufacturing Co. |

Complaint

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IN THE MATTER OF

THE BRIARWOOD CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2255. Complaint, Dec. 4, 1934—Decision, Feb. 20, 1935*

Where a corporation engaged under a name including the word "Briarwood" in the manufacture and sale of pipes made of ground briar root and binder, molded under pressure into various shapes, and sold under the name "Berbriar", and other designations—

Employed such words and phrases in its advertisements, letterheads, billheads and other trade literature circulated among customers and prospective customers, in referring to and describing said pipes and soliciting the sale thereof, as "made from genuine imported Briar Root, Briar Kob", "molded from genuine imported briar root by an entirely new process", and ascribed said pipe's smoking quality to "molding the genuine imported briar root in such a way as to keep the pores open";

With capacity and tendency through said incorrect, exaggerated, and misleading statements to deceive and mislead purchasers and prospective purchasers of said article into the belief that they were made from natural grown briar root, carved or fashioned from the solid block:

Held, That such practices, under the conditions and circumstances set forth, were to the prejudice of the public and competitors, and constituted unfair methods of competition.

Mr. Astor Hogg for the Commission.

Mr. William H. Rosenfeld, of Cleveland, Ohio, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that The Briarwood Corporation has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said 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, the Briarwood Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its factory and principal place of business in Cleveland, in the State of Ohio. It is now and has been for more than one year past engaged in the manufacture of smoking pipes and in the sale and distribution of such smoking

pipes in commerce between and among the several States of the United States of America, causing said pipes when sold, to be shipped and transported from its said factory and place of business in Cleveland, Ohio, to dealers, distributors, and purchasers thereof in the several States of the United States, and during said period of time and now, the said respondent has been and is in competition with divers other firms, corporations, associations, and individuals engaged in a similar and like business and who are likewise engaged in interstate commerce.

PAR. 2. In the course and conduct of its said business the respondent, the Briarwood Corporation, adopted as and for a corporate and trade name under which to carry on its said business, the words "The Briarwood Corporation", and further, in soliciting the sale of and in selling said pipes in interstate commerce, caused such pipes to be designated, described and represented in its advertisements, letterheads, billheads, and other printed literature widely circulated among customers and prospective customers, by the use of the following words and phrases "*made from genuine imported briar root, briar kobs*", "*this pipe . . . is molded from genuine imported briar root*", "*imported briar*" and "*berbriar*"; when in truth and in fact said pipes were not made from the natural grown briar root, but were fabricated by said respondent corporation from briar root dust and a vegetable binder.

PAR. 3. There is a preference on the part of many users, purchasers and smokers of pipes, for pipes molded from the natural grown briar root, and the use by respondent of the words and phrases set out in paragraph 2 hereof, had and has the capacity and tendency to deceive and mislead the smokers of pipes and the purchasing public into the belief that when they purchased the pipes, manufactured, advertised, designated, described and sold as aforesaid, they were buying genuine briar root pipes, molded from the natural grown briar root, when in truth and in fact they were purchasing a fabricated article made from briar root dust with a vegetable binder.

PAR. 4. In the conduct of its said business and in the sale of its said pipes, the respondent furnished its dealers and retail merchants certain advertising matter among which was a printed paper or circular which was placed in the bowl of each pipe shipped to the dealer and entitled "*important notice on the care of your pipe*", and which contained the following: "*This pipe which you have just purchased is molded from genuine imported briar root by an entirely new process*" and "You will notice the coolness of the smoke in your mouth; this is accomplished by molding the *genuine imported briar*

root in such a way as to keep the pores open . . ." all of which was false, misleading and exaggerated and placed in the hands of retail merchants an instrumentality for the perpetration of a fraud and a deception upon the buying public.

PAR. 5. Each and all of the false and misleading statements and representations of the respondent referred to in paragraphs 2, 3, and 4 had and have a capacity and tendency to divert trade from those individuals, firms, corporations, and associations engaged in the manufacture and sale in interstate commerce of genuine briar root pipes and from those individuals, firms, corporations, and associations doing a similar and like business to that of respondent, but who truthfully advertise and represent their commodities, to respondent and to otherwise injure said competitors of respondent.

PAR. 6. The acts and practices set forth in paragraphs 2, 3, and 4 hereof are all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission on the 4th day of December 1934 issued and thereafter served its complaint against the respondent named in the caption hereof, charging it with the use of unfair methods of competition in commerce in violation of the said act. Respondent, after entering its appearance and filing its answer to said complaint, thereafter, to wit, on the 1st day of February 1935, entered into a stipulation as to the facts with W. T. Kelley, chief counsel for the Federal Trade Commission, in which it was stipulated and agreed that the statement of facts in said agreement between respondent and chief counsel may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto; and that the Commission may proceed upon said statement of facts to make its report stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs.

The Commission being fully advised in the premises, now approves, ratifies, and confirms the said stipulation and agreement entered into

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as aforesaid by and between respondent and W. T. Kelley, chief counsel of the Federal Trade Commission, and, having duly considered the same, makes this its report in writing and states its findings as to the facts and conclusion drawn therefrom, as follows, to wit:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized and existing under and by virtue of the laws of the State of Ohio with its principal office and place of business located in the city of Cleveland, State of Ohio. Respondent is now and for more than two years last past has been engaged in the business of manufacturing, selling, and distributing smoking pipes known, described, and designated by it as "Berbriar" and other designations. Respondent causes said smoking pipes, when so sold to be transported from its place of business in the city of Cleveland, State of Ohio, into other States of the United States to purchasers thereof at their respective locations. In the course and conduct of said business, respondent is in competition with other corporations, partnerships and individuals likewise engaged in the manufacture, sale, and transportation in commerce between and among the various States of the United States of similar articles of commerce.

In the course and conduct of its said business, the respondent adopted as and for a corporate and trade name under which to carry on its business, the words "THE BRIARWOOD CORPORATION" and in soliciting the sale of and in selling said pipes in interstate commerce caused such pipes to be designated, described and represented in its advertisements, letterheads, billheads, and other trade literature widely circulated among customers or prospective customers by the use of the following words and phrases:

"MADE FROM GENUINE IMPORTED BRIAR ROOT," "BRIAR KOB", "THIS PIPE * * *,
IS MOLDED FROM GENUINE IMPORTED BRIAR ROOT" * * * "IMPORTANT
NOTICE ON THE CARE OF YOUR PIPE",

and which contained the following:

"THIS PIPE WHICH YOU HAVE JUST PURCHASED IS
MOLDED FROM GENUINE IMPORTED BRIAR ROOT BY AN ENTIRELY
NEW PROCESS." * * * "YOU WILL NOTICE THE COOLNESS OF THE
SMOKE IN YOUR MOUTH; THIS IS ACCOMPLISHED BY MOLDING THE
GENUINE IMPORTED BRIAR ROOT IN SUCH A WAY AS TO KEEP THE
PORES OPEN * * *"

The pipes as designated are fabricated by respondent from ground Briar Root to which a binder has been added forming a plastic mass which is then molded under pressure into various desirable shapes;

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the wood content of said pipes so fabricated, sold and distributed by respondent consists of genuine ground Briar Root; and the said pipes so fabricated, sold and distributed by respondent are not made from the Briar Root in its natural form.

PAR. 2. The foregoing statements and representations made by respondent in aid of the sale of its smoking pipes are incorrect, exaggerated and misleading and have the capacity and tendency to mislead and deceive purchasers and prospective purchasers of respondent's said smoking pipes into the erroneous belief that said smoking pipes are made from natural grown Briar Root and carved or fashioned from the solid block.

CONCLUSION

The practices of the respondent under the conditions and circumstances described in the foregoing findings of fact are to the prejudice of the public and to the competitors of the respondent and are unfair methods of competition in commerce in violation of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued its complaint against the respondent, The Briarwood Corporation, charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act. Thereafter, the respondent filed its answer to the charges set forth in the complaint and on, to wit, the 1st day of February 1935 a stipulation as to the facts was entered into by and between the chief counsel for the Federal Trade Commission and counsel for the respondent, in which it was stipulated and agreed that the statement of facts thus agreed to might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and the Commission having accepted and approved the said stipulation as to the facts and having made its findings as to the facts and conclusion that the respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes"—

It is now ordered, That the respondent, The Briarwood Corporation, its agents, representatives, and employees, in connection with

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the sale and advertising and offering for sale in interstate commerce of its smoking pipes designated as "Berbriar" and other designations do cease and desist from representing:

(1) That said smoking pipes are "Made from genuine imported Briar Root", unless that phrase is used in conjunction with the word "ground" or some other word of like import conspicuously displayed.

(2) That said smoking pipes are "Briar Kobs", unless that phrase is used in conjunction with the word "ground" or some other word of like import conspicuously displayed.

(3) That "This pipe * * * is molded from genuine Briar Root", unless such phrase is used in conjunction with the word "ground" or some other word of like import conspicuously displayed.

(4) That "This pipe which you have just purchased is molded from genuine imported Briar Root by an entirely new process", unless that phrase is used in conjunction with the word "ground" or some other word of like import conspicuously displayed.

(5) That "This is accomplished by molding the genuine imported Briar Root in such a way as to keep the pores open * * *", unless such phrase is used in conjunction with the word "ground" or some other word of like import conspicuously displayed.

(6) From making any other claims or assertions to the effect that the smoking pipes manufactured, sold and distributed by respondent are made from "Genuine Briar Root", unless such assertions and representations are used in conjunction with the word "ground" or some other word of like import conspicuously displayed, which explains that the smoking pipes are not made from or carved from the Briar Root in its natural form.

It is further ordered, That the charge of the complaint as to respondent's corporate and trade name be, and is hereby dismissed.

It is further ordered, That the respondent, The Briarwood Corporation, shall, within 60 days after the date of service upon it of this order, file in detail the manner and form in which it has complied with and is complying with the order to cease and desist hereinabove set forth.

IN THE MATTER OF

CLAYTON R. HASTINGS, DOING BUSINESS UNDER THE
NAME AND STYLE OF NATIONAL CIVIL SERVICE
INSTITUTECOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2286. Complaint, Jan. 26, 1935—Order, Mar. 4, 1935*

Consent order requiring respondent individual and respondent corporation, successor to the business theretofore conducted by him, its officers, etc., in connection with the sale, offer or distribution of courses of study and instruction preparatory to Civil Service examinations for the Federal Government, to cease and desist from—

- (a) Using term "Civil Service" in the name under which the business is conducted, in connection with the word "National", or in any other way implying or suggesting a connection with the United States Civil Service Commission or the United States Government, or using any other words in the name under which the business is conducted, or otherwise, from which such connection might be implied or suggested;
- (b) Falsely representing in any way that Civil Service positions under the Government are open and available or that examinations are to be held in the near future or at a specified time, or that said individual or corporation can secure Government positions for those who take said courses or that they, or either of them, can assist in that regard other than by assisting students in preparing for such examinations;
- (c) Designating any course offered by any term other than by such a term as may correspond to some classification used by said commission at the time such course is offered and for which examinations are held by such commission;
- (d) Misrepresenting the number of civil service employees, or of appointments thereto made, or to be made, or period or duration of civil service positions, or making any other false representation in regard to such jobs or examinations; or
- (e) Using a refund agreement based upon a contingency of a student falling to pass an examination, when there is little likelihood of any examination being held which such student could take and is solicited to contract to prepare for.

Mr. Harry D. Michael for the Commission.

Robinson, Symmes & Melson, of Indianapolis, Ind., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that Clayton R.

Hastings, doing business under the name and style of National Civil Service Institute, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said 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. That said respondent, Clayton R. Hastings, doing business under the name and style of National Civil Service Institute, is now and has been engaged for more than one year last past in the sale and distribution of courses of study and instruction designed and intended for preparing students thereof for examinations for various Civil Service positions under the United States Government, which said courses of study and instruction are pursued by correspondence. That said respondent, in conducting his said business, has his office and principal place of business in the city of Muncie, in the State of Indiana. That respondent, in the course and conduct of his said business, causes his said courses of study and instruction, consisting of pamphlets, study and question sheets, and other printed or mimeographed matter to be transported in interstate commerce from his said place of business in Indiana to, into and through States of the United States, other than Indiana, to various and numerous persons to whom said courses of study and instructions are or have been sold.

PAR. 2. That, during the time above-mentioned, other individuals, firms and corporations in various States of the United States, are and have been engaged in the sale and distribution in interstate commerce of courses of study and instruction designed and intended for the purpose of preparing students thereof for examinations for various Civil Service positions under the United States Government, and also engaged in the sale and distribution as aforesaid of other courses of study and instruction in other lines, all of which are pursued by correspondence, and such other individuals, firms, and corporations have caused, and do now cause their said courses of study and instruction, when sold by them, to be transported from various States of the United States to, into and through States other than the State of origin of the shipment thereof. Said respondent has been, during the aforesaid time, in competition in interstate commerce in the sale of his said courses of study and instruction with such other individuals, firms, and corporations.

PAR. 3. That the name, National Civil Service Institute, used by the respondent in conducting his said business, implies and has the tendency and capacity to create the belief among persons solicited to pursue respondent's courses of study that said National Civil Service

Institute is a part of, or is connected with, or is an agency of the Government of the United States. That the word "National" is a term frequently used in referring to the United States Government or its agencies, or to institutions under its direction or supervision. That the term "Civil Service" is used to designate a class of employees of the United States Government. That the name of respondent's school suggests the Government agency known as the Civil Service Commission and causes confusion on that account. That the impression of Government connection is further increased by the use by respondent of the terms "supervisor", "registrar", and "advisor" to designate persons representing or connected with said school. That respondent and his representatives make statements to prospective students which represent or imply that he or they or said school is connected with or represents the Government of the United States. That, in fact, neither respondent nor his school, nor any one connected therewith has any connection whatever with the United States Government or represents the same.

PAR. 4. That respondent and his agents, in talking to prospective students, make statements which represent or imply that Civil Service positions under the United States Government are open and available; that examinations for such positions will be held in the near future; and that respondent can place those who take his courses in Government positions, when such were not and are not the facts. That, in fact, vacancies in the positions for which respondent offers training have been comparatively few within the last few years, and usually when vacancies occur in such positions, long lists of eligibles have been and are available for filling the same. That very few, if any, examinations have been held within recent years for many of the positions for which respondent offers training. That respondent has no way of placing his students in Government positions.

PAR. 5. That respondent in its advertising literature distributed to prospective students, represents that United States Government positions are available as internal revenue clerk, general department clerk, clerks for Washington, D. C. and as clerks in various governmental agencies, when in fact the United States Civil Service Commission has not, in recent years, maintained any such general classifications and has not held examinations for such. Respondent further represents in his advertising literature that "Uncle Sam employs from 30,000 to 50,000 additional men and women each year; * * *" when, in fact, such is not the case, or the statement is misleading in that it implies that such number of positions are available and open to those who take the training for which respondent gives

instruction for Civil Service examinations. Respondent further represents that "Beginning salaries range from \$1,440 to \$1,900 a year"; that successful applicants will receive in salary twice a month "a check ranging from \$70 to \$92"; that Government employees have no lay-offs, and that they are pensioned when they become too old to work, when in fact, such are not the facts, or such statements are misleading and wholly inaccurate.

PAR. 6. That the contract form used by respondent and which is signed by students who enroll for his training contains a so-called "money back agreement" which provides in substance that the money paid will be refunded on certain conditions, among which are the following:

(c) I am to try the first examination covered by this training.

(d) If I fail to pass on that examination, or I have passed and am not offered an appointment within one year from the time my name was placed on the eligible list and I have lost my eligibility, I am to be refunded as set forth in article (e).

That, in fact, said agreement is meaningless and noneffective in that, as heretofore shown, few, if any examinations have been held within recent years or are in immediate prospect in the lines for which respondent offers training, so that those who complete the same have little if any opportunity to take an examination, and therefore cannot comply with the terms set out above for a refund.

PAR. 7. That the representations of respondent as aforesaid have had and do have the tendency and capacity to confuse, mislead, and deceive members of the public into the belief that respondent is a representative of or is connected with the Government of the United States; that Civil Service examinations are being held at frequent intervals in the classifications for which respondent offers training; that Government positions in the classifications named by him as aforesaid are available, and that corresponding examinations will be held for the same; that vacancies exist in Government service that are to be filled; and that students who enroll for respondent's courses will receive their money back upon conditions reasonably possible of fulfillment, when, in truth and in fact, such are not the facts. That said representations of respondent have had and do have the tendency and capacity to induce members of the public to answer respondent's advertisements, to sign his said contracts, to pay money to respondent and his agents, and to pursue said courses of instruction as herein described because of the erroneous beliefs engendered, as above set forth, and to divert trade to respondent from competitors engaged in the sale of correspondence courses in interstate commerce in similar lines to those offered by respondent, as well as those so engaged in such sale in other lines of study.

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PAR. 8. The above acts and things done by respondent are all to the injury and prejudice of the public and the competitors of respondent in interstate commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission on the 26th day of January 1935 issued its complaint against Clayton R. Hastings, doing business under the name and style of National Civil Service Institute, respondent herein, and caused the same to be served upon him as required by law, in which complaint it is charged that respondent has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

On February 11, 1935, said respondent filed herein an answer in writing to said complaint. Subsequently, said respondent filed herein a petition to withdraw said answer and asked that a new answer therewith submitted be filed in lieu thereof, which said petition was granted by the Commission and said new answer was accordingly filed. Said new answer was filed on behalf of said respondent individually and also on behalf of The National Institute, Inc., of which said Clayton R. Hastings is president, and which has succeeded to said business formerly conducted by said respondent under the name as given in the title hereof. By said new answer said respondent, Clayton R. Hastings, and said corporation, The National Institute, Inc., by Clayton R. Hastings, its president, elected to refrain from contesting this proceeding and consented to the issuance of an order to cease and desist from the practices set forth in the complaint herein, expressly waiving the amendment of said complaint as to parties and as to allegations to show such corporate succession, or otherwise in that connection.

Thereafter, this proceeding came on regularly for disposition and decision by the Commission under subdivision (b) of rule V of the Rules of Practice adopted by the Commission, and the Commission being fully advised in the premises:

It is ordered, That said Clayton R. Hastings, doing business under the name and style of National Civil Service Institute, or under any other trade name, and The National Institute, Inc., a corporation, its officers, directors, agents, representatives, servants, and employees,

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in connection with the sale, offering for sale or distribution in interstate commerce and the District of Columbia of courses of study and instruction intended for preparing students for Civil Service examinations held by the Government of the United States, cease and desist from the following practices, to wit:

1. The use of the term "Civil Service" in the name under which said business is conducted in connection with the word "National" or in any other way or connection which implies or suggests any connection with the United States Civil Service Commission or the United States Government, or the use of any other word or words in the name under which said business is conducted or otherwise from which such connection might be implied or suggested.

2. Representing in any manner or mode that Civil Service positions under the United States Government are open and available; that examinations for such positions will be held in the near future or at a specified time, unless and until such are the facts.

3. Representing that said Clayton R. Hastings or said corporation can secure Government jobs for those who take said courses of instruction or that they, or either of them, can assist in that regard other than by assisting students thereof in preparing for Civil Service examinations.

4. Designating any course offered by any term other than by such a term as may correspond to some classification used by the United States Civil Service Commission at the time such course is offered and for which examinations are held by said Commission.

5. Representing the number of Civil Service employees, the number of appointments made or to be made, the period or duration of Civil Service jobs or making any other representation in regard to such jobs or examinations therefor unless such representations state the facts as they exist at the time such representations are made.

6. Using a refund agreement based upon a contingency of a student failing to pass an examination when there is little likelihood of any examination being held which such student could take and for which he or she is solicited to contract to prepare.

It is further ordered, That said Clayton R. Hastings and said The National Institute, Inc., within 60 days from and after the date of the service upon them of this order shall file with the Commission a report in writing, setting forth in detail the manner and form in which said order to cease and desist hereinabove set forth is being complied with.

IN THE MATTER OF
**MAURICE SMOOKE, DOING BUSINESS UNDER THE
 TRADE NAME AND STYLE OF STANDARD HANDKER-
 CHIEF MANUFACTURING COMPANY**

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

Docket 2204. Complaint, June 28, 1934—Decision, Mar. 9, 1935

Where an individual engaged in sale and distribution of handkerchiefs to wholesalers and retailers—

- (a) Included word "manufacturing" in his trade name and set forth on his letterheads the words "Factories, Brooklyn, N. Y., New York, N. Y., Newark, N. J.;"
- (b) Made such statements in his advertising as "We were lucky in placing our orders for raw cotton in early April", notwithstanding fact he bought no raw cotton; and
- (c) Advertised "price—always right—low overhead—quality product—large distribution and personal ownership—management assures of the lowest possible price at all times";

Notwithstanding fact he neither owned, operated or controlled any factory or machinery engaged in the manufacture of said articles; and

- (d) Advertised an ordinary handkerchief of domestic manufacture, labeled "London Kerchief":

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

Mr. John W. Hildrop for the Commission.

Mr. Nathaniel Phillips, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that Maurice Smooke, doing business under the trade name and style of Standard Handkerchief Manufacturing Company, hereinafter called respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said 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, Maurice Smooke, is an individual who is, and for the past four years has been, doing business as hereinafter described, under the trade name and style of Standard Handkerchief

Manufacturing Company, with his place of business at 491 Broadway, New York, N. Y.

PAR. 2. The said business of respondent is the selling of handkerchiefs by wholesale to retail merchants, jobbers and chain stores, and respondent also sells handkerchiefs by retail by means of certain vending machines which respondent owns and operates, and in which handkerchiefs are placed and the vending machines put in public places, and in which the purchaser places a coin in a slot provided for the purpose and extracts a handkerchief from said vending machine. .

PAR. 3. Respondent does not manufacture any of the handkerchiefs he sells either by wholesale or retail. In some cases respondent buys silk handkerchiefs from importers and resells them to the trade, and sometimes respondent buys cotton and linen handkerchiefs from manufacturers. He also purchases cotton and linen piece goods from converters and sends them to independent contractors who cut them up and finish the cut goods into handkerchiefs.

PAR. 4. Respondent does not own, operate, control, or have any financial or other interests in any factory or place where handkerchiefs are made. In his place of business, at 491 Broadway, New York City, there is no machinery of any kind and the only persons working therein are the respondent and three or four girls engaged in packing handkerchiefs in boxes.

PAR. 5. Respondent is, and has been for some years past, engaged in selling handkerchiefs in interstate commerce, and shipping handkerchiefs to various jobbers and retailers from his place of business in the City of New York, State of New York, in various of the other States of the United States of America, and said respondent is doing business in competition with divers other individuals, firms and corporations doing a similar and like business to that conducted by respondent, and with various individuals, firms and corporations engaged in the manufacture and sale of handkerchiefs to the trade.

PAR. 6. Respondent is now, and has been for a long time past, using false and misleading advertisements and representations in the conduct of his said business by way of letters and circulars sent through the United States mail to various retail dealers and jobbers in the several States of the United States of America, and by advertisements inserted in newspapers and trade journals, wherein respondent advertises that he manufactures the handkerchiefs he sells to the trade and advertises that he has factories in Brooklyn, N. Y., and Newark, N. J., when, as a matter of fact, said respondent has no factory nor financial or other interest in any factory, nor is any factory for the manufacture of handkerchiefs directly or indi-

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rectly under his control. One circular sent out by respondent through the mails, as aforesaid, as an inducement for the retail stores and jobbers to buy handkerchiefs from him, stated as follows:

Prices always right. A low overhead quantity production. Large distribution and personal ownership management assure you of the lowest possible price at all times. Made and guaranteed. Standard Handkerchief Manufacturing Company.

Under date of May 25, 1933, and at various times since that date, respondent has sent out to the trade and his customers a letter, through the United States mails, containing the following, which is printed across the top of the letterhead used by respondent:

STANDARD HANDKERCHIEF MANUFACTURING COMPANY

The effect of which was to mislead the customers of respondent, and prospective customers and the trade generally, and to make them believe that respondent manufactured the handkerchiefs sold and offered for sale by him, and that in buying from respondent they would be dealing with the manufacturer of the handkerchiefs, thus assuring both quality and prices.

The said letter or circular also contained the following misleading advertisement and representation:

WE WERE LUCKY IN PLACING OUR ORDERS FOR RAW COTTON IN EARLY APRIL

The effect of the foregoing was, to cause the buying public to believe that the cotton handkerchiefs sold and advertised by respondent were actually manufactured by him and that respondent had been able to obtain raw cotton at a low price and was therefore able to give and would give to the buying public and the trade the benefit of this low-price cotton in the way of cheaper prices, when, as a matter of fact, respondent had not bought any raw cotton in April or at any other time, and he did not, nor does he now, manufacture any of the handkerchiefs advertised and sold by him.

On the outside of the boxes and cartons in which handkerchiefs were packed and shipped by respondent in interstate commerce, there was printed as an advertisement, the following, to wit:

London Kerchief
(Trade mark reg.)
1 for 10 cents
The World's Best
Made and guaranteed by
Standard Handkerchief Manufacturing Company
New York, U. S. A.
Sanitarilly packed.

The effect of the foregoing false and misleading advertisements and representations of respondent, is to mislead the retail merchants and jobbers in the several States, by causing them to believe that respondent is conducting a business much larger in size and scope than it is; that respondent owns and operates factories in Brooklyn, N. Y., and Newark, N. J., wherein he manufactures the handkerchiefs he sells or offers for sale to said retail merchants and jobbers, and that when they buy handkerchiefs from respondent they are dealing directly with the factory thus assuring quality and that when they buy from respondent they are saving a "middleman's profit" for themselves and the public who may purchase such handkerchiefs from said retail merchants and jobbers. All of the foregoing is an added inducement for customers and prospective customers to buy handkerchiefs from respondent and has a tendency and capacity to and does divert trade from competitors of respondent engaged in a like or similar business, to respondent.

PAR. 7. The above acts and things done by respondent have a tendency to and do mislead and deceive jobbers and retailers of handkerchiefs, and these false and misleading representations have a tendency to and do divert business from other corporations, individuals and firms engaged in the manufacture and sale of handkerchiefs and those engaged in a similar or like business to that conducted by respondent.

PAR. 8. The above acts and things done by respondent are all to the injury and prejudice of the public and competitors of respondent in interstate commerce, within the meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served its complaint upon the respondent, Maurice Smooke, an individual trading as Standard Handkerchief Manufacturing Company, charging said respondent with the use of unfair methods of competition in interstate commerce in violation of provisions of Section 5 of said Act.

Respondent having entered his appearance and filed his answer to said complaint, hearings were had and evidence was introduced in support of the allegations of said complaint and in opposition

thereto before a trial examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon this proceeding came on for final hearing, and counsel for the Federal Trade Commission and counsel for respondent having submitted briefs and the Commission having duly considered the record, and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Maurice Smooke, is an individual trading as Standard Handkerchief Manufacturing Company, with his office and principal place of business at 491 Broadway, in the City of New York, State of New York.

PAR. 2. The respondent is now and has been for several years past engaged in the sale and distribution of handkerchiefs in interstate commerce in and among the various States of the United States to wholesalers and retailers. Respondent in the course and conduct of his said business causes the said handkerchiefs to be transported in interstate commerce from his place of business in the City of New York, in the State of New York, to, into and through States of the United States other than the State of New York to various and numerous wholesalers and retailers.

PAR. 3. During the time the said respondent has been engaged in the sale and distribution of handkerchiefs, other individuals, firms and corporations in various States of the United States are and have been engaged in the sale and distribution in interstate commerce of similar and like handkerchiefs. Such said individuals, partnerships, and corporations have caused their said handkerchiefs to be sold and distributed to, into and through the various States of the United States and to, into and through States other than the State of origin of the shipment thereof. Respondent has been during the aforesaid time in competition in interstate commerce in the sale of said handkerchiefs with such other individuals, firms and corporations.

PAR. 4. The respondent, an individual trading under the name and style of Standard Handkerchief Manufacturing Company, holds himself out to wholesalers and retailers and others who purchase his merchandise as a manufacturer of handkerchiefs. The fact is that respondent does not own a factory for the manufacture of handkerchiefs, does not own any machinery in any factory, and does not own, operate or control any individual undertaking, partnership or corporation engaged in the manufacture of handkerchiefs, and does not manufacture any of his handkerchiefs in any way whatsoever.

Order

PAR. 5. The respondent in the course and conduct of his business has used and still uses such advertising phrases as:

We were lucky in placing our orders for raw cotton in early April.

The fact is the respondent has never purchased any raw cotton.

The respondent has advertised his goods aforesaid as follows:

PRICE—ALWAYS RIGHT—LOW OVERHEAD—QUALITY PRODUCT—
LARGE DISTRIBUTION AND PERSONAL OWNERSHIP—
MANAGEMENT ASSURES OF THE LOWEST POSSIBLE
PRICE AT ALL TIMES

The fact is the respondent does not own, operate or control any factory engaged in the manufacture of handkerchiefs.

On respondent's letterhead appears the statement:

FACTORIES: BROOKLYN, N. Y.
NEW YORK, N. Y.
NEWARK, N. J.

The fact is respondent neither owns, operates, or controls a factory in any of these cities or in any other city.

PAR. 6. The respondent in the course and conduct of his business has for some time past advertised and sold an ordinary handkerchief labeled "London Kerchief." This label has underneath and to the right the phrase "The World's Best." In truth and in fact the handkerchiefs so branded and labeled by respondent are not made in London, but are of domestic manufacture.

CONCLUSION

The practices of said respondent under the conditions and circumstances described in the foregoing findings are all to the injury and prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce in violation of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent and the testimony taken and briefs filed herein, and the Commission having made its findings as to the facts and conclusion that the respondent has violated the provisions of an Act of Congress

¹ The order is published as modified by the Commission on April 24, 1935, so as to eliminate therefrom paragraph 5 relating to misrepresenting domestic handkerchiefs as "London Kerchiefs".

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approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes":

It is now ordered, That the respondent, Maurice Smooke, trading as Standard Handkerchief Manufacturing Company, his officers, agents, representatives, and employees, in the manufacture, sale and distribution in interstate commerce of handkerchiefs do cease and desist from:

(1) Representing himself or his company by advertisements, advertising literature, radio broadcasts, or by any manner or means whatsoever as a handkerchief manufacturer until he owns, operates or controls the factory or factories in which the said handkerchiefs are manufactured.

(2) Representing by advertisements, advertising literature, sales posters or in any manner whatsoever that he or his company is a purchaser of raw cotton unless and until such is the fact.

(3) Representing in any way by stationery, advertisements, advertising literature or by any manner or means whatsoever that he or his company has handkerchief factories located in Brooklyn, N. Y., New York, N. Y., or Newark, N. J., unless and until such is the fact.

(4) Representing by stationery, advertisements, advertising literature, or by any manner or means that the company's prices are always right, that it has low overhead, and that, due to large distribution and personal ownership and management, purchasers are assured the lowest possible price at all times, unless and until such are the facts.

It is further ordered, That the respondent above named within 60 days after the service upon him of this order shall file with the Commission a report in writing stating further in detail the manner in which the order has been complied with and conformed to.

Complaint

IN THE MATTER OF

H. GORDON

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 23, 1914*Docket 2269. Complaint, Dec. 18, 1934—Decision, Mar. 9, 1935*

Where an individual engaged in conducting a jobbing and wholesale shoe business, caused the words "Dr. Gordon's Healthopedic", or "Fashion Built Healthopedic Combination Last" to be stamped on the soles of certain shoes sold by him, and branded other shoes "Dr. Gray's Style-Fit Health Shoe", and "Dr. Williams' Arch Support"; notwithstanding fact shoes thus stamped or branded were not made in accordance with any design, or under the supervision of a doctor, did not contain special, orthopedic or scientific features that were the result of medical advice, and were not constructed to correct or alleviate any foot trouble or weakness; with capacity and tendency to mislead many among the trading and consuming public into the belief that said products were made or designed by doctors or others with knowledge of orthopedics, or at least contained some feature or features not common to the ordinary line of foot wear, designed or intended to correct some foot ailment or weakness or afford some relief therefrom, and with effect of unfairly diverting trade thereby from competitors and otherwise injuring the same:

Held, That such acts and practices, under the conditions and circumstances set forth, were to the prejudice of the public and competitors, and constituted unfair methods of competition.

Mr. Morton Nesmith for the Commission.

Stein & Stein, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that H. Gordon has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. H. Gordon is the sole owner and operator of a jobbing and wholesale business in shoes with his principal place of business at 107 Reed Street, New York City. Said respondent is now, and has been for the past ten years, engaged in the business of selling shoes at wholesale, being a wholesaler thereof between and among the different States of the United States. He has sold and has caused and still causes the said articles in which he deals, to be

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transported from his said place of business into and through other States of the United States to various jobbers and retailers located at points in different States of the United States. In the course and conduct of his said business respondent is in competition with other individuals, partnerships, and corporations engaged in the sale and transportation of shoes in commerce between and among the different States of the United States.

PAR. 2. The respondent, H. Gordon, in the course and conduct of his business as aforesaid, in soliciting the sale of and selling his product in interstate commerce, caused the words "Doctor Gordon's Health-O-Pedic" to be stamped on or across the sole of a certain brand of shoe sold by him in interstate commerce, and said respondent further caused and still causes the words "Fashion Bilt Health-O-Pedic Combination Last" to be stamped on or across the sole of a certain brand of the shoes sold by him in interstate commerce. Said respondent also caused three other types of shoes, which he labeled and branded as "Dr. Gray's Style-Fit Health Shoe", "Dr. Starr's Health Shoe", and "Dr. William's Arch Support", to be sold by him in interstate commerce. Said respondent also caused and still causes certain of his shoes to be packed and shipped in interstate commerce in cartons or boxes on which the words:

STYLE PLUS COMFORT

ARCH SUPPORT

HEALTH-O-PEDIC

HEALTH IN EVERY STEP

are conspicuously displayed.

PAR. 3. In truth and in fact the shoes so marked, stamped, branded, labeled, advertised, and sold, as described in paragraph 2 hereof, were not made in accordance with the design and/or under the supervision of a doctor, and did not contain special, orthopedic or scientific features which were the result of medical advice or services, nor was such footwear manufactured or constructed upon a special last, nor is such footwear intended to be designed or constructed for the purpose of correcting or alleviating any form of foot trouble or weakness of the feet; all of which has the capacity and tendency to mislead many among the aforesaid trade and among the consuming public into the belief that said shoes have been fashioned or designed by doctors or others with a knowledge of orthopedics, or at least had some feature or features not common to the ordinary run of footwear, which features were designed or intended to correct some foot ailment or intended weakness, or at least afford some relief therefrom.

PAR. 4. The respondent, H. Gordon, in the sale of his products as aforesaid, ships and delivers to his jobber and retailer customers his products so labeled and branded, and said jobbers and retailers resell said products so labeled and branded to the consuming public.

PAR. 5. There are among the competitors of the respondent, referred to in paragraph 1 hereof, many persons, firms, and corporations who sell at wholesale shoes which contain special features designed and intended to correct and alleviate certain foot ailments and weaknesses. There are also among the competitors of the respondent persons, firms and corporations who sell at wholesale shoes and footwear manufactured along standard lines and according to standard methods but for which no special feature claims or representations are made, and the use by the respondent of the word "Doctor" or the abbreviation "Dr." in connection or in conjunction with a name or with any other word or words or in any way as a trade name, brand or designation for his products or in his advertisements of said products, together with other special feature representations, has unfairly diverted trade from and otherwise injured and prejudiced respondent's competitors in interstate commerce.

PAR. 6. The above alleged acts and things done by the respondent are all to the injury and prejudice of the public and of the competitors of respondent in interstate commerce, and constitute unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued a complaint on December 18, 1934, upon the respondent H. Gordon, an individual owning and operating a jobbing and wholesale shoe business in New York City, N. Y., charging him with the use of unfair methods of competition in commerce as commerce is defined in said act. The respondent, H. Gordon, through counsel, filed his answer to said complaint, which answer was received by the Commission January 8, 1935.

Thereafter on February 5, 1935, a hearing in New York City was set before a trial examiner theretofore duly appointed and thereafter in lieu of testimony and evidence the respondent through his attorney desired to enter into a stipulation as to the facts and to consent to an order to cease and desist, and the attorney for the

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Commission having agreed to the entrance upon the record of a stipulation as to the facts and a consent order to cease and desist, a stipulation as shown in the transcript was made and entered into.

Thereafter this proceeding came on regularly for final hearing before the Commission on the complaint, answer and stipulation as to the facts, and the respondent and counsel for the Commission having waived the filing of briefs and oral argument, said cause was duly submitted, and, the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, H. Gordon, is the sole owner and operator of a jobbing and wholesale business in shoes with his principal place of business at 118 Duane Street, New York City, respondent having prior to that time occupied the premises at 107 Reade Street, New York City. Said respondent is now and has been for the past ten years engaged in the business of selling shoes at wholesale and has sold the same during said time between and among the several States of the United States. Respondent has sold and still causes the articles in which he deals to be sold and transported from his place of business into and through the other States of the United States to various retail dealers located at points in different States of the United States. In the course and conduct of his business as aforesaid, respondent has been and is in competition with other individuals, partnerships and corporations engaged in the sale and transportation of shoes in interstate commerce.

PAR. 2. The respondent in the course and conduct of his business as aforesaid, in soliciting the sale of and selling his products in interstate commerce has caused the words "Doctor Gordon's Health-O-Pedic" to be stamped on or across the sole of a certain brand of shoes sold by him in interstate commerce and respondent caused the words "Fashion Bilt Health-O-Pedic Combination Last" to be stamped on or across the sole of a certain brand of shoes sold by him in interstate commerce. Said respondent also caused two other kinds of shoes which he labeled and branded as "Dr. Gray's Style-Fit Health Shoe" and "Dr. Williams' Arch Support", to be sold by him in interstate commerce. Said respondent never caused any shoes to be labeled or branded as "Dr. Starr's Health Shoe". Said respondent also caused and still causes some of his products to be packed and shipped in interstate commerce in cartons or boxes on which the words—

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STYLE PLUS COMFORT

ARCH SUPPORT

HEALTH-O-PEDIC

HEALTH IN EVERY STEP

are conspicuously displayed.

PAR. 3. In truth and in fact the shoes so marked, stamped, branded, or labeled, and sold as "Dr." or "Doctor" as described in paragraph 2 hereof were not made in accordance with any design or under the supervision of a doctor and do not contain special, orthopedic, or scientific features that were the result of medical advice, nor was such footwear manufactured or constructed for the purpose of correcting or alleviating any foot-trouble or weakness of the feet; all of which has a capacity and tendency to mislead many among the aforesaid trade and among the consuming public into the belief that said shoes have been or were manufactured or designed by doctors or others with the knowledge of orthopedics or at least contained some feature or features not common to the ordinary line of footwear which features were designed or intended to correct some foot ailment or weakness or at least to afford some relief therefrom, all of which has unfairly diverted trade from and otherwise injured respondent's competitors in interstate commerce.

PAR. 4. The shoes of the respondent which were marked, labeled, branded, or designated with the words:

STYLE PLUS COMFORT

ARCH SUPPORT

HEALTH-O-PEDIC

HEALTH IN EVERY STEP

in truth and in fact did contain certain orthopedic principles, namely, a flexible steel shank and arch support counter, a combination last and said shoes are two widths larger in the upper than in the counter.

CONCLUSION

The acts and practices of respondent under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding coming on for final hearing by the Federal Trade Commission upon the record including the complaint of the Commission, the answer of respondent, the transcript containing stipulated facts, and, findings as to the facts; and the Commission having duly considered the matter, and being fully advised in the premises—

It is now ordered, That respondent, H. Gordon, his agents, servants and employees in connection with the advertising by any means whatsoever, or on labels, cartons, or the offering for sale, or sale in interstate commerce of shoes, do cease and desist from:

(1) Directly or indirectly using or causing to be used the word "Doctor" or the abbreviation "Dr." in connection or in conjunction with a name, or with any word or words, or in any way as a trade name in the advertising or designation of his shoes; or in any way which may have the tendency and capacity to confuse, mislead or deceive purchasers into the belief that said shoes are made in accordance with the design, or under the supervision of a doctor, and contain special, scientific or orthopedic features which are the result of medical advice or services, when such is not the fact.

(2) Directly or indirectly using or causing to be used the word "Doctor" or the abbreviation "Dr." in connection or in conjunction with the name, or with any word or words, or in any way as a trade name, brand, label or designation on his shoes; or in any way which may have the capacity and tendency to confuse, mislead and deceive purchasers into the belief that said shoes are made in accordance with the design, or under the supervision of a doctor, and contain special, scientific or orthopedic features which are the result of medical advice or services, when such is not the fact.

It is further ordered, That the respondent, H. Gordon, shall within 30 days from the service of a copy upon him of this order, file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which he has complied with subparagraph (1) of the order to cease and desist, in so far as advertising matter is concerned, and,

It is further ordered, That respondent, H. Gordon, shall within 60 days after the service of a copy of this order upon him, file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which he has complied with subparagraph (2) of the order to cease and desist, in so far as the labeling and branding of his shoes are concerned.

Complaint

IN THE MATTER OF

A. C. HAYSLER, JR., TRADING UNDER THE NAME AND
STYLE OF DR. SOUTHLINGTON REMEDY COMPANY

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

Docket 2202. Complaint, June 20, 1934—Decision, Mar. 18, 1935

Where an individual engaged in the sale of certain so-called prescription compounds and suppositories, for women, advertised, represented, and held out by him as remedies for or affording relief in cases of pain, disturbances, and ailments, caused or produced by amenorrhea, dismenorrhea, and other diseases and ailments peculiar to women, and, in the case of the last-named product, as a contraceptive—

Made such statements in labels, leaflets, periodicals, and other printed matter describing and offering the same as "I positively guarantee", "End pain and worry", "Successful relief compound", "End pain and delay", "have safely relieved some of the most obstinate and abnormal cases in from three to five days", will never "disappoint in a single instance where they are properly and faithfully used", "A grand good remedy and often worth its weight in gold", and others of similar tenor, notwithstanding fact that aforesaid preparations did not have the effects thus indicated or represented, or any effect in female diseases and troubles, and were not beneficial in their treatment, and said suppositories were not effective for the purpose for which offered;

With tendency and capacity to confuse and mislead members of the public into believing that aforesaid preparations had general curative properties in relieving cases of pain and distress due to said ailments, and would restore health and constituted remedies for or would give relief in, such diseases or ailments, generally, or afford prevention, without qualification or limitation, and to induce members of the public to purchase and use said compounds, medicines or products because of the erroneous beliefs thus engendered, and with effect of diverting trade to said individual from competitors engaged in sale of similar products or those adapted to and used for treatment of such ailments, and for said purposes, including those who in nowise misrepresent the therapeutic uses or effects of their compounds and medicines, and with tendency so to divert:

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

Mr. Carrel F. Rhodes for the Commission.

Mr. Clinton Robb, of Washington, D. C., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged

respondent individual, engaged as aforesaid in the sale and distribution of emmenagogues and suppositories for women, with using misleading trade name and advertising falsely or misleadingly as to qualities or properties of product, in violation of the provisions of Section 5 of said Act prohibiting the use of unfair methods of competition in interstate commerce, in that respondent, engaged in sale of said products made for it by a manufacturing chemist, from formulae purchased by respondent from his predecessor in business,¹ so advertises his aforesaid preparations in newspapers, periodicals, booklets, and other advertising matter as to imply or assert, falsely or misleadingly, that they are positive and unfailing remedies for the ailments and conditions for which offered, and are based on the prescription of a Dr. Southington, and that a physician is connected with the business, the facts being said products constitute an ordinary combination of drugs, or prescriptions frequently used by physicians, they are not based on any formula or prescription of a Dr. Southington or prepared or compounded by a competent doctor, and there is no physician connected with the business, and the claims made for them are not justified; with the result that prospective customers buy said products in reliance upon the truth of the aforesaid extravagant, false, and misleading statements, and with the tendency thereby to mislead such purchasers into the erroneous belief that the use of said products in accordance with directions will serve to produce the results set out, and induce the purchase thereof by consumers in reliance upon such erroneous belief, and divert trade from and otherwise injure competitors; all to their prejudice and that of the public.²

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served its complaint upon the respondent, A. C. Haysler, Jr., trading under the name and style of Dr. Southington Remedy Company, charging him with the use of unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

¹ The composition of said various products, as alleged in the complaint, is set forth in the findings, *infra*, at page 199.

² The claims made by respondent for his aforesaid preparations, as alleged and quoted in the complaint, are set forth in the findings, *infra*, at pages 198, 199.

Respondent having entered his appearance and filed his answer to said complaint, hearings were had and evidence was introduced in support of the allegations of said complaint and in opposition thereto before a trial examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon this proceeding came on for final hearing upon the record and brief of the attorney for the Commission, respondent having failed to file a brief herein, although an opportunity was given him therefor, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, A. C. Haysler, Jr., is the sole owner and manager of the business conducted by him under the name "Dr. Southington Remedy Company", which said business has been owned and conducted by him for more than four years last past, with his principal place of business in the city of Kansas City in the State of Missouri. Said business consists of the compounding, preparation, sale and distribution of proprietary or so-called "patent" medicines. Said medicines or compounds are known and described as: "Dr. Southington's Single Strength Prescription Compound"; "Dr. Southington's Double Strength Prescription Compound"; "Dr. Southington's Combination Prescription Compound No. 3"; "Dr. Southington's Vaginal Suppositories"; and are and have been sold to members of the public in various States of the United States other than the State of Missouri, and said respondent causes and has caused said products when so sold to be transported in interstate commerce from his said place of business in the State of Missouri to, into and through States of the United States other than the State of Missouri, to members of the public to whom said products are and have been sold.

During said time, other individuals, partnerships, and corporations are and have been engaged in the manufacture and sale of proprietary or patent medicines similar in kind and as to purposes of use to those manufactured and sold by respondent as aforesaid. Also, during said time other individuals, partnerships, and corporations are and have been engaged in the manufacture and sale of proprietary or patent medicines adapted to and used in the treatment of the respective diseases and bodily conditions for which the respondent herein advertises and recommends his said medicines and compounds. Said other individuals, partnerships, and corpora-

tions have caused and do now cause their said products when sold by them to be transported in interstate commerce from their several places of business in various States of the United States to, into and through States other than the State of Missouri or the State of the origin of the shipment thereof. Respondent herein has been during said period in competition in interstate commerce in the sale of his said products with the several products of such other individuals, partnerships, and corporations.

PAR. 2. Respondent in soliciting the sale of and selling said "Dr. Southington's Single Strength Prescription Compound", "Dr. Southington's Double Strength Prescription Compound", "Dr. Southington's Combination Prescription Compound No. 3", and "Dr. Southington's Vaginal Suppositories" makes use of and has made use of certain printed matter, i. e.: Labels, leaflets, booklets, circulars, pamphlets, and newspapers, magazines, and other periodicals which he has caused to be transported or circulated through the mails and otherwise in interstate commerce from his place of business in the State of Missouri to places in other States of the United States where said medicines and compounds are offered for sale and sold and where said printed matter is circulated and distributed to and among the purchasing public. Said printed matter has printed thereon various statements and representations as to the therapeutic value or effect of said medicines or compounds, among which are the following:

(a) LADIES! I positively guarantee my great successful "Relief Compound". Safely relieves some of the longest, stubborn and unusual cases in three to five days.

(b) End Pain and Worry.

(c) * * * They have safely relieved some of the most obstinate and abnormal cases in three to five days * * * we do not believe that these choice treatments will ever disappoint in a single instance, where they are properly and faithfully used * * *.

(d) There are thousands of women in all walks of life, married and single, who suffer each month from * * * unnatural suppression of menstruation.

(e) * * * a valuable "Relief" Treatment to use at once when the necessity arises one, two or three months from now, thus saving time and avoiding much trouble, worry and delay.

(f) I positively guarantee my great successful "Relief Compound." Safely relieves some of the most unnaturally painful and functionally delayed cases in 3 to 5 days.

(g) For over a quarter of a century women from all over the country have used this compound with remarkable results. Testimonials without number. No harm, pain or interference with work. Mail \$2. Double strength, \$3. Booklet Free. Also FREE with each order while they last 2 Books of 127 pages entitled "What Every Married Woman Should Know" by Fielding and "The Physiology of Sex Life" by Dr. Greer. Simply mail this ad and your order today for either single or double strength treatment to Dr. E. C. Southington Remedy Co., Kansas City, Mo.

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(h) Prescription No. 1 * * * is adapted to restore normal menstruation in very mild and uncomplicated cases * * *.

(i) Prescription No. 2, Double Strength is urgently advised in more prolonged cases of long standing where complete suppression or other stubborn unnatural irregularities exist. This is a grand, good remedy, and often *worth its weight in gold* to women who suffer from prolonged cases of suppression due to functional causes. Read Testimonials * * *.

Respondent in a written statement signed and filed by him as evidence in this case, and in his oral testimony, admits that he published and circulated or caused to be published and circulated, in the manner and form set out hereinabove, the advertisements enumerated in this paragraph.

PAR. 3. Respondent admits that the said compounds, manufactured and sold as stated in paragraphs 1 and 2 hereof, are composed of medicinal ingredients in the proportions as follows:

(1) Dr. Southington's Single Strength Prescription Compound:

Senecin, Concentrated.....	1 gr.
Cemicifugin, Concentrated.....	1/4 gr.
Caulophyllum, Concentrated.....	1/2 gr.
Ferri Sulphas, Gran.....	1 gr.
Medicago Sativa.....	1/8 gr.
Po. Kola Nut.....	1/500 gr.
Po. Ergot.....	1/500 gr.
Oil Cloves.....	1/50 gr.

(2) Dr. Southington's Double Strength Prescription Compound:

Senecin, Concentrated.....	2 gr.
Cemicifugin, Concentrated.....	1/2 gr.
Caulophyllum, Concentrated.....	1 gr.
Ferri Sulphas, Gran.....	2 gr.
Medicago Sativa.....	1/4 gr.
Po. Kola Nut.....	1/500 gr.
Po. Ergot.....	1/500 gr.
Oil Cloves.....	1/50 gr.

(3) Dr. Southington's Combination Prescription Compound:

Senecin, Concentrated.....	2 gr.
Cemicifugin, Concentrated.....	1/2 gr.
Caulophyllum, Concentrated.....	1 gr.
Ferri Sulphas, Gran.....	2 gr.
Medicago Sativa.....	1/4 gr.
Po. Kola Nut.....	1/500 gr.
Po. Ergot.....	1/500 gr.
Oil Cloves.....	1/50 gr.

(4) Dr. Southington's Vaginal Suppositories:

Ext. Calendula.....	1/15 gr.
Oil Cloves.....	1/2 min.
Po. Tannic Acid.....	3/16 gr.
Po. Kola Nut.....	5/128 gr.
Hardening Material to fill capsule.	

Several doctors, specialists in diseases of women, and druggists familiar with the ingredients contained in respondent's compounds, testifying on behalf of the Commission gave their opinions as to the therapeutic uses and effectiveness of said compounds. Dr. Bernard Fantus, one of the medical specialists, testifying for the Commission, after exhaustive research, careful study and comparison with Culbreth's "Materia Medica and Pharmacognosy", "National Formulary", and "The United States Pharmacopeia" has set out in memoranda prepared by him and filed in evidence in this case, two exhibits, i. e., Commission's Exhibit No. 23,³ a "Materia Medica of Ingredients of Southington's Preparations", and Exhibit No. 24, "Ingredients Usually Contained in Emmenagogues and Abortifacients (and Contraceptives)", which show the average dose and use of the ingredients contained in such compounds and remedies and that the ingredients contained in respondent's compounds are in too small quantities to be effective. Dr. Fantus further testified that compounds (1), (2), and (3) above are intended to be used as emmenagogues and abortifacients, and as shown by the printed matter put out by respondent, are represented to be and sold for such purposes, but that "the dosage is so small in this formula as to be absolutely worthless"; and Dr. Fantus further testified that compound (4) above is intended to be used as a contraceptive, and as shown by the printed matter put out by respondent is represented to be and sold for such purpose, but that said compound would have no value or effect for such purposes. Dr. Fantus' conclusions and opinions are agreed to by other expert medical witnesses who testified for the Commission.

Respondent used two medical witnesses, one of whom is regularly employed by respondent as medical adviser in his business. Respondent is not a doctor. There is some conflict between the testimony given by medical witnesses for the Commission and that given by witnesses for respondent regarding the therapeutic uses and effects of respondent's said compounds, but they are agreed that the compounds are not a cure for the complaint, ailments, causes and diseases, namely, amenorrhea and dismenorrhea, or as emmenagogues, abortifacients and contraceptives—for which they are advertised, recommended and sold by respondent. All the witnesses except one agree as to the individual ingredients contained in the compounds and that there is but one effective ingredient, namely, ergot, contained in respondent's compounds and that said ingredient is not given in sufficient quantity to be effective. The one medical witness who disagrees as to the merit of the ingredients contained in the compounds, their therapeutic value and remedial effects, is one of

³ Not published.

respondent's witnesses and he admits that the compounds are not "cures" for the complaints for which they are recommended.

PAR. 4. The Commission finds, in conformity to the signed statement of respondent filed in the case and the overwhelming testimony of medical and other expert witnesses, that respondent's said compounds:

- (1) Dr. Southington's Single Strength Prescription Compound;
- (2) Dr. Southington's Double Strength Prescription Compound;
- (3) Dr. Southington's Prescription Compound Number 3;

are advertised, represented, held out to be, and sold by respondent as remedies for or as affording relief in cases of pain, disturbances and ailments caused or produced by amenorrhœa, dismenorrhœa, and other disorders and diseases peculiar to women. The Commission further finds that the said compounds—

(a) Are not cures for and will not afford relief in cases of amenorrhœa and dismenorrhœa, or long "stubborn and unusual cases" due to this kind of female sickness, disorder, and disease.

(b) Will not "end pain and worry" due to such disorders.

(c) Will not relieve "obstinate and abnormal cases" due to such disorders.

(d) Have no value or effect as a treatment for such disorders.

(e) They will not relieve "unnaturally painful and functionally delayed cases" and cannot be guaranteed as a "successful relief compound".

(f) That compound or Prescription No. 1 will not "restore normal menstruation".

(g) That "Prescription No. 2, Double Strength" is not "a grand, good remedy, worth its weight in gold to women who suffer from prolonged cases of suppression due to functional causes", and will not relieve "suppression or other stubborn unnatural irregularities."

(h) That they have no effect in female diseases and troubles and would not be beneficial in such treatment.

The Commission also finds that respondent's compound (4) "Dr. Southington's Vaginal Suppositories" is advertised, represented, held out to be, and sold by respondent as a contraceptive. The Commission further finds that said "Dr. Southington's Vaginal Suppositories" are not effective as a contraceptive and will not prevent conception.

PAR. 5. The Commission finds that the representations of respondent in regard to the therapeutic effects of said compounds or medicines, namely:

Ladies! I positively guarantee my great successful "Relief Compound." Safely relieves some of the longest stubborn and unusual cases in three to five days.

End Pain and Worry.

* * * They have safely relieved some of the most obstinate and abnormal cases in three to five days * * * we do not believe that these choice treatments will ever disappoint in a single instance, where they are properly and faithfully used * * *.

There are thousands of women in all walks of life, married and single, who suffer each month from * * * unnatural suppression of menstruation.

* * * a valuable "Relief" Treatment to *use at once* when the necessity arises one, two or three months from now, thus saving time and avoiding much trouble, worry and delay.

I positively guarantee my great successful "Relief Compound." Safely relieves some of the most unnatural painful and functionally delayed cases in 3 to 5 days.

For over a quarter of a century women from all over the country have used this compound with remarkable results. Testimonials without number. No harm, pain or interference with work. Mail \$2. Double strength, \$3. Booklet Free. Also *free* with each order while they last 2 Books of 127 pages entitled "What Every Married Woman Should Know" by Fielding and "The Physiology of Sex Life" by Dr. Greer. Simply mail this ad and your order today for either single or double strength treatment to *Dr. E. C. Southington Remedy Co., Kansas City, Mo.*

Prescription No. 1 * * * is adapted to restore normal menstruation in very mild and uncomplicated cases * * *.

Prescription No. 2, Double Strength is urgently advised in more prolonged cases of long standing where complete suppression or other stubborn unnatural irregularities exist. This is a grand, good remedy, and often *worth its weight in gold* to women who suffer from prolonged cases of suppression due to functional causes. Read Testimonials * * *

are exaggerated, misleading, unwarranted in fact, beyond the medical value of the compounds, and that said representations do not truthfully and accurately state the therapeutic effects thereof.

PAR. 6. The representations of respondent as to the therapeutic value and effects of his said compounds have had and do have the tendency and capacity to confuse, mislead and deceive members of the public into the erroneous belief that said "Dr. Southington's Single Strength Prescription Compound", "Dr. Southington's Double Strength Prescription Compound", and "Dr. Southington's Prescription Compound Number 3" have general curative properties in relieving cases of pain and distress due to amenorrhea and dismenorrhea and restoring health without regard to the particular cause of said ailments, and that said "Dr. Southington's Vaginal Suppositories" are an effective contraceptive or would prevent conception, and that the same are remedies for or will give relief in cases of the diseases and ailments named therein, or are such remedies or will give such relief generally, or afford such prevention, without qualification or limitation. Said representations of respondent have the tendency and capacity to induce members of the public to purchase and use said compounds or medicines because of the

erroneous belief engendered as above set forth, and to divert trade to respondent from competitors engaged in the sale in interstate commerce between and among the several States of the United States and in the District of Columbia of products similar in kind and as to the purposes of use to those of respondent, and those adapted to and used in the treatment of said respective diseases, ailments and purposes.

PAR. 7. There are among the competitors of respondent in the sale of said compounds and medicines those who in no wise misrepresent the therapeutic use and effects of their said compounds or medicines, and respondent's acts and practices as hereinabove set forth tend to and do divert business to respondent from his competitors to their substantial injury.

CONCLUSION

The practices of said respondent, under the conditions and circumstances described in the foregoing findings, are all to the injury and prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and are in violation of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, the testimony in support of the charges of said complaint and in opposition thereto, and the brief of counsel for the Commission, and the Commission having made its findings as to the facts with its conclusion that the respondent has been and is now violating the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes":

It is ordered, That the respondent, A. C. Haysler, Jr., his agents, representatives, servants, employees, and successors, in connection with the offering for sale, sale or distribution in interstate commerce between and among the several States of the United States and the District of Columbia of the products or remedies known as "Dr. Southington's Single Strength Prescription Compound", "Dr. Southington's Double Strength Prescription Compound", "Dr. Southington's Combination Prescription Compound Number 3", and "Dr. Southington's Vaginal Suppositories", or any products of substantially the same composition and ingredients, under any other name

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or names, in any letters, leaflets, booklets, labels, circulars, pamphlets, newspapers, magazines or other periodicals, or in any sales talks or radio broadcasts, cease and desist:

1. From using the phrases "I positively guarantee"; "end pain and worry"; "successful relief compound"; "end pain and delay" to describe any of the aforesaid products or the effects or use thereof.

2. From representing directly or indirectly in any letters, leaflets, booklets, labels, circulars, pamphlets, newspapers, magazines or other periodicals, or in any sales talks or radio broadcasts, that "Dr. Southington's Single Strength Prescription Compound", "Dr. Southington's Double Strength Prescription Compound", "Dr. Southington's Combination Prescription Compound Number 3", and "Dr. Southington's Vaginal Suppositories", or any of the said compounds, or any products of substantially the same composition and ingredients.

(a) Are competent treatment for relief in cases of pain or anxiety due to amenorrhea or dismenorrhea;

(b) Will produce abortion;

(c) Will relieve any stubborn and abnormal cases due to amenorrhea and dismenorrhea;

(d) Are positively efficacious in all cases;

(e) Will never cause disappointment;

(f) Will "end pain and worry";

(g) "Have safely relieved some of the most obstinate and abnormal cases in three to five days";

(h) Will never "disappoint in a single instance where they are properly and faithfully used" in cases of amenorrhea and dismenorrhea;

(i) That any of these compounds "is adapted to restore normal menstration * * * in uncomplicated cases";

(j) That any of these compounds "is a grand, good remedy, and often worth its weight in gold to women who suffer from prolonged cases of suppression due to functional causes"; or

(k) Any statements of a similar or substantially like false and misleading nature.

It is further ordered, That such respondent shall within 60 days after the service upon him of a copy of this order file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinabove set forth.

Complaint

IN THE MATTER OF

NATHAN HOFFMAN, DOING BUSINESS UNDER THE
TRADE NAME HOFFMAN ENGINEERING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2207. Complaint, July 13, 1934—Decision, Mar. 18, 1935*

Where an individual engaged in the manufacture and sale of a device for use in connection with the ignition system of automobiles, falsely represented in newspapers and periodicals and on the containers thereof that it would cause the motor to start more readily and have more power and speed and to run more smoothly, coolly, and economically, with less carbon accumulation and trouble; with effect of deceiving and misleading the public and inducing purchase of said device in reliance upon the truth of said statements and representations, and of diverting trade in amplifying appliances or units for use in connection with the ignition systems of automobile engines, from competitors, to their substantial injury and prejudice and that of the public:

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

Mr. Edward E. Reardon for the Commission.

Mr. Anthony J. Wolf, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that Nathan Hoffman, doing business under the trade name Hoffman Engineering Company, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce, as "commerce" is defined in 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, Nathan Hoffman, is a citizen of the State of New York, residing in the City of New York, and he is and has been doing business under the trade name Hoffman Engineering Company with a place of business in New York City at all times since on or about March 23, 1933.

PAR. 2. The respondent is and has been during all the times above mentioned engaged in the business of the manufacture and

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of the sale of an accessory or device sold under the name "Super-Fyre Amplifying Unit" for use in connection with the ignition system used in operating an automobile engine, which the respondent has sold and caused to be sold to purchasers, dealers therein for resale to the public, and to members of the public located in various States of the United States other than New York, and the respondent has caused the said accessory or device when so sold by him to be transported from New York, or from the State of origin of the shipment, to, into, and through States other than New York, or the State of origin of the shipment, to the purchasers.

PAR. 3. During all the times above mentioned other individuals, firms, and corporations, located in the various States of the United States, hereinafter called sellers, have been engaged in the business of the sale of various accessories or devices for use in connection with the ignition system used in operating automobile engines, to purchasers residing in various States of the United States other than the State of the seller, or the State of origin of the shipment, dealers therein, who have purchased the same for resale to the public, and to members of the public for use or consumption, and the said sellers have, respectively, during said times caused the accessories or devices when so sold by them to be transported from the State of the seller to, into, and through States other than the State of the seller or the State of origin of the shipment, to the purchasers.

PAR. 4. The respondent during all the times above mentioned is and has been in substantial competition in interstate commerce in the sale of the said Super-Fyre Amplifying Unit.

PAR. 5. The respondent during all the times above mentioned has caused advertisements of his Super-Fyre Amplifying Unit to be published and circulated in newspapers, magazines, and periodicals among the people of the United States containing, among many other similar statements, statements to the effect that the said Super-Fyre Amplifying Unit by means of its use above referred to, caused the automobile engine in connection with whose ignition system it was used to have more power and speed, to be smoother in its running, and to cause less accumulation of carbon or less mechanical trouble by reason of the accumulation of carbon, and to cause the automobile engine to be started more easily, and to keep the motor cool and save gas in its operation, and to obtain more mileage from its use in the operation of an automobile from a certain quantity of gas.

PAR. 6. Respondent's accessory or device in its use in connection with the ignition system of automobile engines has no effect, and it has had no effect in any way upon the performance or the result

of the performance of such engines and it does not accomplish and it has not accomplished in its use any of the various things claimed by respondent, through his agents or salesmen and in advertisements mentioned and referred to in paragraph 5 hereof, to be done by it; and the statements and representations, mentioned and referred to in said paragraph 5, which were made by respondent in advertisements and which were also made by him, by his agents and salesmen verbally to the members of the trade and public, are and have been each and every one false representations of material facts in connection with the sale of his accessory or device; and the respondent knew when the said statements and representations were published and made, or with the exercise of ordinary care on his part should have known that they were false and that they were when made not known to be false by the members of the trade and public, purchasers and prospective purchasers, to whom they were published and made.

PAR. 7. The statements and representations made and caused to be made by the respondent, mentioned and referred to in paragraph 5 hereof, have the capacity and tendency to mislead and deceive, and they have misled and deceived purchasers of respondent's accessory or device, dealers who have purchased the same for resale to the public, and members of the public who have purchased it for use or consumption into believing that the said statements and representations were and are true, and, in reliance upon that belief, into purchasing and using the respondent's accessory or device. The said statements and representations of the respondent have the further capacity and tendency to divert trade and they have caused trade to be diverted from the competitors of respondent, mentioned and referred to in paragraph 3 hereof, to the respondent.

PAR. 8. The above acts and things done and caused to be done by the respondent are each and all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in interstate commerce within the meaning and intent of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served its complaint upon the above-named respondent charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having filed his answer herein to the complaint, hearings were had and evidence was thereupon introduced on behalf of the Commission and the respondent before an examiner of the Federal Trade Commission duly appointed.

Thereupon this proceeding came on for final hearing on the briefs filed on behalf of the Commission and the respondent, and upon oral argument by counsel for the Commission and for the respondent, and the Commission having duly considered the record and being fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and the conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Nathan Hoffman, is a citizen of the State of New York, residing in the City of New York, and he is and has been doing business under the trade name Hoffman Engineering Company, with a place of business in New York City at all times since on or about March 23, 1933.

PAR. 2. The respondent is and has been during all the times since on or about March 23, 1933, engaged in the business of manufacture and of the sale of an accessory or device sold under the name "Super-Fyre Amplifying Unit" for use in connection with the ignition system of automobiles, and which the respondent has sold and caused to be sold to purchasers, dealers therein for resale to the public, and to members of the public located in various States of the United States other than New York, and the respondent has caused the accessory or device when so sold by him to be transported from New York; or from the State of origin of the shipment, to, into, and through States other than New York or the State of origin of the shipment, to the purchasers.

PAR. 3. During all the times since on or about March 23, 1933, other individuals, firms, and corporations, located in the various States of the United States, hereinafter called sellers, have been engaged in the business of the sale of various accessories or devices for use in connection with the ignition system used in operating automobile engines to purchasers residing in various States of the United States other than the State of the seller, or the State of origin of the shipment, to dealers therein, who have purchased the same for resale to the public, and to members of the public for their use or consumption, and the sellers have, respectively, during said times caused the accessories or devices when so sold by them to be transported from the State of the seller to, into, and through States

other than the State of the seller or the State of origin of the shipment, to the purchasers.

PAR. 4. The respondent during all the times since on or about March 23, 1933, is and has been in substantial competition in interstate commerce in the sale of his so-called Super-Fyre Amplifying Unit with the individuals, firms, and corporations referred to in paragraph 3 hereof as the sellers.

PAR. 5. The respondent during all the times since on or about March 23, 1933, has caused advertisements of his Super-Fyre Amplifying Unit to be published and circulated in newspapers, magazines, and periodicals among the people of the United States containing, among many other similar statements, statements to the effect that his Super-Fyre Amplifying Unit, by means of its use in connection with the ignition system of automobiles, caused the automobile engine in connection with which it was used to have more power and speed, to be smoother in its running, and to cause less accumulation of carbon or less mechanical trouble by reason of the accumulation of carbon, and to cause the automobile engine to be started more readily, and to keep the motor cool and save gas in its operation, and to obtain more mileage from its use in the operation of an automobile from a certain quantity of gas than would be obtained without the use thereof.

PAR. 6. The respondent's so-called Super-Fyre Amplifying Unit in external appearance consists of a porcelain socket fitted into a metal housing at the end of which is a metal terminal. The directions for installing the appliance in the ignition system of an engine are printed on the carton in which the appliance is sold, and are:

Remove high tension wire from coil or center of distributor. Insert terminal end of unit pushing all the way down. Insert wire in socket of unit.

The porcelain socket fits into the metal housing. Sunk into the socket into which it is directed that the high tension wire of the ignition system be inserted, is a metal screw, the head of which is seven-eighths of an inch below the socket opening. Into this seven-eighths inch of the socket the high tension wire which is inserted extends, and comes in contact with the metal screw. This metal screw, as shown in one of the respondent's appliances, Commission's Exhibit No. 2, extends all the way from its head, where it is in contact with the end of the high tension wire inserted in the porcelain socket, extending into and through the metal housing to the terminal end of the appliance which, according to the directions for installation of the appliance, is inserted and pushed all the way down on

the center of the distributor, making a continuous metal connection from the end of the high tension wire to the coil or center of the distributor. Within the metal housing and surrounding the screw, there is a coil of metal wire one end of which rests against a metal plate on the base of the porcelain socket.

This wire coil is held pressed against the metal base of the porcelain socket by means of two metal disks at the other end of the wire coil. The metal disks are separated, or are supposed to be physically separated from each other, by mica washers, and mica is a nonconductor of electrical current. The wire coil, by means of the metal plate on the base of the porcelain socket with which it comes in contact, is in electrical contact with the screw which also touches the metal plate where it emerges from the porcelain socket. Regardless of the mica washers, the wire coil is also in physical, and therefore electrical, contact with the other end of the screw by means of the metal disks through which the screw extends at the other end of the wire coil, to where it is attached beyond to the metal terminal of the appliance, thus forming a straight conductor throughout the length of the wire coil. The wire coil does not affect the passage of electric current through the screw extending throughout the appliance, and the appliance is a straight conductor of electric current, exactly as if the length of the high tension wire of the ignition system was increased by so much as the length of the respondent's appliance.

PAR. 7. In the case of another of respondent's appliances, Commission's Exhibit No. 1 for example, the screw which emerges from the porcelain socket, instead of extending all the way through from the porcelain socket to the metal terminal of the appliance, ends in a small bakelite tube or socket, into which another screw coming from the metal terminal of the appliance is inserted. This latter screw may be turned until it is in contact with the first screw coming through from the porcelain socket, in which case it forms a continuous physical as well as electrical contact, as is the case where only one screw is used as in Commission's Exhibit No. 2. Or, the second screw may be turned only so far that it will leave a small gap between its end and the end of the first screw.

If in the case of the appliance, Commission's Exhibit No. 1, a small gap would be created within the bakelite socket between the ends of the two screws, there would nevertheless be no interruption of the flow of current by reason of the gap, as shown as follows:

There is a wire coil in the appliance, Commission's Exhibit No. 1, such as already spoken of in the case of the appliance, Commission's Exhibit No. 2, which is in contact with the metal plate at the base

of the porcelain socket and thereby contacts the first screw. It also contacts the second screw by means of metal disks at its opposite end, notwithstanding mica washers between the disks, thus forming a continuous conductor around the gap, if any, within the bakelite tube; the disks each being in contact with the second screw and consequently in electrical contact with each other, even though physically separated from one another by the mica washers.

PAR. 8. Some of respondent's latest constructed appliances were made with a small shoulder in the porcelain socket, the purpose of which as claimed by the respondent was to make the lower end of the socket of smaller diameter than the high tension wire inserted in the socket, and to prevent the wire from coming quite in contact with the head of the screw extending through the appliance, thus causing interruption of the electric current by means of the small gap so created.

PAR. 9. The respondent sells and has sold its appliance without any reference to, or recommendation concerning, the size of the cable in the ignition systems of automobiles. Approximately 90 percent of all automobiles in the United States use 7 millimeter cables in their ignition systems, and cables of such size, if not provided with brass clips fitted to their ends, would make actual contact in any of respondent's appliances with the screw referred to, notwithstanding the shoulder with which the porcelain sockets of some of the appliances were furnished, and the appliances would thus be and remain straight conductors. If, however, a brass clip such as is frequently used were fitted on the end of the cable inserted in the porcelain socket of appliances provided with a shoulder, a slight gap would result between the end of the high tension wire and the head of the screw which extends from the porcelain socket to the terminal end of the appliance.

PAR. 10. A spark plug normally has a very high resistance, which is measured in millions rather than thousands of ohms. A carbon deposit on the spark plug, caused by the operation of the engine, reduces the resistance of the spark plug because electricity will flow through the deposit of carbon. If the deposit of carbon is of sufficient thickness and coherence, the resistance will be so reduced that the electric current will flow along the carbon deposit on the porcelain insulator to the shell of the spark plug instead of striking across the electrode. In order that the gap, if any, in the bakelite socket in respondent's appliance, Commission's Exhibit No. 1, or the gap, if any, in the porcelain socket between the end of the screw and the high tension wire, would cause a spark plug to fire because of interruption of the electric current, a condition would have to exist

where the spark plug was fouled to such an extent that its resistance was reduced from millions of ohms to between 5,000 and 50,000 ohms, and the respondent's appliance would have to be adjusted to that condition so as to have the gap small enough, or of the right dimensions, according to the measure of the lowered resistance of the spark plug.

The possibility that a spark plug would become so fouled that its resistance would be only between 5,000 and 50,000 ohms is very rare. Even if respondent's appliance had a gap that caused the electric current flowing through it to be interrupted, and the dimensions of that gap were specially adjusted to the particular amount of resistance of a fouled spark plug which it was intended to cause to fire, respondent's appliance would be without practical value because of the very rare occurrence of the above stated conditions in which it might function, and the statements and representations made and caused to be made by the respondent, in connection with the sale of his Super-Fyre Amplifying Unit and concerning its use, were and are, in effect, untrue.

PAR. 11. The statements and representations caused by the respondent to be made in advertisements, as above set forth, and on the cartons in which his appliance, Super-Fyre Amplifying Unit, was sold to the effect that, by means of the use of respondent's appliance in connection with the ignition system of automobiles, the automobile engine was caused to have more power and speed, to be smoother in its running, and to have less accumulation of carbon or less mechanical trouble caused by accumulation of carbon, and to cause the automobile engine to be started more readily, and to keep it cool and save gas in its operation, and that by the use of the appliance more mileage was obtained in the operation of an automobile from a certain quantity of gas than would be obtained without the use of the appliance, were and are each and all of them false representations to members of the public, users and consumers thereof, of material facts in connection with the sale of the respondent's said Super-Fyre Amplifying Unit, and they have the capacity and tendency to deceive and mislead the public, and they have deceived and misled the public, purchasers of appliances designed for use in connection with the ignition system of automobile engines, into the belief that the said statements and representations of the respondent were true, and in reliance upon such erroneous belief, into purchasing the respondent's appliance.

PAR. 12. In consequence of the practices of the respondent above set forth, trade in amplifying appliances or units used in connection with the ignition system of automobile engines was diverted to the

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respondent from competitors, to the substantial injury and prejudice of such competitors and to the substantial injury and prejudice of the public.

CONCLUSION

The practices of the respondent, Nathan Hoffman, doing business under the trade name Hoffman Engineering Company, under the conditions and circumstances described in the foregoing findings, were to the prejudice and injury of competitors of the respondent and were to the prejudice and injury of the public, and were unfair methods of competition in commerce and constitute a violation of the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission, upon the complaint of the Commission, the answer of the respondent, testimony and evidence introduced, and upon briefs on the part of the Commission and the respondent; and the Commission having made its findings as to the facts and its conclusion that respondent, Nathan Hoffman, doing business under the trade name, Hoffman Engineering Company has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes"—

It is now ordered, That respondent, Nathan Hoffman, doing business under the trade name, Hoffman Engineering Company, or under his own or any other trade name, his agents, representatives and employees, in the sale and offering for sale in interstate commerce of amplifying units or appliances for use in connection with the ignition system of automobile engines, do—

Cease and desist from representing or causing it to be stated or represented to dealers or others, or to members of the public, directly or indirectly, either verbally or in advertisements in newspapers, circulars, or other publications, or on labels, or by means of the radio, that the appliance or device designated Super-Fyre Amplifying Unit, or by any other name, will, when used in connection with the ignition system of an automobile engine, affect the operation of the spark plugs of the ignition system, so as to cause the engine to have more power and speed, to be smoother in its running, to have less accumulation of carbon and less mechanical trouble from accumulation of carbon, to cause the engine to start more readily, and

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to save gas in the operation of the engine, and that by the use of the said appliance or device more mileage can be obtained from a certain quantity of gas than would be obtained without the use of the said appliance or device;

Unless and until the said appliance or device is in fact so constructed and so adjusted to the resistance of fouled spark plugs of an ignition system with which it is sold to be used, that the appliance or device will interrupt the electric current of the ignition system to the extent necessary to cause the fouled spark plugs to fire, which, before the appliance or device was used, would not fire.

It is further ordered, That the respondent, Nathan Hoffman, shall within 30 days after the service of this order file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist.

Complaint

IN THE MATTER OF

L. HELLER & SON, INC., AND THE HELLER-
DELTAH CO., INC.

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

Docket 2146. Complaint, Jan. 10, 1934—Order, Mar. 20, 1935

Consent order requiring respondent corporations, their agents, etc., in connection with sale, advertisement, and offer of imitation pearls in interstate commerce, to cease and desist from—

Representing directly or indirectly, or causing retailers or others so to represent, that the usual and customary retail prices received for said respondent's imitation pearls, necklaces, or other articles made with them, whether under their trade names or otherwise, are greater than the actual prices at which said articles have been or are customarily offered to the public, through (a) fictitious prices placed on (1) display cards for attachment to containers in which offered and sold to dealers or public, or (2) labels attached to said articles or supplied to dealers for such purpose, for display; (b) use of such prices in advertisements of said articles, in newspapers, catalogs, or other publications; or (c) establishment thereof through the radio.

Mr. Edward E. Reardon for the Commission.

Hays, St. John, Abrahamson & Schulman, of New York City, and *Tilson, Stanley & McCuen*, of Washington, D. C., for respondents.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that L. Heller & Son, Inc., and the Heller-Deltah Co., Inc., hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce, as "commerce" is defined in 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, L. Heller & Son, Inc., is a corporation, incorporated and existing under the laws of the State of New York since in or about the year 1919 and having a place of business at number 15 West Forty-seventh Street, Borough of Manhattan, City of New York, N. Y.

PAR. 2. Samuel Heller, Milton J. Heller, and Ernest S. Heller are residents of the City of New York and are and have been, respec-

tively, the president and treasurer, the vice president, and the secretary of the respondent, L. Heller & Son, Inc.; the said individuals are and have been the board of directors of the respondent, L. Heller & Son, Inc., since prior to the date, hereinafter referred to, of the incorporation of the respondent, The Heller-Deltah Co., Inc.

PAR. 3. Respondent, The Heller-Deltah Co., Inc., is a corporation, incorporated and existing under the laws of the State of New York since in or about the year 1929 and having a place of business at number 8 West Thirtieth Street, Borough of Manhattan, City of New York, N. Y.

PAR. 4. Meyer F. Cartoon is a resident of the City of New York and he and Ernest S. Heller and Milton J. Heller, above mentioned, are and have been respectively, the president, the secretary, and the treasurer of the respondent The Heller-Deltah Co., Inc., and together they are and have been its board of directors since on or about the date of its incorporation.

PAR. 5. The respondent The Heller-Deltah Co., Inc., was organized as a corporation subsidiary of the respondent L. Heller & Son, Inc. Its business and business policies and all of its activities are and have been controlled and directed at all times since its incorporation by the respondent L. Heller & Son, Inc., through its officers and directors, a majority of whom have also constituted at all said times a majority of the officers and directors of The Heller-Deltah Co., Inc.

PAR. 6. The respondent L. Heller & Son, Inc., is and has been during the times above mentioned engaged in the business of importing merchandise into the United States, including imitation pearls, jewelry, and perfumes from France, Spain and other countries and in the sale of such merchandise, including imitation pearls, necklaces and other such articles made with them by itself and through its subsidiary corporation The Heller-Deltah Co., Inc., to wholesale and retail dealers located throughout the United States to whom it has sold the same during said times.

PAR. 7. The respondent The Heller-Deltah Co., Inc., is now and, during all the times since its incorporation, has been engaged in the business of the sale of merchandise, jewelry, and perfumes, including imitation pearls and necklaces and other such articles made with imitation pearls, to wholesale and retail dealers located throughout the United States to whom it has sold the same during the said times.

PAR. 8. The respondents, during the times above mentioned, have caused the merchandise, imitation pearls and necklaces and other such articles made with them, and jewelry and perfumes, mentioned and referred to in paragraphs 6 and 7 hereof, when sold by them

respectively, to be transported from the State of New York, or from the State of origin of the shipment thereof, to, into, and through other States to the purchasers.

PAR. 9. During the times above mentioned other individuals, firms, and corporations, hereinafter referred to as sellers, located in the various States of the United States, have been engaged in the business of the importation and in the sale of merchandise, imitation pearls, necklaces, and other articles made with them, jewelry and perfumes to wholesale and retail dealers throughout the United States to whom they have respectively sold the same and the said sellers have caused the merchandise, imitation pearls, necklaces, and said other articles, jewelry and perfumes, when so sold by them respectively, to be transported to, into and through States other than the State of the seller or the State of origin of the shipment, to the purchasers.

PAR. 10. The respondents during the times above mentioned have been and they are in substantial competition in interstate commerce in the sale of merchandise, imitation pearls, necklaces and other articles, jewelry and perfumes, with the other individuals, firms, and corporations referred to in paragraph 9 hereof.

PAR. 11. During and long prior to the times mentioned herein imitation pearls produced in France and the articles such as necklaces made with them have long been esteemed and considered by a very substantial number of the dealers in such articles and by the public in the United States as finer and more desirable for the uses for which such articles and imitation pearls are bought by the members of the public, than the imitation pearls produced in other countries or the necklaces or other such articles made with them; and the imitation pearls produced in France as well as the necklaces or other articles referred to made with them have been during the times above referred to considered more valuable and they have sold and still sell throughout the United States for comparatively higher prices than the imitation pearls produced in said other countries or than the said articles produced from them.

PAR. 12. On or about the year 1914 certain imitation pearls were produced or created in France of a kind and quality distinct and superior to many other imitation pearls then being made in France and imported and sold in the United States. They were imported from France and sold to dealers and resold by them to the public throughout the United States as "La Tausca" imitation pearls or in the form of necklaces or other such articles made with them under the trade name or trade mark "La Tausca" from the time they were first produced or created in 1914 until on or after the year 1929 as hereinafter set forth.

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For excellence of quality and perfection of reproduction the imitation pearls described herein, created in France and imported and sold in the United States under the trade name or trade mark "La Tausca" received the gold medal—the highest award at the Panama-Pacific Exposition in 1915 and grand prize medal at the Sesquicentennial Exposition in 1926.

PAR. 13. During all of the times above mentioned and referred to the use of the trade name or trade mark "La Tausca" in connection with the sale of imitation pearls and under which the imitation pearls were sold, as set forth in paragraph 12 hereof, indicated to the public of the United States and still indicates the French origin and the excellence of quality and perfection of reproduction of the said imitation pearls either loose, unset or unstrung or in necklaces or other articles in which forms the said imitation pearls are and have been sold and also indicated and still indicates to the public of the United States that the said imitation pearls are of the same kind and quality as those mentioned and referred to in paragraph 12 hereof.

PAR. 14. The right to the use of the trade name or trade mark "La Tausca" in connection with the sale of imitation pearls was the right or property of a certain individual, firm, or corporation from 1914 to on or about 1926. In the latter year the exclusive right to its use was transferred or sold to respondent L. Heller & Son, Inc., by whom or by its subsidiary The Heller-Deltah Co., Inc., the said trade mark has been since and now is owned and controlled.

PAR. 15. Since on or about 1929 when the respondent The Heller-Deltah Co., Inc., was incorporated and began business the respondents have caused imitation pearls produced in countries other than France to be imported from countries other than France of a kind and quality other than and different and inferior to the imitation pearls mentioned in paragraph 12 hereof; they have caused such imitation pearls, necklaces and other articles made with them to be sold throughout the United States as set forth in paragraphs 6, 7, and 8 hereof under the trade name or trade mark "La Tausca."

In connection with the sale of these different and inferior imitation pearls and necklaces and other articles made with them the respondents delivered to purchasers with each box or package containing the same a printed card on which appeared the following statements:

LA TAUSCA NECKLACE
HIGHEST AWARD PANAMA-PACIFIC EXPOSITION, 1915
GRAND PRIZE SESQUICENTENNIAL EXPOSITION, 1926
GUARANTEED

In pamphlets or folders containing illustrations of imitation pearls and necklaces made with them which the respondents distributed or caused to be distributed throughout the trade and public in the United States in connection with the sale of the above inferior imitation pearls there were, among others, statements as follows:

LA TAUSCA GUARANTEE

La Tausca received the gold medal—highest award at the Panama-Pacific World's Fair 1915—and the grand prize medal at the Sesquicentennial International Exposition 1926.

La Tausca Pearls alone received this recognition for excellence of quality and perfection of reproduction.

The guarantee price card establishes the value of La Tausca Pearls. The price is guaranteed by the makers and is backed by twenty years of service, quality and reliability.

PAR. 16. Neither the said inferior imitation pearls produced in countries other than France nor the necklaces or other articles made with them, which respondents sold and caused to be sold under the trade name or trade mark "La Tausca", as set forth in paragraph 15 hereof, received the awards mentioned in said paragraph 15.

PAR. 17. The usual, regular and customary retail prices of the necklaces and other articles, referred to in paragraph 12 hereof, made with the "La Tausca" imitation pearls described in said paragraph, at which they are and have been resold by dealers to the public for use or wear, were during all the times above mentioned, from approximately \$5 to as much as \$500, respectively, varying according to the number and quality of the imitation pearls and the value of the clasps, boxes or cases or other accessories used in their completion or usually sold with them.

PAR. 18. The respondents, in connection with the sale of the inferior imitation pearls, necklaces and other articles under the trade name or trade mark "La Tausca", as set forth in paragraph 15 hereof, and with the knowledge and intent that their representations would be passed on and made by dealers to members of the public, have represented to dealer purchasers that the said imitation pearls were the genuine "La Tausca" imitation pearls of French origin and that the said necklaces and other articles were made with them; and the respondents, with the said knowledge and intent sold the same to dealer purchasers on the understanding that the respondents would furnish and deliver the same to them prepared for display and resale to members of the public, purchasers for use or wear, put up or encased in display boxes in or on which the corresponding usual, regular and customary retail prices mentioned and referred to in paragraph 17 hereof, respectively, of the genuine "La Tausca"

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imitation pearls, necklaces and other articles would be indicated or exhibited, in addition to furnishing and delivering to the dealers the cards, pamphlets or folders containing the statements described in paragraph 15 hereof.

And the respondents, with the said knowledge and intent have furnished and delivered the said inferior imitation pearls, necklaces and other articles to dealers, so prepared for display and resale, and have furnished and delivered with them the said cards, pamphlets or folders and during said times have caused it to be represented to members of the public that the said inferior imitation pearls, necklaces and other articles were genuine "La Tausca" imitation pearls and that the said prices were the usual, regular and customary prices at which the said inferior imitation pearls, necklaces, and other articles were sold during said times.

PAR. 19. During the times mentioned and referred to in paragraphs 15 and 18 hereof the usual, regular and customary retail prices of the inferior imitation pearls and the necklaces and other articles made with them, referred to in said paragraphs 15 and 18, sold by respondents under the trade name or trade mark "La Tausca" were much lower and substantially less than the usual, regular and customary retail prices of the genuine "La Tausca" imitation pearls and of the necklaces and other articles made with them; for instance, among others, the usual, regular and customary retail price of a necklace sold by respondent made with the said inferior imitation pearls was 70 cents and the usual, regular and customary retail price of the necklace made with the genuine "La Tausca" imitation pearls, with which respondents represented the necklace to be made, as set forth in paragraph 17 hereof, was during said times \$5.

PAR. 20. The practices of the respondents of substituting or passing off to dealers inferior imitation pearls, produced in other countries than France, and necklaces and other articles made with them as and representing the same to be "La Tausca" imitation pearls and necklaces and other articles made with them; of furnishing to dealers boxes or containers for the necklaces and other articles made with the said inferior imitation pearls with the usual, regular and customary retail prices, indicated or exhibited in or on them, of the necklaces and other articles made with genuine "La Tausca" imitation pearls with which respondents represented they were made; of furnishing and delivering the said necklaces and other articles made with the said inferior imitation pearls and the cards, pamphlets and folders described in paragraph 15 hereof to dealers representing that the said inferior imitation pearls had received the

awards mentioned in said paragraph 15; constituted and they each and all were false representations of material facts in the sale of the said imitation pearls, necklaces, and other articles and they were made with the knowledge and intent on the part of respondents that the said false representations would be passed on by the dealers, purchasers from respondents, and by others to members of the public, purchasers for use or wear of the said imitation pearls, necklaces, and other articles made with them.

The above practices of the respondents had the tendency and capacity to mislead and deceive and they have misled and deceived dealers, purchasers from respondents, and caused them, in the belief that the said false representations were true, to pass on and to repeat the same to and thereby to mislead and deceive members of the public, purchasers for use and wear of the said imitation pearls, necklaces and other articles made with them in the particulars, among others, hereinafter set forth.

PAR. 21. The said sale by respondents of the said inferior imitation pearls, necklaces and other articles made with them under the trade name or trade mark "La Tausca" under the representations and conditions above mentioned, had the tendency and capacity to mislead and deceive and they did mislead and deceive purchasers, dealers, and members of the public into the belief that the said inferior imitation pearls and the necklaces and other articles sold by respondents under the trade name or trade mark "La Tausca" were genuine "La Tausca" imitation pearls produced in France and necklaces and other articles made with them; that the said necklaces and other articles made with the said inferior imitation pearls had received the said awards; that the usual, regular and customary retail prices of the said inferior imitation pearls and the necklaces and other articles made with them, at which the same were sold as genuine "La Tausca" imitation pearls and necklaces and other articles made with them, were the usual, regular and customary retail prices for the same, and in reliance thereon into purchasing said inferior imitation pearls, necklaces, and other articles in place of genuine "La Tausca" imitation pearls, necklaces, and other articles and also in place of imitation pearls produced in countries other than France and necklaces and other articles made with them, which were offered for sale and sold by respondents' competitors during said times.

In consequence of the above practices of the respondents in the sale of imitation pearls and of necklaces and other articles made with them, and of the above false representations made and caused by them to be made by others, as above set forth, trade in imitation pearls, necklaces and other articles made with them was diverted from respondents' competitors to respondents.

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PAR. 22. The above acts and things done and caused to be done by the respondents are and were each and all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the meaning and intent of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 717), the Federal Trade Commission on January 10, 1934, issued its complaint against the above named respondents, in which it is alleged that the respondents are and have been using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

On the 18th day of March 1935 the respondents filed an amended answer to the complaint, wherein the respondents severally consent that the Federal Trade Commission may make, enter, and serve upon them, in accordance with the provisions of paragraph (b) of Rule V of the Rules of Practice of the Commission, an order to cease and desist from the practices alleged in the complaint in connection with the sale in interstate commerce of imitation pearls, and the Commission being fully advised in the premises:

It is now ordered, That the respondents, L. Heller & Son, Inc., and The Heller-Deltah Co., Inc., severally, their agents, employees, and representatives, in connection with the sale and the advertising and offering for sale of imitation pearls in interstate commerce, do—

Cease and desist from representing, directly or indirectly, or from causing retail dealers or others to represent directly or indirectly—

(a) By means of fictitious prices placed on display cards attached or supplied to dealers to be attached to boxes or other containers in which imitation pearls, necklaces, or other articles made with them are displayed, offered for sale, and sold to dealers and to members of the public;

(b) By means of fictitious prices on labels attached or supplied to dealers to be attached to imitation pearls, or to necklaces, or to other articles made with them for display to the public;

(c) By means of fictitious prices in advertisements of imitation pearls, necklaces, or other said articles in newspapers, circulars, catalogs, or other publications;

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(d) Or through fictitious prices established by means of the radio. That the usual and customary prices which retail dealers receive or have received for the imitation pearls, necklaces, or other articles made with them, sold by respondent, whether sold under the trade name or trade mark "La Tausca", or under any other trade name, or without connection with any trade name, are or have been prices greater in amount than the actual prices at which the said imitation pearls, necklaces, or other said articles have been or are, respectively, regularly or customarily offered to members of the public, purchasers or prospective purchasers.

It is further ordered, That the respondents, L. Heller & Son, Inc., and The Heller-Deltah Co., Inc., shall severally, within 30 days after the date of 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 and are now complying with the order to cease and desist hereinbefore set forth.

IN THE MATTER OF
CADILLAC PAINT MANUFACTURING COMPANY AND
H. A. LESSEN

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

Docket 2118. Complaint, Apr. 10, 1934¹—Decision, Mar. 25, 1935

Where a corporation engaged in the manufacture and sale of paints, varnishes, and paint products through salesmen and the mail, acting at the direction of, or with, its secretary-treasurer and general manager, in control of the operation thereof, and moving spirit therein—

- (a) Represented, branded, and sold as white lead and linseed oil paints, and quality outside house paints, through use of such words as "White lead ground in linseed oil", "durable", "X-Tra Good", "economical", "dependable", "guaranteed", and otherwise, products which did not contain the aforesaid or other ingredients in the requisite quantities and proportions to justify such designation and sale, failed to conform in the matter of ingredients or proportions to the formulæ or notices set forth on the containers thereof, in those cases in which given, were composed, in large and excessive proportions, of unrevealed water, petroleum spirits, cheap and inadequate adulterants and substitutes, inert materials, extenders and fillers, and fell far below paint specifications recognized by reputable manufacturers of first quality, standard products;
- (b) Labeled the containers of many of its products with the names and addresses of fictitious concerns and set forth, under such names, pretended guarantees and representations as to the quantity, quality, composition and nature of the product concerned, and the results to be expected therefrom by the ultimate user in the way of durability or otherwise, with intent of enabling it thereby to avoid the recognized function of a trade name, and make and sell such products without disclosing the place of manufacture and manufacturer thereof, and with effect of misleading purchasers thereof in various cities into believing, rightly, that a genuine functioning concern was back of the paint involved, as set forth on the label, to which they might rightfully look for the faithful performance of the statements, representations, and guarantees covering the product to which such trade-name label was attached;
- (c) Encouraged and aided "factory" and "dollar" stores and similar enterprises in selling at auction and otherwise as "bankrupt stock" and "interstate unclaimed freight", its aforesaid heavily watered and otherwise adulterated products which it sold to dealers at from 60 to 70 cents a gallon, as high-grade house and outside paint, for advertisement and resale by such outlets as extra good, durable, and guaranteed paint at from 99 cents to one dollar a gallon, with asserted saving of more than 50 percent because purchased from the manufacturer", notwithstanding fact it is impossible to make and sell a durable, quality paint at any such price, and reputable manufacturers decline to put their name on such a product; with the

¹ Supplemental and amended.

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result that such outlets created the impression upon the public that said products, as a result of their supposed purchase, as aforesaid, were high-grade paints offered at exceptionally low prices;

- (d) Supplied trade-name labels to concerns engaged in the purchase of paints at bankrupt and distress sales, including such "dollar" and "factory" paint stores in the several cities, for use upon such unknown and miscellaneous products as they might thus acquire, and thereby lost control over whatever integrity, if any, its said trade names had or should have had, and placed in the hands of such "dollar" and "factory" stores instruments for use in misleading and deceiving the public as to the origin of such paints and the quality and value thereof;

With the result that reputable stores and dealers which advertise annually at large expense ready-mixed paint, with lasting protective qualities, at from \$3.15 to \$3.25 a gallon for high-grade paint, and seek to maintain a standard of paint which covers more, lasts longer, and goes further, suffered heavy losses in their advertising campaigns to educate the public as to the advantages and economy of good paint and found their efforts brought to naught through sale of such watered and adulterated products, as aforesaid, competitors suffered heavy losses, goodwill acquired in connection with the advertising of genuine paint products was destroyed through the sale of the products concerned, and the consuming public was confused, misled and deceived to its loss, into believing that it was purchasing high-grade, durable paint at unusually attractive prices; and

- (e) Included among trade names employed on its products, names which closely simulated those of legitimate functioning enterprises in certain cities, and thereby caused confusion and deception of the purchasing public as to the origin of such products and the identity of the seller:

Held, That such acts, statements, practices, and representations, under the conditions and circumstances set forth, were to the prejudice of the public and competitors, and constituted unfair methods of competition.

Mr. Marshall Morgan for the Commission.

Mr. Isaac Finkelstein, of Detroit, Mich., for respondents.

SUPPLEMENTAL AND AMENDED COMPLAINT

Whereas, the Federal Trade Commission did heretofore, to wit, on September 28, 1933, issue its complaint herein charging and alleging that respondents herein are and have been guilty of unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914;

And said Commission having reason to believe that respondents herein have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, other than and in addition to, those in relation to which the Commission issued its complaint aforesaid and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest; now therefore:

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission charges that Cadillac Paint Manufacturing Company, a corporation, and H. A. Lessen, individually and as an officer and general manager of said Cadillac Paint Manufacturing Company, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Cadillac Paint Manufacturing Company, is a corporation organized under the laws of the State of Michigan with its principal office and place of business at Detroit, Mich., and is engaged in the manufacture and sale of paints and paint products, sold by it in interstate commerce.

Respondent, H. A. Lessen, residing at 2696 Webb Street, Detroit, Mich., is secretary-treasurer and general manager of the Cadillac Paint Manufacturing Company, located at 433 Leland Avenue, Detroit, Mich., and directs the activities and controls the policy and affairs of the respondent company.

Respondent Cadillac Paint Manufacturing Company was incorporated under the laws of the State of Michigan on May 18, 1932, for the purpose of engaging in and carrying on the business of manufacturing, buying, and selling paint and paint products. Respondent, Lessen, for 13 years prior to October 1931 was engaged in business as a paint contractor, in the city of Detroit. From October 1931 until the incorporation and organization of the respondent corporation in May 1932 respondent Lessen manufactured paint at 433 Leland Avenue, Detroit, Mich., under the trade name of Detroit Paint Manufacturing Company.

The respondent, Cadillac Paint Manufacturing Company, is now and for more than one year last past has been engaged in the manufacture, sale, and distribution in commerce among various States of the United States, and more particularly the States of Michigan, New York, Ohio, and Indiana, of paints, varnish, and paint products. In the course and conduct of such business respondent Cadillac Paint Manufacturing Company has been and now is engaged in direct and substantial competition with various corporations, partnerships, and individuals manufacturing and selling or offering for sale in interstate commerce paints, varnishes, and paint products.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, the respondent, Cadillac Paint Manufacturing Company, acting through, and under the direction of H. A. Lessen,

has offered for sale and sold paint, lead, varnish, and other paint products under numerous trade names, and transported or caused the same to be transported in commerce among several States of the United States, to retail dealers located in various States of the United States, and particularly to so-called "Army", "Dollar", and "Factory" paint stores. Respondent Cadillac Paint Manufacturing Company's business results from sales negotiated through the medium of traveling salesmen and the United States mails. The retail dealers to whom the respondent company sells its products under whatever trade name employed, in turn offer such products for sale and sell the same to the general purchasing public.

PAR. 3. As a result of scientific experimentation, as well as practical experience, paint that may be sold in commerce as high-grade, durable, standard quality is a paint composed of accepted, high-grade, metallic pigments combined with liquid vehicle composed largely of linseed oil, to carry the pigments in heavy solution.

The term "white lead" is commonly understood and used by both the trade and the purchasing public to designate either sulphate of lead or carbonate of lead without the addition of other pigments. White lead has been used for many years both alone and as the principal ingredient of high-grade paint, for the purpose of furnishing a protecting film for a painted surface.

Linseed oil is the most generally accepted vehicle to bind together the pigment particles and to cement the paint film to the surface. It dries into a relatively hard, tough, and elastic film.

The addition of water to paint is for the purpose of cheapening, thickening, and adulterating it. Water in quantities impairs the durability of paint and is regarded as a gross adulterant.

Petroleum distillates evaporate upon exposure to the air and when used in excessive quantities, displacing linseed oil, impair the durability of paint, and constitute a gross and fraudulent adulterant.

Paint specifications for paint generally recognized by reputable manufacturers of first quality, standard paint products, require that the pigment shall contain not less than 80 percent by volume of lead and zinc, or lead, zinc and titanium pigments; that the pigment content shall constitute not less than 60 percent, by volume, of the total content, and that the vehicle shall contain not less than 80 percent, by volume, of pure linseed oil, the remainder volatile oils and dryers.

In the course and conduct of the business of respondent company as referred to in paragraphs 1 and 2 hereof, and in connection with the sale of its products not only to retail dealers in various States but by the retail dealers to the purchasing public, the respondent com-

pany, acting under the direction of H. A. Lessen, has been and now is engaged in making various false, misleading and deceptive representations through the use of labels and otherwise, as shown by the following fraudulent acts and practices:

(1) Manufactured, represented, and sold as "white lead ground in linseed oil", a product which contained less than 1 percent of white lead.

(2) Manufactured, represented, and sold as "durable economical linseed oil house paint", a product the vehicle of which contained 85 percent of water and an oil which was not pure linseed oil.

(3) Manufactured, represented, and sold as "white lead", a product the pigment of which contained 99.52 percent barium sulphate, no lead and no zinc.

(4) Manufactured, represented, and sold as "duracote flat wall paint", a product the vehicle of which contained 49 percent of water.

(5) Manufactured, represented, and sold as "X-Tra good ready-mixed linseed oil house paint", "Ironsides paint guaranteed \$1.39 per Gallon", "durable house paint", "guaranteed house paint", "ready-mixed house paint", "durable economical linseed oil house paint" and other alleged high-grade paint, paint the pigments of which were 48 percent, 47.4 percent, 38.20 percent, 47.07 percent, 41.55 percent, 47.10 percent, 35.73 percent, and other inadequate percentages respectively, of the total content.

(6) Manufactured, represented, and sold as "X-Tra good house paint", a product the vehicle of which contained 60.8 percent of water.

(7) Manufactured, represented, and sold as "X-Tra good ready-mixed linseed oil house paint", a product the vehicle of which was composed of 57.6 percent of water.

(8) Manufactured, represented, and sold as "X-Tra good ready-mixed linseed oil house paint", a product the vehicle of which contained 66.1 percent of water.

(9) Manufactured, represented, and sold as "Ironsides paint guaranteed \$1.39 per Gallon", a product the vehicle of which contained 50.94 percent water.

(10) Manufactured, represented, and sold as "durable house paint", a product the vehicle of which contained 29.18 percent of water, and whose pigment contained respectively 38.26 percent of silicates and 43.56 percent of calcium carbonate.

(11) Manufactured, represented, and sold as "guaranteed house paint", a product the vehicle of which contained 47.90 percent of water.

(12) Manufactured, represented, and sold as "ready-mixed guaranteed house paint", a product the vehicle of which contained 56.73 percent of water.

(13) Manufactured, represented, and sold as "durable economical linseed oil house paint", a product the vehicle of which contained 51.34 percent of water.

(14) Manufactured, represented, and sold as "X-Tra good ready-mixed linseed oil house paint", a product the vehicle of which contained 79 percent of water by weight, and an oil which was not pure linseed oil.

(15) Manufactured, represented, and sold as "durable paint", a product which contained less than 1 percent of lead when the label on the can specified 7 percent; 0.4 percent zinc oxide when the label specified 13 percent; 62.2 percent of lithopone when the label specified 35 percent; 1.2 percent of siliceous matter when the label specified 10 percent of magnesium silicate; and a vehicle 59 percent of which was volatile matter, containing 11.6 percent of water.

(16) Manufactured, represented, and sold as "durable ready-mixed house paint—white", a product the vehicle of which was labeled as containing 83 percent of linseed oil when in fact only 60 percent was found, and 17 percent of dryers and mineral spirits when in fact 40 percent of the latter was found.

(17) Manufactured, represented, and sold as "Sunbeam Paint" a product shipped in a can bearing the words "red lead" printed above a white lead-zinc house paint formula, such product being a very poor grade of red lead paint, the pigment of which was only 13 percent by weight, a gallon of the paint weighing only 8.4 pounds, when it was represented as weighing 15 pounds.

(18) Manufactured, represented, and sold as high-grade, standard paint, paint which was composed throughout of cheap, inadequate substitutes for the requisite elements and proportions of white lead carbonate or sulphate, zinc oxide, or other metallic pigments, and linseed oil.

(19) Printed and affixed to cans of paint sold by respondent company various trade-name labels setting forth formulae not truly representing the ingredients found or contained in the paint inside the can, and put in the paint large quantities of added or substituted ingredients not set forth on the label.

(20) Sold to dealers as high-grade house and outside paint, at a price of 60 to 70 cents a gallon, paint which was heavily watered and otherwise adulterated, such price being far below that at which high-grade, standard quality of paint can or could be manufactured and sold.

(21) Encouraged and aided the opening of "Army", "Factory" and "\$1.00" paint stores in various States of the United States for the purpose of selling misbranded and adulterated paint and paint products and aided and encouraged such stores in the misbranding of Cadillac Paint Manufacturing Company products sold as high-grade standard paint at approximately one-third normal prices.

(22) Aided and abetted managers and operators of so-called "Army", "Factory", and "\$1.00" paint stores located in cities of various States of the United States in selling at \$1 a gallon paint that was heavily adulterated with cheap substitutes and of grossly inferior quality, advertising and representing it variously to be "ground in pure linseed oil", "pure white lead and linseed oil paint", "fully guaranteed finest quality", "good grade of paint", "quality ready-mixed house paint", "guaranteed house paint ground in pure linseed oil—fresh from factory, \$1, inside, outside, all colors", "guaranteed house paint—color guaranteed", creating in the mind of the consuming public the impression that it was getting an honest, superior quality of house paint at an unusually attractive price and value, when such was not the fact, for both the pigment and vehicle of paints manufactured by the respondent Cadillac Paint Manufacturing Company and sold and transported by it in interstate commerce, were and are composed largely of cheap adulterants and substitutes and are far below paint specifications for paint generally recognized by reputable manufacturers of first quality, standard paint products.

PAR. 4. In addition to the foregoing acts and practices respondent, Cadillac Paint Manufacturing Company, has avoided or refrained from printing its own name on labels for paint manufactured and sold by it, but instead has printed on such labels the following among other names of fictitious companies and corporations which exist only on paper as trade-name fiction:

Detroit Paint & Color Works, Detroit, Michigan;
Interstate Paint & Roofing Company, New York, Detroit, Chicago;
Detroit Color Works, Detroit, Michigan;
Detroit Quality Paint Manufacturing Co., Detroit, Michigan;
Superior Paint Company, Cleveland, Ohio;
Superior Paint and Color Works, Cleveland, Ohio;
LaSalle Color Company, Detroit, Michigan;
United Manufacturing Products Company, Detroit, Michigan;
Reliance Paint & Varnish Works, Saginaw, Michigan; Detroit,
Michigan;
Ironsides Paint Works, Detroit, Michigan, U. S. A.;
Klimatic Paint Company, Detroit, Michigan;
Wolverine Lead & Color Works, Detroit, Michigan;

Wolverine White Lead Works, Cleveland, Ohio;
 H. A. Lessen Company, Detroit, Michigan;
 Red Arrow Paint & Varnish Company, Detroit, Michigan;
 Old Method Economy White Lead Works, Detroit, Michigan;
 Michigan Paint Products Company, Detroit, Michigan;
 Imperial Color Works; Detroit, Michigan;
 Wallace Paint and Varnish Company, Cleveland, Ohio;
 Imperial Roofing Company, Detroit, Michigan.

Respondent Cadillac Paint Manufacturing Company, acting under the direction and control of respondent H. A. Lessen, has been and is using the herein enumerated trade names on labels for paint products manufactured and sold by respondents in interstate commerce in such manner as to deceive and mislead the ultimate purchasers of such paint products into believing that such trade names were and are those of corporations or companies having an actual business existence standing behind paint products covered by such labels, certifying to the quality and quantity of paint in the cans so labeled, giving directions for the proper use of said paint, guaranteeing its quality and in some instances guaranteeing the number of years it would last. Said trade names were not and are not now employed in the ordinary sense of denoting some particular concern, or the origin of goods with some particular concern, but were and are being used to indicate a seller's recognition and acceptance of the responsibilities and obligations resulting from the sale of his products for a valuable consideration.

Among the business functions and responsibilities the respondents herein undertook and are undertaking to have their various trade named companies assume and perform through the use of trade name labels were and are the following:

The Detroit Color Works, Detroit, Mich., existing only as a trade name, undertakes to give directions covering the use of the following paint products: "X-tra Good Mixed Paint Ground in Pure Linseed Oil"; "Mixed Paint"; "X-tra Good Ready Mixed House Paint"; "Sunbeam Enamel"; "Durable Ready Mixed Paint"; "Wear More Ready Mixed Paint"; "Depend-On Enamel"; "Porch Deck"; "Rex Flat Paint"; "House Paint—Ready for use"; "Dura Cote Flat Wall Paint".

The Detroit Color Works further made and makes on labels the following representations:

That "Leak Proof Asbestos Roof Coating makes tin, corrugated iron, felt, gravel and composition roofs water tight" and that "Leak Proof is unaffected by changing temperatures"—that "the fiber tendons grip the surface tenaciously"; that "House Paint" is "One Gal-

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lon U. S. Std. Measure"; that a "General Purpose Varnish" and a "Four Hour Varnish" are "One Gallon—U. S. Standard"; that a "Wear More House Paint" is a "Linsced Oil Paint".

The "Superior Paint & Color Works, Cleveland, Ohio", existing as a trade name only gives directions for the use of "Depend-On Ready Mixed House Paint" and "Durable-Economical Ready Mixed House Paint".

The "Detroit Quality Paint Mfg. Co., Detroit, Mich.", existing only as a trade name, gives directions for the use of "Rex One-Coat Enamel".

The "Superior Paint Company, Cleveland, Ohio", existing only as a trade name, gives directions for the use of "Perfection Ready for Use Mixed Paint".

The "Interstate Paint and Roofing Company, New York-Detroit-Chicago" existing only as a trade name, gives directions for the use of "Interstate Interior Ready Mixed Exterior House Paint".

The "Michigan Paint Products Company", of Detroit, existing as a trade name only, gives directions for the use of "Durable-Economical Ready Mixed House Paint".

The name, "Cadillac Paint Manufacturing Company", which company manufactured and sold the above-described paint products, does not appear on any of these labels.

PAR. 5. Among the further business functions and responsibilities the respondents herein undertook and are undertaking to have their various trade name companies assume and perform through the use of trade name labels affixed to cans of paint sold and transported into various States of the United States were and are the following:

The "Detroit Color Works", existing in name only, guarantees a spar varnish; represents that it is of "Guaranteed Quality". The same guarantees are given in the case of a "House Paint", a "General Purpose Varnish" and a "Four Hour Varnish". A "Mixed Paint" is also guaranteed to a purchaser thereof by this supposedly existing company.

The "Wallace Paint & Varnish Co., Cleveland, Ohio", existing as a trade name only, represents that "House Paint" is "Guaranteed", that it is "Quality Guaranteed" and "One Gallon U. S. Std. Measure". The same representations are made for a "Floor Varnish".

The "Huron Lead Works, Detroit, Mich.", existing only as a trade name, gives the following guarantee for Huron "Paste White": "Guaranteed Ground in Pure Linsced Oil".

The "Superior Paint and Color Works, Cleveland, Ohio", existing as a trade name only, gives the following Guarantee for "Durable-Economical Ready Mixed House Paint": "Guaranteed to Give Satisfactory Service for FOUR Years".

The name "Cadillac Paint Manufacturing Company", which company manufactured and sold the above-described paint products, does not appear on any of these labels.

The purchasers of said paint in various cities of the United States were and are thereby led to believe and were and are justified in believing that a genuine functioning concern was and is back of the paint covered by such trade name labels, a company to which they might rightfully and properly look for the faithful performance of the statements, representations, and guarantees covering the paint products to which said trade name labels were attached.

PAR. 6. Among the trade names so adopted, used, and employed by respondents in the sale of their paint products, were and are a number so similar to those of actual, legitimate business concerns operating in various States of the United States, as to result unavoidably in confusion and deception to the purchasing public in relation to the origin of the products sold under such trade names, as follows:

(a) The trade name, "Detroit Paint & Color Works, of Detroit, Michigan", was and is being used when there is and was a company already operating in Detroit known as Detroit Paint & Color Company;

(b) The trade name "Michigan Paint Products Company, of Detroit, Michigan", was and is being used when there was and is a company operating in Detroit under the name of Michigan Products Corporation;

(c) The trade name "Imperial Color Works, of Detroit, Michigan", was used when there was operating in the city of Detroit another company by the name of Imperial Color Works, Inc.;

(d) The trade name "Wolverine White Lead Works", of Cleveland, Ohio, was and is being used when there was and is operating in that city a concern known as Wolverine White Metal Works; also another concern operating there under the name of Wolverine Varnish Company.

The name "Cadillac Paint Manufacturing Company" does not and did not appear on labels using such similar and confusing trade names.

PAR. 7. Said respondents, in addition have furnished said herein described labels to various dealers making a practice of buying paint at bankrupt or distress auction sales, including "Dollar", "Factory",

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and "Army" paint stores in the several States of the United States established by and with the financial aid and assistance of respondents, and serving as outlets for products of the Cadillac Paint Manufacturing Company. Such "Dollar", "Factory", and "Army" and other stores have in turn affixed said labels to paint picked up at various auction sales over the country and thereafter sold by them. Said respondents have permitted outsiders freely to use and affix to unknown, miscellaneous paint products labels containing trade names of respondent Cadillac Paint Manufacturing Company, the said company thereby losing control over whatever integrity, if any, such trade names might otherwise have had or should have had. Respondents thereby place and are placing in the hands of the proprietors of such "Dollar", "Factory", and "Army" stores instruments used and to be used in misleading and deceiving the public as to the origin of the paint, its quality and value. Said labels were and are being furnished to said "Dollar", "Factory", and "Army" and similar stores by respondents with full knowledge and in reckless disregard of the fact that the labels would be affixed indiscriminately to any and every character of paint of unknown origin, quality, and content obtained at bankrupt or distress auction sales, and elsewhere.

Said trade name labels were employed by respondents not for the purpose of indicating that certain paint products were manufactured by and originated with the Cadillac Paint Manufacturing Company, but on the contrary were employed to satisfy the demand of certain of the Cadillac Paint Manufacturing Company's customers and distributors who believe and believed that the use of certain names would prove of greater selling advantage than other names used upon paint labels. Said trade name labels were employed by respondents not to denote origin, the recognized function of a trade name, but to permit the Cadillac Paint Manufacturing Company to manufacture and sell paint products without disclosing where and by whom such products were manufactured.

The purchasers of such paint are and have been misled and deceived thereby into believing that the trade names used on said labels are and were the names of genuine functioning business concerns, capable of performing the undertakings and guarantees set forth on such labels and are and have been misled and deceived concerning the origin of the paint sold under such labels, its quality and value.

PAR. 8. Said respondent, Cadillac Paint Manufacturing Company, in furtherance of its efforts to effect sales of paint manufactured by it cooperated or participated with Cadillac Paint Manufacturing Company outlets in the advertising of respondent company's prod-

ucts as being those of bankrupt and unclaimed freight stock sales thereby creating the impression upon the purchasing public that respondent company's paints, because obtained through bankrupt and freight stock sales, were a high grade paint product being sold at an exceptionally low price. Said Cadillac Paint was thus advertised and sold by Cadillac outlet stores in sales variously advertised as "unclaimed freight", and "\$450,000 stock liquidation at bankrupt prices", "interstate unclaimed freight". Said freight and bankrupt sale advertisements by Cadillac Paint Manufacturing Company outlets offered "\$3. House Paint All Colors" for 95 cents a gallon; "\$3.50 High Grade Paints" * * * "Depend On", "Detroit Color" at 95 cents a gallon; "\$3. High Grade 4-Hour Varnish" at 79 cents a gallon; "\$2.50 House Paint" at 39 cents a gallon; "\$2. 4-hour Floor Varnish" at 98 cents and 58 cents per gallon; "\$3.50 Paint" at 98 cents; when in truth and in fact said advertised values were false and fictitious, said Cadillac products never having been worth or sold for such fancy top prices, denoting highest quality and excellence for paint.

PAR. 9. Respondents have claimed in writing that they are inexperienced in the manufacture of paint, whereas the fact is they have mastered all the intricacies touching the manufacture and distribution in interstate commerce of cheap, inferior paint, including the misbranding and adulteration of the same. Respondents possess, in fact, full knowledge of the various adulterant ingredients which commonly are and may be used in the manufacture of cheap, inadequate paint, as a substitute for the requisite ingredients prescribed for and found in high grade, durable, standard quality of paint. Respondents have undertaken to sell and distribute, and have sold and distributed, and are selling and distributing in interstate commerce, large quantities of cheap, watered adulterated paint under various labels, misbranding either the quality or ingredients of the paint in the can, or both, in addition to giving false and fictitious guarantees concerning the same, well knowing that said paint products were adulterated and misbranded, thereby deceiving and misleading the public into relying upon and accepting such representations as true.

PAR. 10. The above and foregoing fraudulent acts, practices, and representations of respondent company in the course of manufacturing, advertising, offering for sale and the selling of its products in interstate commerce, have the capacity and tendency to mislead and deceive, have placed and are placing in the hands of the wholesaler and retailer in interstate commerce the means of deceiving the ultimate purchasers, and have misled and deceived the purchasing public

in various States of the United States into the belief that respondent company's paints were and are of high-grade quality and durability, containing only the ingredients indicated on their labels in the proportions stated thereon, and were and are being offered to the public at an especially low price, whereas such were not the facts, and induce and have induced the purchasing of respondent company's products in reliance upon such erroneous beliefs, and in addition divert trade from and otherwise injure competitors of respondent company.

PAR. 11. The above false, deceptive, and fraudulent acts and practices committed by said respondents as aforesaid, are all to the prejudice of the public and respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission on September 28, 1933, issued and thereupon served a complaint in this proceeding upon the Cadillac Paint Manufacturing Company, a corporation, and H. A. Lessen, an individual, charging them and each of them with the use of unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act.

Respondents entered their appearance by counsel and on March 17, 1934, filed answer to said complaint. Subsequently, to wit on April 10, 1934, the Commission issued a supplementary and amended complaint against the respondents herein charging them with other and further acts and practices, constituting the use of unfair methods of competition in violation of the provisions of Section 5 of said Act. Respondents entered their further appearance by counsel and on May 7, 1934, filed their answer to said supplemental and amended complaint.

Thereafter, hearings with respect to the charges in the complaint were held before an examiner of the Commission thereunto duly appointed, at which evidence was offered in support of the complaint.

Thereupon the taking of testimony was closed, respondents having failed to offer evidence or to file a brief in opposition to the complaint. And the Commission having now duly considered the record, and being fully advised in the premises, makes this its report stating its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Cadillac Paint Manufacturing Company, is a corporation chartered on May 18, 1932, under the laws of the State of Michigan, with its principal office and place of business at 433 Leland Avenue, Detroit, Mich. Since its incorporation respondent, Cadillac Paint Manufacturing Company, has been engaged in the manufacture, sale, and distribution in commerce among various States of the United States, and more particularly in the States of Michigan, New York, Ohio, and Indiana, of paints, varnish, and paint products. Respondent, Cadillac Paint Manufacturing Company, causes merchandise sold by it to be transported from the point of origin at Detroit, Mich., through and into various other States of the United States to the respective purchasers thereof, and in the course and conduct of its business has been, and is now in active competition with other corporations, partnerships, and individuals engaged in a similar sale and distribution of paint, varnish, and paint products in commerce in, between, and among the several States of the United States and in the District of Columbia.

Respondent, Lessen, for 13 years prior to October 1931 was engaged in business as a paint contractor in the city of Detroit. From October 1931 until the incorporation and organization of the respondent corporation in May 1932 respondent, Lessen, manufactured paint at 433 Leland Avenue, Detroit, Mich., under the trade name of "Detroit Paint Manufacturing Company". Respondent, Lessen, is secretary-treasurer and general manager, the moving spirit, of respondent, Cadillac Paint Manufacturing Company, and directs the activities and controls the policy and affairs of the respondent company.

The business of respondent company results from sales negotiated through the medium of traveling salesmen and the United States mail. The retail dealers to whom the respondent company sells its products under whatever trade name and trade mark employed, in turn, offer such products for sale and sell the same to the general purchasing public.

Respondent company, in addition to selling some of its products under its own corporate name, distributes numerous others through the use of some twenty trade-name companies, none of which alleged companies has or ever had, any existence in fact. When any one of said company trade-names was printed on a can of paint manufactured by the Cadillac Paint Manufacturing Company, the name of

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such actual parent concern was, and has been omitted. Said trade-name companies used by respondent company are as follows:

Detroit Paint & Color Works, Detroit, Michigan;	Klimatic Paint Company, Detroit, Michigan;
Interstate Paint & Roofing Company, New York, Detroit, Chicago;	Wolverine Lead & Color Works, Cleveland, Ohio;
Detroit Color Works, Detroit, Michigan;	H. A. Lessen Company, Detroit, Michigan;
Huron White Lead Works, Detroit, Michigan;	Red Arrow Paint & Varnish Company, Detroit, Michigan;
Detroit Quality Paint Manufacturing Co., Detroit, Michigan;	Old Method Economy White Lead Works, Detroit, Michigan;
Superior Paint Company, Cleveland, Ohio;	Michigan Paint Products Company, Detroit, Michigan;
Superior Paint and Color Works, Cleveland, Ohio;	Imperial Color Works, Detroit, Michigan;
LaSalle Color Company, Detroit, Michigan;	Wallace Paint and Varnish Company, Cleveland, Ohio;
United Manufacturing Products Company, Detroit, Michigan;	Imperial Roofing Company, Detroit, Michigan.
Reliance Paint & Varnish Works, Saginaw, Michigan; Detroit, Michigan;	

PAR. 2. Outside paint that may be sold as durable, economical, standard quality is a paint composed of accepted high grade insoluble metallic pigments combined in proper proportions with a liquid vehicle composed largely of linseed oil, to carry the pigments in heavy solution. The pigment is the indestructible portion of paint that supplies a protective and decorative coating to the surface to which it is applied. The vehicle acts as a binder to hold the indestructible pigment in place on the surface to which it is applied and it also acts as a weatherproofing agent to repel moisture or water.

The commonly accepted pigments for outside white or light-tint paint are made of white lead, zinc oxide, and titanium. White lead has been used for many years, both alone and as the principal ingredient of high-grade paints.

"White Lead" means only the basic carbonate or the basic sulphate of lead. If said basic carbonate or sulphate of lead be reduced or reinforced at all, the terms should be modified or followed by the word "compound" in letters as conspicuous as the main title. If the lead content be less than 50 percent of the whole the word "lead" should not be used at all on the label except as a part of the complete formula printed thereon. This standard has been univer-

sally recognized by the paint industry for over twenty years, and is so recognized and followed today by the paint industry.

United States Federal specifications for red lead paste provide for a red lead pigment of from 92 to 94 percent ground with from 6 to 8 percent of linseed oil, the 94 percent solution not to contain more than 0.5 percent of moisture or other volatile matter, nor more than 1.5 percent of coarse particles and skins. Red lead paste when made into red lead paint must be mixed with linseed oil, turpentine, and liquid dryer in the following proportions:

Red lead paste.....	pounds.....	20
Raw linseed oil.....	pints.....	3
Turpentine.....	gills.....	2
Liquid dryer.....	gills.....	2

This paint, when brushed on a smooth, vertical surface, shall dry hard and elastic without running, streaking, or sagging.

Linseed oil, a clear nonvolatile oil expressed from flax seed, is the most generally accepted vehicle to bind pigment particles together and cement the paint film to the surface.

Volatile oils and dryers are used in the vehicle of paint to make it easier to apply. A drying oil hardens or becomes tough upon exposure to the air. A volatile agent like turpentine is used in paint or varnish as a thinner, that is, to reduce the body or brushing consistency of paint. Volatile spirits evaporate completely upon exposure to the air, have no binding or film-coating qualities, and the effect of their substitution for linseed oil in outside paint is to cheapen the paint and reduce its durability. Petroleum distillates used as a substitute for linseed oil constitute a gross adulterant.

Barium sulphate (barytes), calcium carbonate (chalk), calcium sulphate (gypsum), and magnesium silicate (asbestine), are known as "extenders" when used in an outside linseed oil paint, and their general purpose is to cheapen the paint. A small amount of magnesium silicate has a legitimate use in an outside paint, to prevent settling.

A pigment composed of white lead, or lead and zinc oxide, or titanox is opaque and possesses high covering power, while pigments composed of such extenders as barium sulphate, calcium sulphate, calcium carbonate, and magnesium silicate are transparent or translucent, possess no such hiding power, and their use as a substitute for lead, zinc, or titanox greatly affects the durability of paint.

Barium sulphate, which is much cheaper than white lead, has small hiding power as compared to lead, and should never be sub-

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stituted for white lead. When such substitution has been made, the paint peels in a short time, and it becomes necessary to remove the entire paint coat with a blow torch. Barium sulphate has a legitimate use in inside paints.

Lithopone is also an inert pigment suitable for flat wall paint, and possessing a hiding power smaller than that of lead. It is cheaper than lead. Lithopone should never be substituted for lead in an outside paint. Neither barium sulphate nor lithopone will give satisfactory service in the case of an outside paint.

Calicum carbonate is an extending pigment which possesses little body as a pigment ingredient. It is a product which should be combined with water, and is much used in calcimine work. It has no legitimate use in connection with an outside paint. Its substitution for lead, zinc, or titanium pigments would not produce a durable outside paint.

Calcium sulphate makes a good calcimine and is added to cheap paints as an extender, but has little real value as a covering or preserving agent in paint. It should never replace lead, zinc, or titanium as a part of the pigment.

Silicates, such as magnesium silicate or asbestine, are inert pigments and are used mainly to prevent settling of paint pigment. They should not be used as substitutes for lead, zinc, or titanium pigments in an outside paint.

It is not permissible under any circumstances to put water in an outside or linseed oil paint. When water is added to a paint containing linseed oil it has a tendency to thicken it or puff it up. Paint which has been thickened with water, by reason of its resulting heavy body, would deceive an ordinary purchaser. Outside paint to which water has been added loses in durability and usefulness to the extent of such addition or substitution; the more water that is added the less covering obtained.

The following figures give the range in manufacturers' wholesale prices by the pound covering the period from October 24, 1932, to May 22, 1933, on various ingredients used as pigments:

White lead carbonate 6 to 6½ cents a pound;	Calcium carbonate (chalk-whiting) $\frac{1}{100}$ of a cent to 1 cent a pound;
Basic lead sulphate 5½ to 6 cents a pound;	Calcium sulphate (gypsum) $1\frac{1}{100}$ cents a pound;
Zinc oxide 5¼ cents a pound;	Magnesium silicate (asbestine) $\frac{1}{100}$ cents a pound;
Titanox B 6 cents a pound;	Barytes $1\frac{1}{100}$ cents a pound.
Lithopone 4½ cents a pound;	

The range in manufacturers' wholesale prices per gallon of non-volatile liquid ingredients of the vehicle for outside paints covering the same period follows:

Linseed oil $45\frac{1}{10}$ cents to $62\frac{1}{10}$ cents a gallon;	Soy bean oil $31\frac{1}{2}$ to $46\frac{1}{10}$ cents a gallon;
Menhadon oil (light pressed) 23 to $32\frac{1}{10}$ cents a gallon;	Sardine oil 9 cents to 16 cents a gallon.

A tin gallon container for paint, with a handle attached, costs from 10 to 11 cents; one-half gallon container, about 6 cents.

When cheap or so-called "Dollar Paint", that has water in it, diluted linseed oil or fish oil, and a substitution such as barium sulphate or other extender pigment for a lead pigment, is used for an outside paint job, the result will be that the paint will either wash off or crack or "alligator". It will be necessary in such instance, in case of repainting, to burn off the cheap paint down to the wood, put on a coat of white lead primer and then follow that with two coats of good paint, making an expensive job. Good paint put on top of cheap paint likewise comes off and is a loss. Inferior paint, seemingly economical at first because of its original cheapness, proves very expensive in the end.

United States Federal specifications for linseed oil paint made on a lead-zinc base suitable for outside use call for a pigment composed of basic white lead carbonate or sulphate or a mixture thereof, zinc oxide and other white mineral pigments containing no lead or zinc compounds, and tinting colors. The white lead content of the pigment shall in no case be less than 60 percent of the total pigment, and the sum of the white lead and zinc oxide shall in no case be less than 90 percent of the total pigment. The liquid shall contain not less than 80 percent linseed oil, the balance to be combined dryer and thinner. The thinner shall be turpentine, volatile mineral spirits, or any mixture thereof. The pigment of such outside paint, under these specifications, shall comprise a minimum of 66 percent of the total content, the liquid shall comprise a maximum of 34 percent of the total content, and the maximum water content shall be 0.5 percent. A gallon of this paint shall weigh not less than $16\frac{3}{4}$ pounds.

Well known and creditable manufacturers of ready-mixed outside paint employ a similar formula known as the "80-20". In this the pigment and liquid are found in a 67-33 ratio, respectively, the pigment is 80 percent carbonate of lead and 20 percent oxide of zinc, and the liquid portion is 88 percent linseed oil, 8 percent turpentine and 4 percent Japan dryer. These specifications fall within

the limits and admit of the proportions prescribed by United States Federal specifications.

PAR. 3. Respondent company, in connection with the sale of its products in various States, and acting under the direction of respondent, H. A. Lessen, has manufactured, represented, and sold as "White Lead Ground in Linseed Oil", a product which contained 84 percent barium sulphate, 13.2 percent lithopone and less than 1 percent of white lead; manufactured, represented, and sold as "Durable Economical Linseed Oil House Paint", a product the volatile portion of its vehicle comprising 36 percent by weight of the total content of the can, the vehicle containing over three-fourths by weight of water, or 85 percent, and an oil which was not pure linseed oil; manufactured, represented, and sold as "White Lead" a product the pigment of which contained 99.52 percent barium sulphate, no lead and no zinc; manufactured, represented, and sold as "Dura-Cote Flat Wall Paint" a product the vehicle of which contained 49 percent of water, and comprised 55.19 percent of the total contents of the can; manufactured, represented, and sold as "X-Tra Good House Paint" a product the vehicle of which contained 60.8 percent of water, the pigment being only 49.01 percent of the total content; manufactured, represented, and sold as "X-Tra Good Ready Mixed Linseed Oil House Paint" a product the vehicle of which contained 57.6 percent of water, the pigment of this paint comprising only 47.06 percent of its total content; manufactured, represented, and sold as "Ironsides Ready Mixed House Paint" a product the vehicle of which contained 50.94 percent water, the pigment being only 38.20 percent of the total content, a can of this paint weighing only 10.53 pounds; manufactured, represented, and sold as "Durable House Paint" a product the vehicle of which contained 29.18 percent of water, the pigment containing respectively 38.26 percent of silicates, when only 10 percent was claimed, and 43.56 percent of calcium carbonate when only 15 percent was claimed.

The pigment of this paint comprised 47.07 percent of its total; manufactured, represented, and sold as "Guaranteed House Paint" a product the vehicle of which contained 47.90 percent of water. The pigment of this paint comprised only 41.55 percent of the total content and a gallon weighed only 10.6 pounds; manufactured, represented, and sold as "Ready Mixed Guaranteed House Paint" a product the vehicle of which contained 56.73 percent of water, the pigment comprising only 47.10 percent of the total content; manufactured, represented, and sold as "Durable Economical Linseed Oil House Paint" a product the vehicle of which contained 51.34 percent of water, and a pigment which was only 35.73 percent of the total

content; manufactured, represented, and sold as "X-Tra Good Ready Mixed Linseed Oil House Paint", a product the vehicle of which contained over 79 percent of water by weight, and an oil which was not pure linseed oil; manufactured, represented, and sold as "Durable Paint" a product which contained less than 1 percent of lead when the label on the can specified 7 percent; 0.4 percent zinc oxide when the label specified 13 percent; 62.2 percent of lithopone when the label specified 35 percent; 1.2 percent of siliceous matter when the label specified 10 percent of magnesium silicate; and a vehicle 59 percent of which was volatile matter, containing 11.6 percent of water. The pigment of this paint was 51 percent by weight of the total content, and a can of this paint weighed only 12.5 pounds; manufactured, represented, and sold as "X-Tra Good Ready Mixed Linseed Oil House Paint" a product which, when the can in which it was contained was placed in a Frigidaire ice-making machine, showed a cloudy upper liquid layer and under this a layer of very dense material through which a screw driver could not be driven.

When this can of paint was allowed to come to room temperature and the entire liquid portion was then poured off, the top of the pigment, which had settled to the bottom of the can, the liquid portion was found to consist of two distinct layers. The upper layer consisted of oil, and of petroleum thinner. The lower layer upon examination was found to consist of water. This lower layer of clear liquid, showing transparent through a bottle, approximated 50 percent by weight of the entire liquid or vehicle portion of the can of paint in which it was found; manufactured, represented and sold as "X-Tra Good Ready Mixed Linseed Oil House Paint" another product the vehicle of which when the can of paint in which it was contained was similarly placed in a laboratory refrigerator and subjected to freezing temperature, showed a gritty, mushy substance like glass, which could be broken with the hand and which melted when held between the fingers. This can when subjected to normal temperature also showed a separation of water and oil, the large amount of the water in the can going to the bottom of a bottle as a clear substance when the liquid portion was poured off the pigment; manufactured, represented, and sold as "Sunbeam Outside House Paint" a product shipped in a can bearing the words "Red Lead" printed above a White Lead Zinc House Paint formula, such product being a very poor grade of red lead paint, the pigment of which was only 13 percent by weight of the total content, a gallon of the paint weighing only 8.4 pounds, a little more than water, when it was represented as weighing 15 pounds, and should have weighed 25 pounds. The volatile portion of the vehicle equaled 44 percent of its weight.

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The pigment contained 13 percent of calcium carbonate and 21 percent of hydrochloric acid, insoluble matter mainly siliceous. This paint contained about enough red lead to color the product, and when brushed on tin showed a pale brown color and very poor hiding power. This can was further labeled as "Manufactured conforming to United States Government Standard specifications furnished by Government Bureau of Standards, Washington, D. C."; manufactured, represented, and sold as high-grade, standard paint, paint which was composed throughout of cheap, inadequate substitutes for the requisite elements and proportions of white lead carbonate or sulphate, zinc oxide, or other metallic pigments, and linseed oil; printed and affixed to cans of paint sold by respondent company various trade-name labels setting forth formulae not truly representing the ingredients found or contained in the paint inside the can, and put in the paint large quantities of added or substituted ingredients not set forth on the label; sold to Cadillac outlets as high-grade house and outside paints, at a price of 60 to 70 cents a gallon, paint which was heavily watered and otherwise adulterated, such prices being far below those at which high-grade, standard quality of paint can or could be manufactured and sold; printed and affixed to cans and containers purporting to contain "White Lead" a label reading:

OLD METHOD
ECONOMY
WHITE LEAD
WORKS
GUARANTEED
GROUND IN PURE
LINSEED OIL
12½ POUNDS

and a label reading:

SNOW WHITE
HURON
WHITE LEAD
WORKS
GUARANTEED
GROUND IN PURE
LINSEED OIL
12½ POUNDS

On each label the words "White lead" and "Linseed oil" are printed in large, heavy, black type, the word "works" in small, light, inconspicuous type, and the word "guaranteed" in each instance is likewise emphasized by the type employed. Neither label contains any address or wording indicating the origin of the product.

PAR. 4. Respondents admit that at any time there was a representation made upon labels that paint was "ground in linseed oil" such

paint was "ground in linseed oil of the average percentage of 15 per cent of pure linseed oil".

Respondents admit selling to dealers as high-grade house and outside paint, at a price of from 60 to 70 cents a gallon, paint which was heavily watered and otherwise adulterated, such price being far below those at which high-grade standard quality of paint was or could be manufactured and sold.

PAR. 5. Said respondents further encouraged and aided the proprietors of "Factory", "One Dollar", and similar stores in the sale and selling as "bankrupt stock" and "interstate unclaimed freight" of paint which came directly and originally from the Cadillac Paint Manufacturing Company, such paint being sold direct to such stores by respondent Lessen from the stock of the respondent Cadillac Paint Manufacturing Company. Said Cadillac paint was sold to such stores and dealers by the said Lessen with full knowledge on his part that such stores and dealers would and did advertise and sell the paint at auction and otherwise as "bankrupt stock" and "interstate unclaimed freight". Cadillac outlets, in thus advertising and selling respondent company's products as being those of bankrupt and unclaimed freight stock sales, thereby created upon the purchasing public the impression that respondent company's paints, because obtained through bankrupt and freight stock sales, comprised high-grade paint products being sold at exceptionally low prices.

PAR. 6. Said respondents, in addition, have furnished Cadillac and Cadillac trade-name company labels to dealers making a practice of buying paint at bankrupt or distress auction sales, including "Dollar" and "Factory" paint stores in the several States of the United States, serving as outlets for products of the Cadillac Paint Manufacturing Company. Such "Dollar", "Factory", and other stores have in turn affixed said labels to miscellaneous lots of paints picked up at various auction sales over the country and thereafter sold by them. Said respondents have thus made it possible for outsiders to affix to such unknown, miscellaneous paint products labels emanating from and employed by the Cadillac Paint Manufacturing Company, the said company thereby losing control over whatever integrity, if any, its trade names might otherwise have had or should have had. Respondents have thereby placed and are placing in the hands of the proprietors of such "Dollar", and "Factory" stores, instruments used and to be used in misleading and deceiving the public as to the origin of paint, its quality and value.

PAR. 7. Respondent, Cadillac Paint Manufacturing Company, acting further under the direction and control of respondent, H. A. Lessen, has been and is using the hereinbefore enumerated trade

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names on labels for paint products manufactured and sold by respondent, Cadillac Paint Manufacturing Company, in interstate commerce in such manner as to deceive and mislead the ultimate purchasers of such paint products into believing that such trade names were and are those of corporations or companies having an actual business existence standing behind paint products covered by such labels. Said trade names were not and are not now employed to designate a particular business or the place at which it is located, or to identify merchandise with a specific source.

Respondent, under the trade name of Detroit Color Works, Detroit, Michigan, represents that "Leak Proof Asbestos Roof Coating makes tin, corrugated iron, felt, gravel and composition roofs water tight" and that "Leak Proof is unaffected by changing temperatures—that the fiber tendrons grip the surface tenaciously"; that certain products are "One Gallon U. S. Std. Measure"; that a "Wear More House Paint is a Linseed Oil Paint"; guarantees a spar varnish; represents that it is of "guaranteed quality". The same guarantees are given in the case of a "House Paint"; a "General Purpose Varnish" and a "Four Hour Varnish". A "Mixed Paint" is also guaranteed to a purchaser thereof by this supposedly existing company; respondent, under the trade name of Wallace Paint & Varnish Company, Cleveland, Ohio, represents a "Floor Varnish" and a "House Paint" as "guaranteed" and as "One Gallon U. S. Std. Measure"; respondent, under the trade name of the Huron Lead Works, Detroit, Michigan, guarantees Huron "White Lead" as "Ground in Pure Linseed Oil"; and respondent, under the trade name of the Superior Paint and Color Works, Cleveland, Ohio, guarantees Durable Economical Ready Mixed House Paint to "Give satisfactory service for four years".

The name "Cadillac Paint Manufacturing Company", which company manufactured and sold and sells the above-described paint products, does not appear on any of these labels, nor is there any address printed on or in connection with any trade-name label, identifying such trade-name company with the Cadillac Paint Manufacturing Company of 433 Leland Avenue, Detroit, Mich. No trade name appears on letterheads or in advertising matter so far as the record discloses. Said trade name labels were employed by respondents not to denote origin or identity with a particular business, the recognized function of a trade name, but to permit the Cadillac Paint Manufacturing Company to manufacture and sell paint products without disclosing where and by whom such products were manufactured.

The purchasers of said paint in various cities of the United States were and are thereby led to believe, and were and are justified in

believing that a genuine functioning concern, that set forth on each trade name label, was and is back of the paint covered by such labels, a company to which they might rightfully and properly look for the faithful performance of the statements, representations and guarantees covering the paint products to which said trade name labels were attached.

PAR. 8. Reputable stores expend large sums of money annually advertising ready-mixed paint with lasting protective qualities. They advertise and seek to maintain a standard of paint that covers more, lasts longer and goes further. Such reputable stores advertise high-grade paint at from \$3.15 to \$3.25 per gallon. "Dollar" paint stores, and other outlets handling Cadillac paint, advertise alleged extra-good, durable and guaranteed paint for 99 cents to \$1 per gallon. These figures even include the price of containers. Reputable dealers manufacturing and selling a durable quality of paint are unable to make such a paint that sells for \$1.10 per gallon, and decline to put their names on cans of paint that would sell for such price. This watered and adulterated paint is and has been advertised and sold as affecting a saving of more than 50 percent because purchased from "a manufacturer." The dealer that is endeavoring to sell good paint of lasting quality suffers and has suffered heavy losses in his advertising campaign to educate the public as to the advantages and economy of good paint, and finds that his efforts come to naught in the face of the character of competition disclosed in this record. The sale of this watered, adulterated paint results, and has resulted, in heavy financial losses to competitors of respondents, one paint store in Cincinnati suffering a loss of \$5,000 in one month as a result. In addition the sale of this watered, adulterated paint has proved particularly disastrous to and destructive of the goodwill acquired in connection with the advertising of genuine paint products.

The consuming public, the record establishes, being unfamiliar with the methods and processes employed in manufacturing durable, high quality house paint, or concerning the essential ingredients of the same, is, and becomes confused by the representations used by respondents and their outlets in connection with the advertising and sale of "Dollar" paint. Large quantities of this watered, adulterated Cadillac paint have been sold in various States of the United States, notably in the States of Ohio, Indiana, Michigan, and New York. The consuming public in the above-mentioned States believed and has been led to believe that they were obtaining high-grade, durable paint at unusually attractive prices, when such was not the fact. The record discloses that this cheap paint peeled and cracked, and proved very prejudicial to consumers, subjecting them to losses much in

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excess of the original cost of the paint. Numerous complaints concerning this cheap paint were made by the purchasers thereof.

PAR. 9. The record further establishes that the respondents in connection with the use of fictitious trade names, employed such trade names as "Michigan Paint Products Company of Detroit, Michigan", "Imperial Color Works of Detroit, Michigan", and "Wolverine White Lead Works of Cleveland, Ohio", when there were in existence in those cities such operating concerns or companies as "Imperial Color Works", "Michigan Paint Products Corporation", "Michigan Paint Company", and "Wolverine White Lead Works."

PAR. 10. The record in this case establishes that the paint and paint products manufactured and sold by respondents are not and were not, in view of the water and other adulterant ingredients found in them, respectively, "durable", "extra-good", "economical", "dependable" or of a quality entitled to be "guaranteed", and that pails of heavy paste labeled and sold as "white lead" were not, in fact, white lead; that respondents have manufactured and sold ready-mixed outside paint containing large quantities of water, without disclosing on the labels affixed to the containers thereof the presence of any water whatsoever in the paint; that both the pigment and vehicle of paints manufactured by the respondent, Cadillac Paint Manufacturing Company, and sold and transported by it in interstate commerce under brands and labels denoting and intending to denote quality, durability and service, were and are composed largely of cheap adulterants and substitutes, and are far below paint specifications for paint generally recognized by reputable manufacturers of first quality, standard paint products; that respondents have sold and distributed, and are selling and distributing, paint and paint products that were and are so grossly diluted and adulterated as to be far short of the weight paint of such represented character should possess; that respondents have printed and employed on labels the use of a large number of company trade names in such a manner as to deceive and mislead ultimate purchasers of products sold under such labels into the belief that such company trade names were those of corporations or companies having an actual business existence, when, in fact, such trade names were not used to indicate the true origin of the products sold or the real identity or address of the manufacturer thereof; and that respondents, in further connection with the use of fictitious company trade names, have employed trade names similar to or practically identical with those of certain legitimate functioning companies and concerns located in certain cities of the United States, causing thereby confusion and deception of the purchasing public as to the origin of paint products and the identity of the seller thereof.

CONCLUSION

The hereinbefore acts, statements, practices, and representations of the said respondents, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and respondents' competitors, and constitute unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

Pursuant to the provisions of an Act of Congress approved September 26, 1914 (38 Stat. 717) the Federal Trade Commission issued and served a complaint and supplemental and amended complaint, upon the respondents, Cadillac Paint Manufacturing Company, a corporation, and H. A. Lessen, charging them with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act. This proceeding having been heard by the Federal Trade Commission on the complaint and the supplemental and amended complaint of the Commission, the answers of the respondent thereto, the testimony and evidence, and brief of the Commission, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes"—

It is now ordered, That the respondents, Cadillac Paint Manufacturing Company, a corporation, and H. A. Lessen, and each of them and their agents, representatives, and employees, in connection with the advertising, offering for sale or selling in commerce among the several States of the United States and in the District of Columbia, of paints and allied products do cease and desist:

(1) From representing on labels or in advertising or in any other way, expressly or by implication, any paint product as "White Lead" or "White Lead Paint" or "White Lead Ground in Linseed Oil" unless and until the pigment content of such paint product exclusive of necessary coloring matter is composed wholly of white lead.

(2) From representing by labels on cans containing paint or in any other way, expressly or by implication, that paint contains white

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lead in certain proportion or percentage, unless and until the paint so represented contains white lead in the proportion or percentage represented.

(3) From representing on labels or in advertising or in any other way, expressly or by implication, paint as "Linseed Oil" or "Linseed Oil Paint" or "White Lead Ground in Linseed Oil" unless and until the nonvolatile liquid content of the paint exclusive of necessary dryers is composed wholly of linseed oil.

(4) From representing by labels on cans containing paint or in any other way, expressly or by implication, that paint contains linseed oil in certain proportion or percentage, unless and until the paint so represented contains linseed oil in the proportion or percentage represented.

(5) From representing by labels or cans containing paint or in any other way, expressly or by implication, that paint contains certain materials or ingredients or certain materials or ingredients in certain proportions or percentages unless and until the paint so represented contains said materials or ingredients and in the proportions or percentages represented.

(6) From representing on labels or in any other way, expressly or by implication, a purported analysis of paint or any other product which is not in fact an accurate and truthful analysis of such paint or product.

(7) From representing on labels or in advertising or in any other way, expressly or by implication as "Durable House Paint", "Durable-Economical House Paint", "X-Tra Good House Paint", "Guaranteed House Paint", paint for outside use, which contains excessive quantities of water or petroleum spirits or inert materials or which contains excessive amounts of any filler or extending material and from representing by any other word or words, expressly or by implication, that such paint is the best quality, grade or standard of paint for such use.

(8) From representing on labels or in advertising or in any other way, expressly or by implication, that paint manufactured and sold by respondent Cadillac Paint Manufacturing Company was manufactured by a fictitious company or corporation or by any fictitious companies or corporations which have no existence in fact, and from employing the use of trade name companies in connection with the sale of respondents' products unless and until such trade names are used to denote origin and association or identity of the products sold with the business of respondents.

(9) From guaranteeing or certifying on labels, or by means of advertising or in any other way, in connection with the use of names

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of fictitious companies or corporations having no existence in fact, that paint manufactured and sold by the Cadillac Paint Manufacturing Company is of certain described quality, quantity and durability.

(10) From representing in advertising or in any other way, and from selling directly, or indirectly by, through, or in cooperation with another, products manufactured by the Cadillac Paint Manufacturing Company as being those of "bankrupt stock", "interstate unclaimed freight", "distress stock", or stock of similar type and character.

(11) From employing such trade names as Michigan Paint Products Company, Imperial Color Works, Wolverine White Lead Works, or other trade names in the sale of respondent Cadillac Paint Manufacturing Company's products so similar to those of existing legitimate business concerns operating in various cities of the United States as to result unavoidably in confusion and deception of the purchasing public in relation to the origin of products sold under such names.

It is further ordered, That the respondent within 60 days from and after the date of the service upon them of this order shall file with the Commission a report or reports in writing setting forth in detail the manner and form in which they are complying with the order to cease and desist hereinabove set forth.

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IN THE MATTER OF
MARSHALL FIELD & COMPANY

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

Docket 2260. Complaint, Dec. 12, 1934—Order, Mar. 26, 1935

Consent order requiring respondent, its officers, etc., to cease and desist in the sale of its "Sunlight" knitting yarn, or of any other yarn, from directly or indirectly using or causing to be used any representations, statements or assertions on labels or in advertisements, trade promotional literature, or in any other manner whatsoever, to the effect that any such yarn is moth proof, cannot be damaged by moths, is guaranteed against moth damage, or gives permanent guarantee against moth damage, unless such is a fact, and from directly or indirectly using words or representations in connection therewith which import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief, that any treatment given said yarn is a permanent and continuous preventative against moths or moth damage throughout the normal life of said yarn; provided, however, that nothing in the order shall prohibit respondent from representing that said yarn has been specially treated to prevent moth damage so long as such shall be the fact, or from guaranteeing that said yarn has been specially treated to prevent moth damage and that the respondent will replace the yarn if it is damaged by moths, so long as such are true in fact.

Mr. John W. Hilldrop for the Commission.

Wilson & McIlvaine, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that Marshall Field & Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said 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, Marshall Field & Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located in the city of Chicago, in said State. It is now and for more than two years last past has been engaged, among

other things, in the manufacture at Monticello, Ind., of woolen yarns and in the sale thereof at retail in the city of Chicago and at wholesale to wholesale and retail dealers therein throughout the entire United States. It causes and has caused such yarn when sold to such wholesale and retail dealers to be shipped from its place of business in the city of Chicago aforesaid and from its factory at Monticello, Ind., aforesaid, to purchasers thereof located in the States of Illinois and Indiana and located also in States other than the States of Illinois and Indiana. There is now and for more than two years last past has been a constant current of trade and commerce by said respondent in such woolen yarns between and among the various States and Territories of the United States and in the District of Columbia. In the course and conduct of its said business, respondent is now and for more than two years last past has been in substantial competition with other corporations and with persons, firms, and partnerships engaged in the sale in interstate commerce of woolen yarns.

PAR. 2. Among the woolen yarns sold by the respondent as described in paragraph 1 hereof, is a yarn to which respondent has given the trade name "Sunlight". Now and for more than two years last past, the said respondent has represented and still represents on the labels used on such "Sunlight" yarn, on the containers thereof, in advertisements thereof, and in other ways, that the aforesaid "Sunlight" yarn is moth proof, and that it cannot be damaged by moths; when in truth and in fact, said "Sunlight" yarn is not moth proof, and is subject to damage by moths.

PAR. 3. There are among the competitors of the respondent engaged in the sale of woolen yarns between and among the various States of the United States and Territories thereof and in the District of Columbia, manufacturers and dealers who truthfully represent that the yarns dealt in by them are moth proof; and, there are others of said competitors of respondent who deal in yarns which are not moth proof and who do not represent that their said yarns are moth proof. The aforesaid misrepresentations of the respondent as set out in paragraph 2 hereof have the capacity and tendency to mislead and deceive and have misled and deceived dealer purchasers and prospective dealer purchasers and the purchasing public into the beliefs that the representations made by the respondent as set forth in paragraph 2 hereof are true and to purchase said "Sunlight" yarn from respondent in that belief; thereby trade has been diverted to respondent from the aforementioned competitors engaged in the sale of woolen yarns in interstate commerce and as a consequence thereof substantial

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injury has been done and is being done by the respondent to substantial competition in interstate commerce.

PAR. 4. By the misrepresentations described in paragraph 2 hereof, the respondent has placed and still places in the hands of dealers to whom it sells such yarn, the means of misleading and deceiving subsequent purchasers thereof, including the purchasing public, into the erroneous beliefs that the aforesaid "Sunlight" yarn is moth proof and cannot be damaged by moths.

PAR. 5. The above alleged acts and practices of respondent are all to the prejudice of the public and of respondent's said competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding coming on for final hearing by the Federal Trade Commission on the record, including the complaint of the Commission issued under Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", and respondent's supplemental answer thereto that respondent waives hearing on the charges set forth in the complaint, refrains from contesting the proceeding and, pursuant to the provisions of the Commission's Rules of Practice with respect to answers, consents that the Commission may make, enter, and serve upon respondent without a trial, without evidence and without findings as to the facts or other intervening procedure, an order to cease and desist from the method or methods of competition alleged in the complaint; and the Commission having duly considered the matter and being fully advised in the premises—

It is now ordered, That in the course of or in connection with the sale or distribution in interstate commerce or in the District of Columbia or in any Territory of the United States of knitting yarn sold by respondent under the designation "Sunlight", or of any other yarn, the respondent, Marshall Field & Company, its officers, directors, agents, representatives, servants, and employees cease and desist from directly or indirectly using or causing to be used any representations, statements, or assertions on labels or in advertisements, trade promotional literature, or in any other manner whatsoever, to the effect:

- (a) That any such yarn is moth proof;
- (b) That any such yarn cannot be damaged by moths;

- (c) That any such yarn is guaranteed against moth damage;
- (d) That any such yarn gives permanent guarantee against moth damage; and

From directly or indirectly using in connection with such yarn any representations or words which import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief, that any treatment given said yarn is a permanent and continuous preventative against moths or moth damage throughout the normal life of said yarn; provided, however, that nothing in this order shall prohibit respondent from representing that said yarn has been specially treated to prevent moth damage so long as such shall be the fact, or from guaranteeing that said yarn has been specially treated to prevent moth damage and that the respondent will replace the yarn if it is damaged by moths, so long as such are true in fact.

It is further ordered, That respondent, Marshall Field & Company, shall, within 30 days after the service upon it of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinabove set forth.

IN THE MATTER OF
DURALITH CORPORATION AND WILLIAM WEINER,
HARRY WEINER, AND JOSEPH D. WEIL

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

Docket 2157. Complaint, Jan. 23, 1934—Decision, Mar. 29, 1935

Where a corporation organized by two individuals, its executive officers, in order to afford a corporate instrumentality for putting into effect a scheme of fraud evolved by them for the sale of a plastic wall paint, the formula of which they controlled, and also to serve as a corporate shield against the consequences of their acts in carrying out said scheme, and said individuals; in pursuance of said scheme, directed to securing distributor dealers, signatures, through fraud and misrepresentation and through agreements, assurances and promises, which were not to be, and were not, kept, observed or performed, to (1) contracts obligating said dealers to accept and pay for specified quantities of said product, and (2) trade acceptances in payment of the purchase price, and acting through numerous agents, or contact men, in order to induce distributors and prospective distributors to visit their executive offices, so that they might secure their signatures, as aforesaid—

- (a) Represented to such distributors, solicited to undertake sale of said product, that corporation had been and was having great success in distribution and sale thereof in other sections, where distributors had effected a great volume of sales, and were sending monthly repeat orders for such product, by the carload, and that the consumer demand for product was 55 percent of that for all competing products, facts being there was no demand whatever therefor, they had not had and were not having any success whatever in the sale thereof, except in unloading it on unsuspecting distributors through such representations and assurances, and no distributor had had any such success as to give any repeat orders of any kind;
- (b) Represented that said product was waterproof and washable and could be applied successfully by anyone, and was the only product for such purposes that could be applied to a large surface by one operation, facts being it was not waterproof unless glazed by varnish or shellac, and could not be applied by one operation, or by housewife, child, or any unskilled person;
- (c) Represented that the territory for which prospect's service was sought, was virgin territory, in that corporation had neither had a distributor therein, nor had product been there offered or sold, or in any part thereof directly or through any other agency, fact being they had sold product therein one or more times, and it was then being offered therein by former distributors at less than cost;
- (d) Represented that a careful survey in the territory had been made of homes and other institutions therein, in order to approximate amount of product which territory would require or consume, as result of which it had been concluded that prospect should have on hand as a month's supply amount determined, for which amount prospect was to obligate himself,

facts being that amount thus ascertained was not based on product's market, but upon amount prospect could be induced to purchase, and said surveys were directed to his financial ability, and not to possibilities of retail outlet for product;

- (e) Falsely represented that after receipt of initial order, and prospect's execution of distributor's agreement, and compliance with their practice of requiring trade acceptances covering purchase price, a representative would organize prospect's sales division, demonstrate product's application and use to trade and public, assume burden of selling first shipment, conduct newspaper and radio campaign to promote its sales, establish or develop retail or other outlets, conduct sales campaign to insure success in disposing of first shipment, or first month's supply, and, in fact, sell it for distributor, and that outlets for the product had already been established, and orders received or promised which would be credited to prospective distributor after signing the agreement and trade acceptance, facts being it conducted no such campaign, did not effect sales of first shipment or any part thereof, neglected to establish any retail or other sales outlets, had no such orders to be credited, and said various statements and representations were all false;
- (f) Represented that it was in financial position to retain and would retain trade acceptances until their maturity, or would renew or extend same until distributor could pay them out of proceeds of sale of product purchased, and that there would be little or no investment required of distributor, who would be doing business really upon their money, facts being it was their policy and practice as an essential part of their fraudulent plan to disregard their said assurances, as to investment required, and violate their verbal agreements to hold, renew or extend said acceptances;
- (g) Made it their policy and practice, at conferences with prospects in their executive offices, to repeat, elaborate and emphasize aforesaid false statements, agreements, assurances and promises, and exhibited letters purporting to be from distributors expressing pleasure on account of their success in distribution of said product, notwithstanding fact former distributors were then offering product in territories involved by said letters as distress merchandise, at nominal prices, and falsely stated at such times, that no definite delivery dates for product could be fixed because company was flooded with back orders:
- (h) Sold or purported to sell said acceptances while actually retaining control thereof, to certain so-called finance companies (charged with or possessed of full knowledge of the circumstances), for sale by said companies as pretended innocent purchasers for value, so that, through said collusive practices, said companies might hold themselves out to said distributors as having purchased such acceptances for value, without notice of any defenses thereto, and demand payment thereof by suits or threats thereof, and they themselves might thereby be able to preclude legitimate defenses for fraud which, as against them, the distributor could interpose successfully, and thus escape the consequences of their fraudulent plan or scheme;

With the result that trade in said product was disrupted and demoralized in different communities in the various States, the public was misled and deceived and induced to purchase product in question in reliance upon erroneous beliefs thereby caused, and trade was diverted to them from competitors offering similar products in interstate commerce:

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Held, That such acts and practices, under the circumstances set forth, were to the prejudice of the public and competitors, and constituted unfair methods of competition.

Mr. James M. Brinson for the Commission.

Mr. Abram F. Myers, of Washington, D. C., and *Apfel, Berliner & Freidin*, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that Duralith Corporation, and William Weiner, Harry Weiner, and Joseph D. Weil, individually, have been or are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Duralith Corporation, is a corporation organized and existing under and by virtue of the laws of the State of New York, having its principal office and place of business located in New York City in said State, and is now and since 1928 has been engaged in the business of manufacturing, selling and shipping in interstate commerce plastic paint or wall texture material known as Duralith to purchasers thereof, hereinafter called distributors, located throughout the different States of the United States. Respondent, Duralith Corporation, causes said Duralith so purchased to be shipped and transported to said distributors located throughout numerous States of the United States other than the State in which said shipments originated.

That respondent has devised and carried out a fraudulent scheme in competition in interstate commerce by which it has in the ways hereinafter described sold its products under the pretense of securing distributors therefor, obtained orders from said so-called distributors by false representations and obtained and undertaken to enforce collections of trade acceptances secured by false representations.

In the course and conduct of said business respondent, Duralith Corporation, has been and is engaged in direct and substantial competition with individuals, partnerships, and corporations engaged in offering for sale and selling in interstate commerce among the several States of the United States plastic paints and wall texture materials and allied products.

The individual respondents, William Weiner and Harry Weiner, have been and are sole owners of the said Duralith Corporation's no par value common stock of which there are 1,000 shares carrying all the stockholders' voting rights in said corporation. There are 25,000 shares of preferred nonvoting capital stock of said corporation, all of which is owned by respondents, William Weiner, Harry Weiner, and Joseph D. Weil, with the exception of 1,000 shares. Such individual respondents have been since the organization of respondent corporation and now are its executive officers. They have created, formed, and instituted and have maintained and directed all of the policies, methods, and practices of respondent corporation and at all times hereinafter mentioned they have dominated and controlled the affairs of respondent corporation and have directed and been responsible for and now direct and are responsible for all of the representations, transactions, sales, and other activities of respondent corporation hereinafter mentioned. Respondents William Weiner, Harry Weiner, and Joseph D. Weil caused respondent Duralith Corporation to be organized in order to acquire a corporate instrumentality through which they would be enabled to institute, establish, and carry out said fraudulent sales plan.

PAR. 2. As a part of said fraudulent sales plan said respondent Duralith Corporation's agents acting within the scope of their employment and with the knowledge, acquiescence and support of respondents have solicited sales of Duralith to distributors and have secured the signatures of distributors to certain commercial paper known as trade acceptances in payment therefor upon the false and fraudulent representation that such trade acceptances would be retained by respondent Duralith Corporation until their maturity and until the product Duralith purchased from respondent Duralith Corporation could and would be sold by said distributors to retail dealers and consumers thereof with respondent Duralith Corporation's aid and assistance and that said trade acceptances would be retained until said distributors could meet and pay same from and out of such sales of said product with resultant profit to said distributors.

Respondents, as a part of said fraudulent sales plan, after receiving said executed trade acceptances instead of retaining and holding same as represented would be done, so as to enable said distributors to pay for said trade acceptances with and from money derived from sales of said product, Duralith, delivered and transferred said trade acceptances prior to their maturity to certain finance companies whereby such finance companies would be and are placed in a position to interpose the claim of innocent purchasers for valuable considera-

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tion and without notice of any defense thereto. In truth and in fact said finance companies are controlled by respondents or are in collusion with them and knew the methods and pretenses by which the execution of said trade acceptances were procured and knew that the trade acceptances in their hands were subject to the same defenses by said distributors as though they had remained in the hands of respondent Duralith Corporation. Pursuant to said fraudulent sales plan it was and is the practice of finance companies to hold themselves out to said distributors as purchasers and holders of said trade acceptances for value and without notice of any defenses thereto and said finance companies have demanded and now demand payment therefor under penalty of suit.

PAR. 3. Pursuant to said fraudulent sales plan, respondent Duralith Corporation's agents acting within the scope of their employment and with the knowledge, acquiescence, and support of respondents have induced and persuaded numerous distributors and prospective distributors located throughout the United States to visit the executive offices of respondent Duralith Corporation located in New York, N. Y., and Chicago, Ill., for the purpose and with the intent of securing the signatures of said distributors and prospective distributors to contracts or printed instruments requiring the purchase of a supply of said product Duralith and to secure the signatures of said distributors and prospective distributors to said trade acceptances, in pursuance of which the purchase price of a supply of Duralith, as determined by respondent Duralith Corporation, must be paid by said distributors within or during periods of time varying in different cases from sixty to ninety days. Said distributors and prospective distributors were persuaded and induced to visit respondent's executive offices and sign and execute said instruments as the result of one or more of the numerous false and misleading representations hereinafter set forth in paragraph 4, particularly such representations: (a) concerning the kind and quality of Duralith; (b) concerning the amount of sales and demand for Duralith; (c) market conditions; (d) distributors' profits; (e) concerning the amount and quality and character of advertising matter and advertising service furnished distributors; (f) concerning the amount and quality and character of sales service furnished distributors.

PAR. 4. Pursuant to said fraudulent sales plan, respondent Duralith Corporation's agents acting within the scope of their employment and with the knowledge, acquiescence, and support of respondents and with the purpose and intent of deceiving, misleading, and defrauding distributors and prospective distributors into buying

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Duralith and signing said trade acceptances made and now make false, misleading and deceptive statements and representations to the following effect; that respondent Duralith Corporation had been and was having great success in the distribution and sale of Duralith in other sections of the United States where distributors had effected a great volume of sales and were sending monthly repeat orders for Duralith by the carload; that the consumer demand for Duralith is 55 percent of all competing products; that Duralith contains as its base casein, which is a product of the dairy industry and that no other plastic paint or wall texture material on the market contains or has such substance for its base; that Duralith is waterproof and washable and can be successfully applied by anyone and is the only product for the same or similar purpose or purposes that can be applied to a large surface by one operation; that the territory for which the service or cooperation of the prospective distributors is sought, is virgin territory for Duralith, since respondent corporation has neither had a distributor in such territory, nor offered for sale or sold the product directly or through any other agency in such territory or any part thereof; that said respondent had carefully studied the territory, and its available or desirable agencies for the distribution of the product and had chosen the individual, partnership, or corporation approached.

That a careful survey of the territory had been made to ascertain the number of homes and other institutions, private and public, in order to approximate the amount of Duralith such territory would require or consume, and it has been concluded from such survey that the prospective distributor in such territory should have on hand as a month's supply the amount determined by respondent corporation from such survey which the prospective distributor must purchase after execution of the agreement for the position of distributor; that after receipt of the initial order of Duralith, following execution of the agreement naming the prospective distributor, as authorized distributor, and compliance with said respondent's practice of requiring trade acceptances covering purchase price of the product, a representative of said respondent would organize the distributor's sales division for Duralith, demonstrate its application and use, to the trade and public and assume the burden of selling the first shipment; that such respondent would also conduct a newspaper and radio advertising campaign for the distributor to promote sales of the product and establish or develop retailers or a retail outlet for disposition of the product; that respondent would in fact conduct a sales campaign to insure success in disposal of the first shipment of Duralith, or the first month's supply of

the product, for its distributors; that respondent corporation was in a financial position to retain and would retain the trade acceptances until their maturity; that the representative was unauthorized to conclude the negotiations but that it would be necessary for the prospective distributor to visit the executive offices of respondent corporation in New York or Chicago, the expense of which would be borne by such respondent and there conclude the final arrangements, necessary to become the exclusive distributor of respondent Duralith Corporation in the particular territory to which the allocation was to be made.

In some instances, representatives of said respondent have assured prospective distributors, that retail dealers for the product have already been established by it, and orders for Duralith received from them which would be credited to such prospective distributors, after consummation of the negotiation through agreement with such respondent, and execution of the trade acceptances. Said respondent has at its executive offices when concluding or attempting to conclude an agreement with prospective distributors followed the practice of representing the great success being achieved by its distributors in disposing of Duralith to the consuming public. To such purpose respondent corporation has exhibited to such prospective distributors written papers, purporting to be letters from other distributors, when such prospective distributors, have inquired relative to time when Duralith purchased by them, would be delivered at their respective places of business, in which letters or purported letters such alleged distributors expressed pleasure on account of success in the distribution of Duralith. On such occasions said respondent has sometimes replied to the inquiry with the statement that time of delivery could not be forecast, as respondent company was flooded with back orders, and that the order under consideration probably could not be filled within thirty days.

In general the statements and representations of respondent corporation to its prospective distributors are all to the effect that in accomplishing the sale of Duralith, to be purchased by the prospective distributor, the work of securing retail outlets, will be done by respondent corporation, and that the expense of advertising both in newspapers and by radio broadcasting will be borne by it. The prospective distributor is questioned in respect to warehouse facilities, and his situation relative to the local railroads or one of them, and is led to believe that the principal service to be performed by the distributor will be as warehouseman. In truth and in fact, while respondent corporation may have been having some success in leading distributors, who had been misled by the aforesaid false and

misleading statements and representations, with large supplies of the product, it was not having, and had not had, and is not having success in the distribution of any more of its product, than the initial purchase thereof required by respondent of its distributors. No distributor of said respondent has at any time given it a so-called repeat order and all of them have encountered and still encounter, insurmountable obstacles, in the sale and distribution of Duralith purchased by them, attributable to a substantial extent, to the failure of respondent corporation to fulfill, as hereinafter described, the representation which led or induced its distributors to make the initial purchase. Duralith is not waterproof but on the contrary must be supplemented by shellac or some varnish glaze to become waterproof.

While it may have casein, as its base, such substance is also, contrary to representations of respondent corporation, the base of various products sold in competition with Duralith. It cannot be applied by anyone, uninstructed or unskilled in its use and it is not the only plastic paint that can be applied on large surfaces by one operation, nor can it be applied so as to be washable and unimpaired, on large surfaces by one operation.

The territory represented to the prospective distributors, as virgin territory for Duralith, usually is not virgin territory, and on the contrary, at the time such false and misleading representation is being made to the prospective distributors as hereinabove stated, there are one or more former distributors in such territory, who have been unable to dispose of Duralith, which they purchased when they became distributors of respondent corporation although the period of their contract, one year, has expired. These former distributors unable to dispose of the Duralith which they had been led by said respondent to believe would be a month's supply and which they had purchased in reliance on such erroneous belief, have classified it as "Distress" merchandise and have been, and were at the time said respondent's contact men were offering the foregoing inducements to others to become distributors in such territory, offering Duralith at such low prices, that their successor or successors as distributors for such respondent have at the outset of their attempt to distribute such Duralith, been confronted with a competition which they could not meet or overcome.

It has been and is the policy and practice of respondent corporation to withhold from the prospective distributors any knowledge or information regarding such situation in so-called virgin territory and to acquire its profits chiefly by means of this method of impressing and selling prospective distributors, and at the end of the speci-

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fied year or term, of replacing them, with other distributors similarly misled and of continuing such practice. It is continued always without contact with the trade in plastic paint and is so employed with prospective distributors in such business as to render it unlikely, that the falsity of the representations, as to virgin territory would be discovered until the prospective distributors become the real distributors and undertake to sell the product and thereupon find other Duralith in the community offered at a price impossible to meet without great loss. Such distributors have after some lapse of time, been compelled also to classify their stock of Duralith as "Distress" merchandise, and thereby furnish the next distributors of respondent corporation with the same competition, the former encountered when first assuming the role of distributors for it.

Respondent corporation has furnished its distributors, with the services of demonstrators for brief periods of time, but has failed and neglected in all instances to conduct an advertising campaign by radio or newspapers or otherwise in behalf of distributors and such demonstrators have remained with the distributors only long enough to insure their execution of the aforesaid trade acceptance and have on all occasions refused even to demonstrate Duralith for the distributors until they have signed such trade acceptances. Thereupon it has been and is the practice of such demonstrators of respondent corporation to advise distributors that they must respond to necessary calls elsewhere but will return to such distributors to carry on the sales campaign for them. It has been their practice, however, never to return after the execution of such trade acceptances. Respondent corporation has not effectuated sales of the first shipment of the product for their distributors, as represented by the contact men who engaged the attention and enlisted the interest of the distributors before they were induced to sign contracts and which were in fact signed in reliance on the truthfulness of the statements and representations which led them to the executive office of respondents. Respondent corporation has failed and neglected to establish any retail outlets for absorption of the Duralith sold its distributors by means of the aforesaid representations, and has at no time received from any retail dealers orders for Duralith to be credited to the prospective distributors on assumption of the proposed relationship to respondent corporation.

The estimated amount of Duralith, respondent corporation represents as necessary for the adequate supply of the solicited distributor, is not based on the probable market the product will have, but upon the amount such prospective distributors can probably be induced to purchase, ascertained by respondent corporation in the

course of the so-called surveys, which have related more directly to the financial ability of the prospective distributors than to the probabilities of a retail outlet for the merchandise said respondent seeks to sell. There is no consumer demand for Duralith to the extent of 55 percent over other competitors or to any other extent, and in all instances in which said respondent has declared that on account of a flood of back orders, merchandise cannot be shipped within thirty days, it has been shipped within a few days, since respondent corporation is not and never has been flooded with back orders and in the very sections from which it has exhibited to prospective distributors letters from so-called successful and well-pleased distributors, there have been former distributors, attempting to sell as "Distress" merchandise, the Duralith or part of it purchased when they became distributors of said respondent at nominal prices likely to enable them to unload.

PAR. 5. There are individuals, corporations, and partnerships offering for sale and selling in interstate commerce plastic paints of various kinds and wall texture materials truthfully described and represented in competition with Duralith, the product of respondent corporation.

PAR. 6. The false and misleading statements and representations of respondents described and set forth herein have had and have and each of them has had and has the capacity and tendency to mislead and deceive and they and each of them have misled and deceived and do mislead and deceive individuals, partnerships and corporations into becoming distributors of said product Duralith and into the purchase of said product from respondent Duralith Corporation greatly to their financial detriment.

The aforesaid false and misleading statements and representations of said respondents have had and each of them has had and has the capacity and tendency to divert trade to respondent Duralith Corporation from competitors offering for sale in interstate commerce plastic paints, wall texture materials and other products for the same or similar purposes as those for which respondent Duralith Corporation offers for sale and sells its product Duralith, and to disrupt, demoralize and otherwise to injure the entire trade in paints, wall texture materials and allied products.

PAR. 7. The above and foregoing practices of respondent corporation are all to the prejudice of the public and respondents' competitors and have been and are unfair methods of competition in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served its complaint upon respondents, Duralith Corporation, and William Weiner, Harry Weiner, and Joseph D. Weil, individually, charging them with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act.

Respondents having entered their appearance and filed answers to the complaint herein, testimony was taken and evidence received in support of the complaint and on behalf of the respondents before the examiner for the Federal Trade Commission theretofore duly appointed for such purpose. Thereafter this matter came on for final hearing before the Federal Trade Commission upon the record, briefs and oral argument. The Commission having duly considered the record and the arguments of counsel for the Commission and for the respondents, and being duly advised in the premises, files this its report in writing stating its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Duralith Corporation is now and has been since 1928 a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business in the City and State of New York.

Respondents William Weiner and Harry Weiner are individuals who caused the incorporation and organization of respondent Duralith Corporation, and who ever since have been and now are its chief executive officers. They own all of the no par value stock in said respondent corporation, the stock which carries the voting rights and privileges therein.

Respondent Joseph D. Weil had some connection with the early history of respondent corporation but there is no evidence which associates him with its activities or methods of business as herein-after particularly described, and in these findings as to the facts and conclusions use of the word respondents shall not be deemed to include him.

Respondents William Weiner and Harry Weiner have owned and controlled and now own and control the International Research

Corporation, which itself owns the formula for a plastic paint or wall texture material known as Duralith. In the exercise of their control over such International Research Corporation, they caused it to license respondent Duralith Corporation, upon its organization, to manufacture and sell Duralith in the United States.

Said individual respondents caused respondent Duralith Corporation to be incorporated in order that they might acquire a corporate creature which would serve them as an instrumentality by which they might institute, establish and maintain a fraudulent plan, for the sale of Duralith, hereinafter described, and also serve as a corporate shield to protect them as individuals from the consequences of such fraudulent plan.

Respondent Duralith Corporation on its creation, became and ever since has been the instrumentality through which William Weiner and Harry Weiner conducted business. The said individuals William Weiner and Harry Weiner have, therefore, been more than mere executive officers of respondent Duralith Corporation. They have conceived and created its system of fraud and they have fabricated and fashioned all of the plans, methods and practices which compose the mechanism of this fraudulent system as hereinafter described. They have dominated and controlled its affairs from its major policies down to the minor detail of its business, and they have been and are responsible for all the transactions, contracts, sales, representations and other activities of respondent Duralith Corporation and its agents.

When in these findings as to the facts and conclusions drawn therefrom respondent Duralith Corporation is mentioned in connection with practices, methods, sales plans, and fraudulent devices, it is to be considered as the instrumentality or agency of respondents William Weiner and Harry Weiner, and the word respondents, whenever used for the purposes of these findings, shall signify or mean all of the respondents except respondent Joseph D. Weil.

In the course of their said business, respondents William Weiner and Harry Weiner, and their corporate agency or medium, respondent Duralith Corporation, have been engaged in the manufacture of the product Duralith, and in its sale, in commerce among and between the State of New York and the various other States of the United States than the State of New York and the District of Columbia, causing such product when sold to be transported from its said place of business in New York to purchasers located in the various other States of the United States than the State of New York.

Respondents have been in the course and conduct of such business in competition in interstate commerce with individuals, part-

nerships and corporations engaged in offering for sale or selling in such commerce plastic paints, wall texture materials, and other allied or competitive products.

PAR. 2. The fraudulent scheme or sales plan mentioned in paragraph 1 hereof has consisted chiefly of the following practices, to wit:

(a) Inducements to enter into contracts for the purchase of Duralith by representations and statements, hereinafter found to be false, fraudulent, and misleading and by agreements, assurances and promises which were not to be, and have not been, observed, kept or performed as hereinafter found.

(b) Inducements to sign trade acceptances in payment for Duralith by representations and statements hereinafter found to be false, fraudulent, and misleading and by agreements, assurances and promises which were not to be, and have not been observed, kept or performed as hereinafter found.

PAR. 3. Pursuant to the fraudulent sales plan of respondents, respondent Duralith Corporation's agents, acting within the scope of their employment and with the knowledge, acquiescence, and support of individual respondents William Weiner and Harry Weiner, and under their supervision and direction, have induced and persuaded numerous distributors and prospective distributors located in many States of the United States to visit the executive offices of respondent Duralith Corporation, in New York City, in the State of New York, and at Chicago in the State of Illinois, for the purpose and intent and with the effect of securing the signatures of said distributors and prospective distributors to contracts or printed instruments requiring the purchase of said product Duralith, and the signatures of such distributors and prospective distributors to trade acceptances providing for payment of the purchase price therefor.

Such agents, called contact men, having been first thereunto duly authorized, have so induced and persuaded said numerous distributors and prospective distributors, by means of one, or more, or all of the following representations, statements, agreements, assurances, and promises:

That respondent Duralith Corporation had been and was having great success in the distribution and sale of Duralith in other sections of the United States where distributors had effected a great volume of sales and were sending monthly repeat orders for Duralith by the carload;

That the consumer demand for Duralith is 55 per cent of all competing products;

That Duralith is waterproof and washable and can be successfully applied by anyone and is the only product for the same or similar purposes that can be applied to a large surface by one operation;

That the territory for which the service or cooperation of the prospective distributors is sought, is virgin territory for Duralith, because respondent Duralith Corporation has neither had a distributor in such territory, nor has Duralith been offered for sale or sold directly or through any other agency in such territory or any part thereof;

That a careful survey of the territory had been made to ascertain the number of homes and other institutions, private and public, in order to approximate the amount of Duralith such territory would require or consume, and it had been concluded from such survey that the prospective distributor in such territory should have on hand as a month's supply the amount determined by respondent corporation from such survey which the prospective distributor must purchase after execution of the agreement for the position of distributor;

That after receipt of the initial order of Duralith, following execution of the agreement naming the prospective distributor, as authorized distributor, and compliance with said respondent's practice of requiring trade acceptances covering purchase price of the product, a representative of said respondent would organize the distributor's sales division for Duralith, demonstrate its application and use to the trade and public and assume the burden of selling the first shipment;

That such respondent would also conduct a newspaper and radio advertising campaign for the distributor to promote sales of the product and establish or develop retailers or a retail or other outlet for disposition of the product;

That respondent corporation would in fact conduct a sales campaign to insure success in disposal of the first shipment of Duralith, or the first month's supply of the product, for its distributors and would in fact sell it for distributors;

That respondent corporation was in a financial position to retain and would retain the trade acceptances until their maturity or would renew or extend them until the distributor could pay such trade acceptances out of proceeds from sale of Duralith so purchased, and that there would be little or no investment required of distributors who would be doing business really on respondents' money;

That retail dealers or outlets for the product had already been established by it and orders for Duralith received from, or promised by them, which would be credited to such prospective distributors after agreement with such respondent relative to becoming its distributor, and execution of the trade acceptances.

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It has been and was the policy and practice of Respondents William Weiner and Harry Weiner, and executives, and employees of respondent Duralith Corporation, to repeat, elaborate and emphasize the aforesaid representations, statements, agreements, assurances and promises during conferences in Chicago and New York, with distributors and prospective distributors, who had been so persuaded and induced to come there. On such occasions it has been the practice of respondents or their representatives to exhibit to such prospective distributors written papers, purporting to be letters from other distributors, in which letters or purported letters such alleged distributors expressed pleasure on account of success in the distribution of Duralith.

It has also been the practice, on such occasions, to represent that no definite time of delivery could be stated because respondent company was flooded with back orders.

In truth and in fact, there was not, has not been and is not any consumer demand or any demand for Duralith, and respondents were not having, have not had and are not having any success whatever in the sale of Duralith except in unloading it on unsuspecting distributors by means of the representations and assurances hereinbefore set forth, and no distributor of respondent Duralith Corporation has had any such success as to give said respondent any repeat car-load order or any repeat orders; Duralith is not waterproof or washable, unless glazed by varnish or shellac nor can it be applied by one operation, or by housewife, child or any unskilled person; territory represented as virgin has not been and was not virgin territory but on the contrary Duralith had been sold in it by respondents one or more times, and was being offered for sale in it by former distributors of respondents, at less than its cost price, at the very time such territory was being represented as virgin territory in which it had never been sold or offered for sale.

Respondent Duralith Corporation has failed and neglected in all instances to conduct a sales campaign as promised its distributors, nor has it conducted any advertising campaign under its present contracts; it did not effect sales of the first shipment of the product for distributors, or any part thereof.

Respondent Corporation has failed and neglected to establish any retail or other outlets for absorption of the Duralith sold its distributors by means of the aforesaid representations and assurances and has at no time received from retail dealers or others, orders for Duralith to be credited to the prospective distributors on assumption of the proposed relationship to respondent corporation, nor has any

distributor received any orders from retailers or other sources arranged or secured by respondents or agents.

The estimated amount of Duralith respondent corporation has represented as necessary for an adequate supply of the solicited distributors has not been based on the market the product would have, but upon the amount the prospective distributor could be induced to purchase, ascertained by respondent corporation in the course of the so-called surveys, which surveys have related directly to the financial ability of the prospective distributor and not to the probabilities of a retail outlet for the merchandise.

Respondent corporation has not been flooded with back orders, and in the very sections from which it has exhibited to prospective distributors alleged letters from so-called successful and well pleased distributors, there have been former distributors with large supplies of Duralith in their possession attempting to sell it as distress merchandise at nominal prices.

It has been the policy and practice of respondents, as an essential part of its fraudulent sales plan, to disregard its assurance to distributors and prospective distributors, that little or no investment would be necessary to represent them as distributors, and to violate its verbal agreements and promises to hold trade acceptances until maturity, or to renew or extend them, until distributors could meet them with money derived from the sale of Duralith. Such practice has been the ostensible or pretended transfer for value of such trade acceptances shortly after their receipt from distributors to certain so-called finance companies, with an understanding that such finance companies would collect or attempt to collect them as innocent purchasers for value while in fact respondents remained their owner and controlled their disposition.

The principal finance companies with which respondents have conducted such collusive transactions have been Abrams and Company, Gotham Factors Corporation and Marsol Credit Corporation of the City of New York, in the State of New York. Litigation or controversies involving trade acceptances which respondents had pretended to transfer to Abrams and Company were settled by respondents as when and how they pleased.

They pretended to transfer to Gotham Factors Corporation trade acceptances amounting to \$462,690.56 and to Marsol Credit Corporation approximately \$125,000 worth of them.

Gotham Factors Corporation was formed in August 1932 by employees of the respondent corporation who had served it in such capacities as necessarily to furnish them and each of them full knowledge of the fraudulent practices by which respondent corporation acquired its trade acceptances. This knowledge they carried with

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them when as executives of Gotham Factors Corporation they pretended in collusion with respondents, to acquire such commercial paper.

The Marsol Credit Corporation was advised soon after its organization, through the executive who controlled it, by the Federal Trade Commission, of the complaints received from various sections of the United States regarding the fraudulent practices of respondents.

As the result of this feature of respondents' sales plan, such financial companies have been enabled to hold themselves out to distributors of respondents as purchasers and holders of the said trade acceptances for value and without notice of any defenses thereto. They have been demanding payment of such trade acceptances and are now demanding payment thereof by suits or under threat or penalty of suits. Respondents have been enabled by such collusive practices to preclude legitimate defenses for fraud, which, as against them, could be interposed successfully by distributors and thereby respondents have been enabled to escape the consequences of said fraudulent sales plan.

PAR. 4. There have been and are individuals, corporations and partnerships offering for sale and selling in interstate commerce, plastic paints of various kinds and wall texture materials truthfully described and represented in competition with Duralith the product of respondent corporation.

PAR. 5. The acts and practices of respondents have had and have and each of them has had and has the capacity and tendency to mislead and deceive and have misled and deceived the public into the belief that the representations, statements, and assurances of respondents, described in paragraph 3 hereof, have been true and into the purchase of Duralith from respondents because of and in reliance on such erroneous belief.

The aforesaid acts and practices of respondents have had and have the capacity and tendency to divert and they have diverted trade to respondents from competitors offering for sale and selling in interstate commerce plastic paints, wall texture materials and allied products. Such acts and practices have also had the capacity and tendency to disrupt and demoralize and they have disrupted and demoralized the trade in plastic paints, wall texture materials and allied products in different communities in the various States of the United States.

CONCLUSION

The aforesaid acts and practices of respondents have been and are all to the prejudice of the public and of respondents' competitors and

have been and are unfair methods of competition in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and evidence in support of the complaint, and on behalf of the respondents' briefs and oral arguments, and the Commission having considered the record and being fully advised in the premises—

It is now ordered, That respondent Duralith Corporation, its officers and agents, in connection with advertising, offering for sale or selling in interstate commerce the product known as Duralith or any other product or products, cease and desist from representing directly or indirectly, and respondent William Weiner, as an individual, cease and desist from causing respondent Duralith Corporation to represent or from himself representing by or through respondent Duralith Corporation, or through any other corporation, or otherwise, directly or indirectly:

(1) That Duralith is waterproof or washable or can be applied by any housewife, child or unskilled person.

(2) That Duralith is the only product for the same or similar purposes that can be applied to a large surface by one operation, or that Duralith itself can be so applied.

(3) That respondent Duralith Corporation has been or is successfully distributing and selling Duralith or any other product in other sections of the United States than that of the solicited respective distributor, unless and until said respondent is actually and successfully distributing and selling Duralith or such other product in other sections of the United States than that of the solicited prospective distributor.

(4) That distributors of respondent Duralith Corporation in other sections than that of the solicited prospective distributor have been effecting a great volume of sales or have been and are sending monthly repeat orders for Duralith to said respondent corporation, unless and until the distributors of respondent in other sections of the United States than that of the solicited prospective distributor actually have been effecting a great volume of sales and actually have been and are sending in monthly repeat orders for Duralith to respondent Duralith Corporation.

(5) That the consumer demand for Duralith is 55 per cent of all competing products, or that there is any demand for Duralith unless and until there is an actual consumer demand for Duralith in accordance with such representations.

(6) That respondent Duralith Corporation or any other corporation has not had a distributor and has not offered for sale or sold Duralith in the particular territory of the solicited prospective distributor or that such territory is virgin territory unless in fact Duralith has never before been offered for sale or sold in the particular territory of the solicited prospective distributor.

(7) That respondent Duralith Corporation, or other corporation, has studied the territory of the solicited prospective distributor and has chosen such prospective distributor from available or desirable agencies for distribution of its product or products, unless such territory actually has been studied by said respondent corporation, or other corporation, with a view to the selection of a distributor, and from such survey the prospective distributor has been chosen as the most available or desirable agency for the distribution of Duralith, or any other product.

(8) That a careful survey of the territory of the solicited distributor has been made to ascertain the number of homes and other institutions, private and public, in order to approximate the amount of Duralith such territory would require or consume, and that as a result of such survey it has been concluded by respondent Duralith Corporation, or other corporation, that the prospective distributor in such territory must have on hand an amount necessary for a month's supply of such product, to be determined by respondent corporation, or other corporation, from such survey, unless and until such a survey has actually been made by respondent corporation, or any other corporation, and from such survey and it alone the amount distributor must have for a month's supply has been determined.

(9) That the amount of Duralith so determined by respondent Duralith Corporation, or other corporation, by means of such survey is necessary to serve for a month's supply for the prospective distributor who must purchase such amount, or any other similar representation which implies or imports the existence of a consumer demand or a probable consumer demand for Duralith in such territory unless such consumer demand actually exists and probably will absorb such monthly supply.

(10) That respondent Duralith Corporation, or other corporation, will organize distributor's sales division for Duralith, or other product, or demonstrate its application and use to the trade or public, or assume the burden of selling a month's supply, or a first shipment,

or any amount of Duralith, or other product, for its distributors if, when, and so long as its practice is to the contrary, unless said respondent Duralith Corporation, or other corporation, actually organizes distributor's sales division for Duralith, demonstrates its application and use to the trade and the public, and assumes the burden of selling a month's supply of Duralith, or a first shipment thereof, in accordance with such representations.

(11) That respondent Duralith Corporation, or any other corporation, will conduct a campaign, including a newspaper and radio advertising campaign, for its distributors to insure sale to the consuming public of Duralith, or any other product, for its distributors, unless and until respondent corporation, or other corporation, actually performs such service in accordance with such representation.

(12) That respondent Duralith Corporation, or other corporation, will establish or develop retailers or a retail outlet for the sale of Duralith, or other product, for its distributors, unless respondent corporation, or other corporation, actually performs such service in accordance with such representation.

(13) That respondent Duralith Corporation, or other corporation, has established retail dealers for the sale of Duralith, or other product, for prospective distributors, and has received orders from them which will be credited to such prospective distributors, unless respondent corporation, or other corporation, has actually established retail dealers for the product, or other products, or has received orders therefor which it can and will credit to the prospective distributor upon consummation of an agreement for distribution of such product, or products.

(14) That distributors by letters are expressing pleasure on account of their success in the distribution of Duralith, unless distributors are achieving success in the distribution of Duralith, and until they actually are expressing pleasure on account of such success in letters to respondent Duralith Corporation.

(15) That respondent Duralith Corporation, or other corporation, has been or is flooded with back orders, unless and until respondent Duralith Corporation, or other corporation, has received or is receiving such an amount of orders for Duralith that it is unable promptly to fill them.

(16) That trade acceptances or other commercial paper received from purchasers of Duralith, or any other product, will be retained by respondent corporation, or other corporation, until their maturity, if, when, and so long as in fact such retention of trade acceptances or other commercial paper so received by respondent corporation, or

other corporation, is contrary to the policy and practice of respondent corporation, and unless and until they are so retained.

(17) That trade acceptances or other commercial paper received by respondent corporation, or other corporation, on account of purchase by distributors of Duralith, or other product, will be retained until the product Duralith, or any other product, or products, sold by respondent Duralith Corporation, or any other corporation, can or will be sold by distributors, if, when, and so long as the contrary is the usual and customary practice of respondent, and until and unless such trade acceptances are so retained.

(18) That trade acceptances or other commercial paper obtained from distributors on account of the purchase of Duralith, or other product, will be retained until distributors can pay them out of the sale of the product, if, when, and so long as the contrary is the usual and customary practice of respondent corporation, or other corporation, or unless and until such trade acceptances or other commercial obligations are actually retained in accordance with such representation.

It is further ordered, That respondent Duralith Corporation, in connection with offering for sale or selling the product Duralith, or any other product, in interstate commerce, cease and desist directly or indirectly, and respondent William Weiner individually cease and desist directly or indirectly, by means of and through respondent Duralith Corporation, or any other corporation, or by any other means:

(a) From selling, discounting, or otherwise disposing of trade acceptances or other commercial obligations given respondent corporation, or other corporation, by the distributors or other purchasers of Duralith, or any other product, upon the representation by respondent corporation, or any other corporation, that such trade acceptances or other commercial obligations will be retained by respondent corporation, or other corporation, or renewed or extended until such distributors of Duralith, or other product, have been able to dispose of the Duralith, or other product, for which such trade acceptances or other commercial obligations were given, unless and until such distributors or other purchasers of Duralith, or other product, actually have sold such Duralith, or other products.

(b) From selling or pretending to sell trade acceptances or other commercial paper secured from purchasers of the product Duralith, or from purchasers of any other product or products to Abrams and Company, Gotham Factors Corporation, or Marsol Credit Corporation, or any other finance company or companies in which respond-

ents have, or either of them has, an interest, or with which respondents, or either of them, act in collusion with respect to such trade acceptances or other commercial obligations, for the purpose or with the effect of permitting such finance companies, or any or either of them, to bring suits for collection of such trade acceptances or other commercial paper, and therein to assert that they are innocent purchasers for value, and without notice, or for the purpose and with the effect of permitting such finance companies, or any or either of them to attempt to defeat defenses available to the distributors against respondent Duralith Corporation, or other corporation, by such assertion of innocence, falsely originating from such pretended or collusive sales.

It is further ordered, That this proceeding be and hereby is dismissed as to the respondents Harry Weiner and Joseph D. Weil, because of the death of the former and failure of the evidence to establish connection of the latter with the fraudulent sales plan of respondents or their practices.

It is further ordered, That respondent Duralith Corporation and respondent William Weiner individually shall file with the Commission within 60 days from and after service of this order a report in writing setting forth in detail the manner and form of their compliance and the compliance of each of them with this order.

IN THE MATTER OF
PURITY ICE COMPANY, INCORPORATED, AND FELES
FERLISE, AS AN INDIVIDUAL AND AS PRESIDENT OF
SAID PURITY ICE COMPANY, INCORPORATED

COMPLAINT EX REL. NATIONAL RECOVERY ADMINISTRATION, OPINION OF
COMMISSION, AND ORDER OF DISMISSAL IN REGARD TO THE ALLEGED VIOLATION OF SEC. 3 OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933, AND OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 2203. Complaint, June 24, 1934—Decision, Apr. 4, 1935

Complaint, on relation of National Recovery Administration, charged respondent corporation and respondent individual, its president and moving spirit, with using unfair methods of competition, in or affecting commerce within the intent and meaning of Section 3 of the National Industrial Recovery Act and of Section 5 of the Federal Trade Commission Act, in constructing and equipping, in Lakeland, Fla., an ice plant, subsequent to date fixed by Article XI of the Code of Fair Competition for the Ice Industry, adopted and approved under said act, without applying to or securing from the Administrator for Industrial Recovery the certificate of public convenience and necessity there provided, sanctioning such construction, and finding the need of additional ice production, storage or tonnage at or in the city and territory involved, or seeking or offering to establish to the satisfaction of said administrator such requirement of public necessity and convenience, and without the establishment thereof or the giving of such a certificate or making of such a finding, and in beginning to manufacture and sell ice therefrom for transportation in interstate commerce, and for use for refrigerating food stuffs in process of transportation in commerce between and among the States, in competition with others similarly engaged;

With capacity and tendency to divert trade and custom to them from their competitors, to injury of latter and the public, endangering, through overproduction in said city and area, the permanence and orderly conduct of the industry therein, with the public loss and inconvenience incident to inability of its manufacturers to continue to produce, offer, sell and deliver ice to public in accordance with the requirements of said code, and to make it impossible for operators in said area to continue their enterprises without violating the same, and thus deny the public the benefit of its provisions relative to labor conditions and minimum wages and hours, embraced therein as a necessary part of the plan and purpose of said National Recovery Act; all in violation thereof and of said code adopted thereunder, and to the prejudice of the public and competitors.

Product of plant in question, construction of which without securing or seeking to secure such certificate was conceded, with capacity of about 15 tons a day, output of about 10, and fourteen employees, was sold entirely in said city in which located, and the surrounding territory, within said State, in competition with that from the plant of one of the largest ice concerns in the United States, with a daily capacity of 375 tons. Neither concern, however, shipped or caused to be shipped any ice outside the State, and

ice supplied by latter concern for refrigerating cars or trucks was delivered in said city or vicinity. By the provisions of Section 3 (b) of the aforesaid Act the provisions of Codes approved under it become standards of fair competition for the trade, industry, or subdivision thereof involved, and any violation of such standards in any transaction in or affecting interstate or foreign commerce is made an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act as amended.

Respondents contended, among other things, that they have not been engaged in any transactions either in, or affecting interstate commerce. In support of complaint it was contended that manufacturers in said competitive area were engaged in business affecting interstate commerce in that they supplied ice in said vicinity for refrigeration of cars and trucks transporting perishable commodities therefrom, and also supplied therein ice for refrigeration of food stuffs imported from outside the State, and, further, that in view of the relation between ice and transportation of perishables the mere construction of such plant affected interstate commerce.

Aside from a single sale and delivery, in said city, of ice to a truck engaged in transporting perishable vegetables in Florida to the District of Columbia, and sundry sales to local grocerymen for refrigerating meats shipped into Florida from other States, however, there was no evidence disclosing the slightest effect whatsoever upon interstate commerce of ice sold by respondents from plant concerned and the ice business, under decision in *New State Ice Co. v. Liebmann*, 285 U. S. 262, 279, is not distinctive from ordinary manufacture and production:

Held, That transactions as to which complaint has been made were not in interstate or foreign commerce and did not substantially or directly affect the same, and that facts show no burden, restraint or effect upon interstate commerce, and, Commission having no authority to proceed under the provisions of aforesaid Section 3 (b) of said Recovery Act, and to issue cease and desist order against respondents, complaint must be dismissed.

Whether said Recovery Act, and Code involved, are unconstitutional for reasons asserted by respondents, or whether refusal of said certificate would, in instant case, permit monopoly in violation of Section 3 of said Act, not passed upon; and

Complaint dismissed "upon the ground that the transactions complained of are not in or affecting interstate commerce."

Mr. Richard P. Whiteley for the Commission.

Douglas, Obear, Morgan & Campbell of Washington, D. C., for respondents.

Cannon, Spieth, Taggart, Spring & Annat of Cleveland, Ohio, and *Mr. T. B. Cantrell*, of Washington, D. C., for Code Authority Ice Industry, Intervenor.

Mr. Gregory Hankin and *Mr. Peter Seitz* for National Recovery Administration, Intervenor.

Complaint

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COMPLAINT

Whereas, the National Recovery Administration, a body created by order of the President, pursuant to Section 2, paragraphs (a) and (b) of the National Industrial Recovery Act, has applied to the Federal Trade Commission for the issuance of a complaint against the Purity Ice Company, Incorporated, a corporation, and Feles Ferlise, as an individual and as president of said Purity Ice Company, Incorporated, relating that said respondents through the violation of Article XI of the Code of Fair Competition for the Ice Industry, approved October 3, 1933, effective October 16, 1933, have been guilty of using unfair methods of competition in or affecting interstate commerce in violation of Section 5 of an Act approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes;" and

Whereas, by reason of the relation of said National Recovery Administration, the Federal Trade Commission has reason to believe that said respondents have been and are using unfair methods of competition in or affecting interstate commerce; and

Whereas, it appears to the Federal Trade Commission that a proceeding by it in respect thereof is in the public interest, and that it is in the public interest that the National Recovery Administration be allowed to intervene and appear in this proceeding;

Now, therefore, the Federal Trade Commission, pursuant to Section 5 of the Federal Trade Commission Act aforesaid, allows said National Recovery Administration to intervene and appear in this proceeding, and on said relation of National Recovery Administration issues this its complaint against said respondents stating its charges as follows:

PARAGRAPH 1. Respondent Purity Ice Company, Incorporated, is a corporation organized and existing under and by virtue of the laws of the State of Florida, having and maintaining its ice manufacturing plant, its office and principal place of business at South Florida Avenue and West Olive Street, in the city of Lakeland in the State of Florida.

PAR. 2. Respondent Feles Ferlise is president of respondent Purity Ice Company, Incorporated, and as such president dominates, directs and controls said Purity Ice Company, Incorporated, in all of its plans, policies, practices and acts to such extent that they are in fact the plans, policies, practices and acts of respondent Feles Ferlise in his individual capacity, and said corporation is used by respondent Feles Ferlise as an instrumentality for the accomplishment of his individual will, plans and purposes.

PAR. 3. Respondents, acting as above alleged, control and operate at the city of Lakeland in the State of Florida a certain factory or plant for the manufacture of ice and therein and thereby manufacture ice to be offered for sale and sold to the public. Respondents have been and are offering for sale and selling the ice so manufactured by them to the public in or affecting interstate commerce. Respondents sell said ice for transportation in interstate commerce, and the same is so transported, also to be used, and the same is used, for the purpose of refrigerating foodstuffs in the process of transportation in commerce between and among the State of Florida and the other States of the United States in this, to wit: Said ice and said foodstuffs so refrigerated thereby are transported from a point or points within the State of Florida into and through other States of the United States to points of destination located at various places within the several States of the United States. Respondents manufacture said ice to be offered for sale and sold, and do offer for sale and sell, said ice to persons, firms, associations and corporations engaged in such interstate commerce for the purpose of transportation in such commerce or for the purpose of refrigerating foodstuffs to be transported, and that are in fact transported, in such interstate commerce; and said ice is so transported in such interstate commerce.

PAR. 4. Other persons, firms, associations and corporations have been, and are, likewise engaged in the manufacture of ice at said city of Lakeland in the State of Florida, and at other points within the same competitive area, for the purpose of offering the same for sale and selling the same to the public and to persons, firms, associations or corporations likewise engaged in such interstate commerce to be by such purchasers transported in such interstate commerce, or used for the refrigeration of foodstuffs in the process of transportation in such interstate commerce, or to be transported therein, and that are actually transported therein.

In the course and conduct of their said business at all times respondents have been in competition, and still are in competition, with all such other persons, firms, associations or corporations so engaged in said business in or affecting such commerce between and among the State of Florida and the several States of the United States; and all acts or practices of respondents in relation to said manufacture of said ice, and said offering for sale, and said sale thereof, are methods of competition in or affecting interstate commerce under the provisions of the National Industrial Recovery Act approved June 16, 1933.

PAR. 5. Under and pursuant to the provisions of Section 2 of said National Recovery Act, the President of the United States, on the 16th day of June 1933 by his certain Executive Order in writing appointed Hugh S. Johnson to be the administrator for Industrial Recovery under Title I of said Act.

Under and pursuant to the provisions of said National Industrial Recovery Act, the National Association of Ice Industries, as a representative of the Ice Industry, submitted to the President of the United States an application for the approval of a Code of Fair Competition for the Ice Industry.

Said application was duly referred to said Hugh S. Johnson, as such administrator, by and before whom such further action was taken and such further proceedings were had that said Johnson, as such administrator, submitted a certain Code of Fair Competition for the Ice Industry, to the President of the United States, together with his written report containing an analysis of said Code of Fair Competition, and his recommendations and findings with respect thereto, wherein said administrator found that said Code of Fair Competition complies in all respects with the pertinent provisions of Title I of the National Industrial Recovery Act, and that the requirements of clauses (1) and (2) of subsection (a) of Section 3 of said Act has been met. The concluding paragraphs of said report are in the following words, to wit:

My Dear Mr. President: I have the honor to submit and recommend for your approval the Code of Fair Competition for the Ice Industry. This Code represents the united efforts of the entire Ice Manufacturing Industry in the United States to comply with the spirit and word of the National Industrial Recovery Act.

An analysis of the provisions of the Code has been made by the Administrator. The wage and hour provisions provided for therein represent a marked improvement over those prevailing in the industry in 1929. I find that the Code complies with the requirements of clauses 1 and 2, subsection (a) of section 3 of the National Industrial Recovery Act.

Thereafter, and on the 3rd day of October 1933 the President of the United States made and issued his certain written Executive Order wherein and whereby he adopted and approved the report, recommendations, and findings of said administrator, and ordered that the said Code of Fair Competition be, and the same thereby was, approved, and by virtue of said National Industrial Recovery Act the provisions of said Code became, and still are, the standard of fair competition for the Ice Industry, and became, and still are, binding upon every member thereof. Respondents have been, and are, members of the Ice Industry within the intent and meaning of said Code, and have been, and are, bound by the provisions of said Code.

A printed copy of said Code, of said written report of said administrator, and of said Executive Order so made and issued by the President of the United States, is filed herewith, marked "Exhibit A"¹ and is by this reference thereto made a part of this complaint.

PAR. 6. Article XI of said Code provides as follows:

If at any time an individual, firm, corporation, or partnership, or other form of enterprise, desires to establish additional ice production, storage, or tonnage in any given territory said party must first establish to the satisfaction of the Administrator that public necessity and convenience require such additional ice-making capacity storage or production. The ice manufactured from any plant that was not in actual operation on September 8, 1933, shall not be sold to any purchaser for a period of twelve months from the date subsequent to September 8, 1933, upon which the operation of such plant may be initiated or resumed, at prices lower than the lowest corresponding prices in good faith published, as required by this Code, in a schedule or schedules governing prices to such purchasers; providing and excepting that this provision will not apply to the sale of ice manufactured by the following:

(a) Plants installed upon authority, of a certificate of necessity and convenience duly issued by the Administrator; or

(b) Plants temporarily shut down for repairs for a period not in excess of twelve months prior to September 8, 1933; or

(c) Plants that were owned or whose output was controlled by companies or operations that were on September 8, 1933, in good faith engaged in the business of selling ice to the general trade in the market in which the ice from such plants is proposed to be sold, such plants being on September 8, 1933, out of operation because of the intent in good faith to further the economic conduct of the business of such company or operation.

At no time prior to the 30th day of January 1934 did respondents or any of them own, control or operate an ice manufacturing plant, or manufacture or offer for sale or sell ice, at the city of Lakeland in the State of Florida, or at any point within the same competitive area. At said date respondents' said ice-manufacturing plant had not been constructed, nor was any such plant in operation or in existence at said city of Lakeland or at any place within the same competitive area.

At no time did respondents or any of them apply to said Hugh S. Johnson, as such administrator, for a certificate or finding of public necessity and convenience for the construction of their said ice-manufacturing plant or for the establishment of additional ice production, storage, or tonnage at or in said city of Lakeland or in any given territory in which said city is located. At no time did respondents or any of them seek or offer to establish to the satisfaction of said administrator that public necessity and convenience require such additional ice-making capacity, storage or production. At no time was it established to the satisfaction of said administra-

¹ Not published.

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tor that public necessity and convenience required such additional ice-making capacity, storage or production. At no time did said administrator give a certificate, or make a finding, that public necessity and convenience require such additional ice-making capacity, storage or production.

Notwithstanding said provisions of Article XI of said Code, and the failure of respondents to establish, or seek or offer to establish, to the satisfaction of said Administrator that public necessity and convenience require such additional ice-making capacity, storage or production, respondents, acting as hereinabove alleged, caused their said ice-manufacturing plant to be constructed and equipped for the purpose of manufacturing ice therein and thereby, and began and have continued to manufacture ice at said plant as above alleged and to offer the same for sale and to sell the same in all things as hereinabove alleged.

PAR. 7. The use of said acts and practices above alleged has the tendency and capacity to divert trade and custom to respondents from their competitors, to the injury of such competitors. The use of said acts and practices is to the injury of the public in this, to wit: It causes such overproduction of ice at said city of Lakeland and in and throughout the competitive area in which said city is located as to endanger the permanence and orderly operation of said industry in said city and competitive area, with the public loss and inconvenience that are incident to the inability of manufacturers of ice in said area to comply with the requirements of said Code of Fair Competition for the Ice Industry, and to continue to produce and offer to sell and to sell and deliver ice to the public under the requirements of said Code of Fair Competition. The use of said acts and practices, has the tendency and capacity to injure the public by making it impossible for operators of ice-manufacturing plants in said area to continue in their said enterprise without violating said Code of Fair Competition denying to the public the benefit of the provisions of said Code relative to labor conditions, minimum wages and hours of labor, which are a necessary part of the plan and purpose of said National Industrial Recovery Act.

PAR. 8. The above alleged acts and practices of respondents are all in violation of the provisions of said National Industrial Recovery Act and of said Code of Fair Competition for the Ice Industry established thereunder, and are all to the prejudice of the public and of respondents' competitors. Said acts and practices constitute unfair methods of competition in or affecting commerce within the intent and meaning of Section 3 of said National Industrial Recovery Act and of Section 5 of an Act of Congress, entitled "An

Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

OPINION

The complaint in this case charges the Purity Ice Company, a corporation, and Feles Ferlise, individually and as president of the said company, with the violation of certain provisions of the Code of Fair Competition for the Ice Industry. Complaint was issued upon the relation of the National Recovery Administration, and counsel for that administration and for the Ice Code Authority were permitted to intervene and to prosecute the complaint.

The complaint alleges that respondents violated the Code in question by failing to apply for or to secure from the Administrator for Industrial Recovery a certificate of public convenience and necessity as required by the provisions of Article XI.²

That article provides that any individual, firm, corporation, or partnership, or other form of enterprise, desiring to establish additional ice production, storage, or tonnage in any given territory must first establish to the satisfaction of the administrator that the public necessity and convenience require such additional ice-making capacity, storage, or production.

Under the provisions of Section 3 (b)³ of the National Industrial Recovery Act, after the President has approved a Code, the pro-

² If at any time an individual, firm, corporation, or partnership, or other form of enterprise, desires to establish additional ice production, storage, or tonnage in any given territory, said party must first establish to the satisfaction of the Administrator that public necessity and convenience require such additional ice-making capacity, storage or production. The ice manufactured from any plant that was not in actual operation on September 8, 1933, shall not be sold to any purchaser for a period of twelve months from the date subsequent to September 8, 1933, upon which the operation of such plant may be initiated or resumed, at prices lower than the lowest corresponding prices in good faith published, as required by this Code, in a schedule or schedules governing prices to such purchasers; providing and excepting that this provision will not apply to the sale of ice manufactured by the following:

"(a) Plants installed upon authority, of a certificate of necessity and convenience duly issued by the Administrator; or

"(b) Plants temporarily shut down for repairs for a period not in excess of twelve months prior to September 8, 1933; or

"(c) Plants that were owned or whose output was controlled by companies or operations that were on September 8, 1933, in good faith engaged in the business of selling ice to the general trade in the market in which the ice from such plants is proposed to be sold, such plants being on September 8, 1933, out of operation because of the intent in good faith to further the economic conduct of the business of such company or operation."

³ "After the President shall have approved any such code, the provisions of such Code shall be the standards of fair competition for such trade or industry or subdivision thereof. Any violation of such standards in any transaction in or affecting interstate or foreign commerce shall be deemed an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act, as amended; but nothing in this title shall be construed to impair the powers of the Federal Trade Commission under such Act, as amended."

visions of such Code become the standards of fair competition for the trade or industry or subdivision thereof involved. Any violation of such standards in any transaction, in or affecting interstate or foreign commerce, is made an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act, as amended.

Respondents admit that they established a plant or factory for the manufacture of ice at Lakeland, Fla., subsequent to the approval of the Code of Fair Competition for the Ice Industry without securing or attempting to secure a certificate of public convenience and necessity as required under Article XI of said Code. They deny, however, that they have at any time been engaged in any transaction in or affecting interstate or foreign commerce. Other defenses are raised by respondents which will be stated hereinafter.

The record shows that the Code for the Ice Industry was approved by the President on October 3, 1933, and became effective October 16, 1933; that early in 1934 the respondents established a plant for the manufacture of ice at Lakeland, Fla., with a capacity of about 15 tons per day and an actual sale of approximately 10 tons daily, and proceeded to sell the ice manufactured in that plant in the city of Lakeland and the territory immediately surrounding said city. The respondent company employed 14 persons. At the time that this plant was established, there was in operation in that area one other ice plant, with a daily productive capacity of about 375 tons. This latter plant was operated by the Federal Ice Refrigerating Company, a subsidiary of the City Ice and Fuel Company. The latter company is the largest ice manufacturing concern in the United States, owns and operates approximately 18 plants in the State of Florida, and has some 26 subsidiaries or branches throughout the United States and Canada. The Federal Ice Refrigerating Company did not ship or cause to be transported any ice outside the State of Florida and the ice which it supplied for refrigeration of cars and trucks was sold and delivered to such cars and trucks in the city of Lakeland or vicinity.

The record fails to disclose a single instance where the respondents sold or shipped ice outside the State of Florida. All of their manufacturing operations were carried on in the city of Lakeland, and all of their sales were restricted to that city or its immediate vicinity. Consequently, the respondents were not engaged in interstate commerce.

Under the National Industrial Recovery Act, the jurisdiction of the Commission over unfair methods of competition is extended to

transactions "in or affecting interstate or foreign commerce." Do respondents' transactions as disclosed by the record affect interstate commerce?

In support of the allegations of the complaint it is contended that the ice manufacturers in the Lakeland competitive area are engaged in business affecting interstate commerce in that they supply ice at Lakeland or vicinity for the refrigeration of cars and trucks which transport perishable commodities from Lakeland and vicinity to other States, and also in that they supply in Lakeland ice for the refrigeration of foodstuffs imported into Lakeland and vicinity from outside the State of Florida. It is further contended that in view of the relation between ice and transportation of perishables the mere construction of an ice plant affects interstate commerce. It is to be noted that aside from a single sale and delivery in Lakeland of ice to a truck engaged in transporting perishable vegetables from Florida to the District of Columbia, and sundry sales of ice to grocermen in Lakeland for the purpose of refrigerating meats which had been shipped into Florida from other States, there is no evidence to show that any of the ice sold by the respondents had the slightest effect whatsoever upon interstate commerce. Did the sale and delivery of ice to the truck in Lakeland and the sale and delivery of ice to the grocers in Lakeland affect interstate commerce so as to confer authority upon the Commission to proceed under Section 3 (b) of the National Industrial Recovery Act?

The question whether intrastate transactions so affect interstate commerce as to come within the purview of Federal regulatory authority under the Commerce Clause has come before the Supreme Court most frequently in litigation arising under the antitrust laws, although other Federal legislation has called for judicial determination of this question. Following *Hopkins v. United States* (171 U. S. 578, 592) which declared "there must be some direct and immediate effect upon interstate commerce", the holding in *Swift & Co. v. United States* (196 U. S. 375, 397), that the effect of the restraint upon interstate commerce was "not accidental, secondary, remote or merely probable"; and the declaration in *Hammer v. Dagenhart* (247 U. S. 251, 272), that "the mere fact that they were intended for interstate commerce transportation does not make their production subject to Federal control under the Commerce Clause", there developed a line of cases squarely controlling the instant proceeding.

In *United Mine Workers v. Coronado* (259 U. S. 344), a civil suit under the Sherman Act, the court in determining whether the conspiracy involved was in restraint of interstate commerce, declared that while coal mining is not interstate commerce, and the power of

Congress does not extend to its regulation as such, nevertheless if the practices in connection with coal mining are likely to obstruct, restrain or burden interstate commerce it is within the power of Congress to subject them to restraint, but that the practices themselves not being of an interstate character, "the intent to injure, obstruct or restrain interstate commerce must appear as an obvious consequence" of the acts.

In *United Leather Workers v. Herkert* (265 U. S. 457), also a civil action under the Sherman Law, the court held that prevention by means of a strike, of manufacture of goods destined for interstate commerce was not an interference with such commerce, stating at page 471:

* * * the mere reduction in the supply of an article to be shipped in interstate commerce, by illegal or tortious prevention of its manufacture, is ordinarily an indirect and remote obstruction to that commerce.

Industrial Association v. United States (268 U. S. 64), presented a case under the Sherman Act of a combination of builders and dealers restricting the purchase of building materials used in San Francisco to products made by open shops. This necessarily raised the question of the effect on interstate commerce in products sold and shipped to San Francisco in such commerce. Referring to the alleged restraint upon the purchase of interstate products, the court stated (at page 80):

The effect upon, and interference with, interstate trade, if any, were clearly incidental, indirect and remote, precisely such an interference as this court dealt with in *United Mine Workers v. Coronado*, 259 U. S. 344, and *United Leather Workers v. Herkert*, 265 U. S. 457.

and further, the court stated (at page 82):

The alleged conspiracy and the acts here complained of, spent their intended and direct force upon a local situation, for building is as essentially local as mining, manufacturing or growing crops, and if, by a resulting diminution of the commercial demand, interstate trade was curtailed either generally or in specific instances, that was a fortuitous consequence so remote and indirect as plainly to cause it to fall outside the reach of the Sherman Act.

Levering v. Morrin (289 U. S. 103), involved a conspiracy to suppress local building operations solely for the purpose of compelling employment of union labor. The court held that it could not be adjudged a conspiracy to restrain interstate commerce, merely because, incidentally, by checking the local use of building materials it would curtail the sale and shipment of those materials in interstate commerce. The court stated (at page 107):

Prevention of the local use was in no sense a means adopted to effect such a restraint. It is this exclusively local aim, and not the fortuitous and incidental effect upon interstate commerce, which gives character to the conspiracy.

In the light of these decisions the facts of the instant case disclose a very apparent weakness and remoteness in any effect they may have upon interstate commerce. Of the ice business, the Supreme Court has stated (*New State Ice Co. v. Liebmann*, 285 U. S. 262, 279):

We are not able to see anything peculiar in the business here in question which distinguishes it from ordinary manufacture and production.

The further contention of the relator to the effect that supplying ice for refrigeration of foodstuffs imported into the State of Florida constitutes interstate commerce, is disposed of by the following principle of law laid down in the case of *Industrial Ass'n v. United States*, *supra*, in which the court (at page 78) held:

It is true, however, that plaster in large measure produced in other states and shipped into California was on the list; but the evidence is that the permit requirement was confined to such plaster as previously had been brought into the State and commingled with the common mass of local property, and in respect of which, therefore, the interstate movement and the interstate commercial status had ended.

Since the transactions of respondents, as to which complaint has been made, were not in interstate or foreign commerce and did not substantially or directly affect said commerce, the Commission has no authority to issue a cease and desist order against them, and the complaint must be dismissed.

This is not to say that power does not exist under the National Industrial Recovery Act and under the Federal Trade Commission Act to take all necessary measures, including control of transactions wholly intrastate in character, whenever indispensable to protect or foster interstate commerce. This principle is not applicable here. The facts show no burden, restraint or effect upon interstate commerce.

Respondents further contend that the National Industrial Recovery Act is unconstitutional; that the refusal of a certificate of public convenience and necessity would, in the instant case, permit a monopoly in violation of Section 3 (a) of the National Industrial Recovery Act; and that Article XI of the Code of Fair Competition for the ice industry violates both the Fifth and Tenth Amendments to the Constitution. These contentions need not be considered since the Commission has decided that it lacks authority in the matter for the reason that the transactions complained of are not "in or affecting" interstate commerce.

The complaint must, therefore, be dismissed.

Order

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ORDER OF DISMISSAL

This matter coming on to be heard by the Commission upon the complaint of the Commission, the answer of the respondent, the testimony taken in support of the allegations of complaint and in opposition thereto, and the briefs and oral arguments of counsel for the Commission, and the relator and for the respondent, and the Commission being now fully advised in the premises:

It is ordered, That the complaint herein be, and the same is, dismissed upon the ground that the transactions complained of are not in or affecting interstate commerce.

Complaint

IN THE MATTER OF

EDWARD M. KAHN CORPORATION

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

Docket 2295. Complaint, Mar. 6, 1935¹—Order, Apr. 18, 1935

Consent order requiring respondent, its agents, etc., in connection with the sale, advertisement and offer of cloth or fabric in interstate commerce, to cease and desist from using or causing others to use words or terms "Taffeta", "Silk" and "Pure Dye", either singly or together, in newspapers, periodicals, sample books, or other publications, or by means of the radio, or by means of labels attached thereto, to describe or to designate cloth or fabric in the form of narrow ribbon or in any other form, unless fiber of the composition thereof is derived entirely from silk, product of the cocoon of the silkworm.

Mr. Edward E. Reardon for the Commission.

COMPLAINT¹

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that the Edward M. Kahn Corporation, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce, as "commerce" is defined in 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 amended complaint stating its charges in that respect, as follows:

PARAGRAPH 1. Edward M. Kahn Corporation, is a corporation formed by consolidation of existing corporations on or about March 1, 1933, under the laws of the State of New York, and having its usual and principal place of business in New York City, N. Y., at all times since said date.

PAR. 2. The respondent is, and, during all the time since its incorporation, has been engaged in the manufacture of Narrow Ribbons, some of which are and have been composed entirely of silk and some of which are and have been composed partly of silk and partly of other fiber, such as rayon, with a factory located at Glendale, N. Y. And the respondent during said time has been engaged in the business of the sale of the Narrow Ribbons manufactured by it,

¹ Amended.

including the ribbons mentioned and referred to in paragraphs 5 to 9, inclusive, hereof, which, among others having labels attached thereto of similar effect, it has sold and still sells, at wholesale, in the usual course of its business to wholesale and retail dealers located in various States of the United States other than New York, the purchasers thereof, for resale to the members of the public for use or consumption.

The respondent has caused its Narrow Ribbons, when so sold by it, to be transported from New York or from the State of origin of the shipment thereof, to, into, and through the said other States to the purchasers.

PAR. 3. During the times referred to in paragraph 2 hereof, other individuals, firms and corporations located in various States of the United States and hereinafter referred to as sellers, have been engaged in the business of the sale of Narrow Ribbons, at wholesale, some of which are and have been composed entirely of silk and some of which are and have been composed partly of silk and partly of other fiber, such as rayon, for the same or similar purposes of use or consumption by the public as the ribbons made and sold by respondent, referred to in paragraphs 2, and 5 to 9, inclusive, hereof, and they have, respectively, sold the same in the usual course of their business to wholesale and retail dealers, the purchasers thereof, located in States other than the State of the seller, or the State of origin of the shipment, for resale to the members of the public for use or consumption.

During the times above referred to, the sellers respectively, have caused the Narrow Ribbons when so sold by them to be transported to, into, and through States other than the State of the seller, or the State of origin of the shipment, to the purchasers.

PAR. 4. The respondent, during the times above mentioned and referred to, has been and it now is in substantial competition in interstate commerce in the sale of Narrow Ribbons with the other individuals, firms, and corporations, referred to as sellers in paragraph 3 hereof.

PAR. 5. During all the times referred to in paragraph 2 hereof, the respondent sold, as set forth in said paragraph, Narrow Ribbon on spools, each spool containing approximately seven yards of ribbon composed entirely of silk. And the respondent caused labels to be placed on each of the spools of the ribbon containing, among other words, the following: "All Silk Taffeta Ribbon"—"Pat. 717"—"Pure Dye", with the knowledge and intent that the spools of ribbon would be displayed and resold by wholesale dealers to retail dealers and in turn displayed and resold by the retail dealers to the members of

the public with the said labels thereon containing the above-mentioned words.

PAR. 6. During all the times referred to in paragraph 2 hereof the respondent sold, as set forth in said paragraph, Narrow Ribbon on spools, each spool containing approximately seven yards of ribbon composed of approximately 50 percent of rayon fiber and 50 percent of silk. And the respondent caused labels to be placed on each of the spools of the ribbon containing, among other words, the following: "All Silk Taffeta Ribbon"—"Meteor"—"Pure Dye", with the knowledge and intent that the spools of ribbon would be displayed and resold by wholesale dealers to retail dealers and in turn displayed and resold by the retail dealers to the members of the public with the said labels thereon containing the above-mentioned words.

PAR. 7. During all the times referred to in paragraph 2 hereof the respondent sold, as set forth in said paragraph, Narrow Ribbon on spools, each spool containing approximately seven yards of ribbon, composed of approximately 58 percent of rayon fiber and 42 percent of silk. And the respondent caused labels to be placed on each of the spools of the ribbon containing, among other words, the following: "Wonder Brand All Silk"—"Seam Binding", with the knowledge and intent that the spools of ribbon would be displayed and resold by wholesale dealers to retail dealers and in turn displayed and resold by the retail dealers to the members of the public with the said labels thereon containing the above-mentioned words.

PAR. 8. During all the times referred to in paragraph 2 hereof the respondent sold, as set forth in said paragraph, Narrow Ribbon on spools, each spool containing approximately seven yards of ribbon, composed of approximately 61 percent of rayon fiber and 39 percent of silk. And the respondent caused labels to be placed on each of the spools of ribbon containing, among other words, the following: "Taffeta Ribbon"—"Meteor"—"Pure Dye", with the knowledge and intent that the spools of ribbon would be displayed and resold by wholesale dealers to retail dealers and in turn displayed and resold by the retail dealers to the members of the public with the said labels thereon containing the above-mentioned words.

PAR. 9. During all the times referred to in paragraph 2 hereof the respondent sold, as set forth in said paragraph, Narrow Ribbon on spools, each spool containing approximately seven yards of ribbon, composed of approximately 60 percent of rayon fiber and 40 percent of silk. And the respondent caused labels to be placed on each of the spools of the ribbon containing, among other words, the following: "Taffeta Seam Binding", with the knowledge and intent that the spools of ribbon would be displayed and resold by wholesale dealers

to retail dealers and in turn displayed and resold by the retail dealers to the members of the public with the said labels thereon containing the above-mentioned words.

PAR. 10. Prior to and during all the times above-mentioned and referred to, cloth or fabric described or designated solely by the words, "Silk" and "Taffeta", used singly or together, is and has been understood to be cloth or fabric the fiber of which is composed of "Silk", the product of the cocoon of the silkworm, by the manufacturers of and wholesale and retail dealers in goods, cloth or fabric, and by the public, who buy goods, cloth or fabric so described or designated for use or consumption in various forms, including Narrow Ribbons. And, during all the said times the words "Pure Dye" when used in connection with cloth or fabric containing silk fiber are and have been understood by the said manufacturers and dealers, and by the public, to mean that the fiber of the cloth or fabric described by the words "Pure Dye" is no other fiber than silk, the product of the cocoon of the silkworm.

PAR. 11. During all the times above mentioned and referred to, the statements and representations consisting of the words "Taffeta", "All Silk", and "Pure Dye", on the labels of the ribbons referred to in paragraphs 6 to 9, inclusive, hereof, and the representations implied therein were and are false statements and false representations of material facts made and caused to be made by the respondent to dealers and members of the public as to the composition of the fabric of which the ribbons were made to which the labels were attached in that the fiber of which the said fabric was composed was not wholly of silk, the product of the cocoon of the silkworm, and they had the capacity and tendency to deceive and to mislead wholesale and retail dealers to whom the respondent sold its said ribbons for resale and to cause the dealers, in turn, to deceive and mislead the members of the public who bought respondent's ribbons so described or designated for use or consumption and the said wholesale and retail dealers and members of the public were deceived and mislead thereby into the belief that the fiber of which the fabric of respondent's said Narrow Ribbons was composed was entirely of silk, the product of the cocoon of the silkworm; and relying upon that belief into purchasing respondent's said Narrow Ribbons in preference to the Narrow Ribbons of respondent's competitors; and trade in Narrow Ribbons was thereby caused to be diverted from respondent's competitors.

PAR. 12. The above acts and things done and caused to be done by the respondent are and were each and all to the prejudice of the public and of the respondent's competitors, and constitute unfair methods of competition in commerce within the meaning and intent of

Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 717), the Federal Trade Commission, on March 6, 1935, issued its amended complaint against the above named respondent, in which amended complaint it is alleged that the respondent has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

On April 17, 1935, the respondent filed its answer to said amended complaint, wherein it consents that the Federal Trade Commission may make, enter and serve upon it an order to cease and desist from the practices alleged in the amended complaint in connection with the sale and offering for sale of narrow ribbon in interstate commerce described or designated by the use of the words or terms "Taffeta", "Silk" and "Pure Dye", in accordance with the provisions of paragraph (b) of Rule V of the Rules of Practice of the Commission, and the Commission being fully advised in the premises:

It is now ordered, that the respondent, Edward M. Kahn Corporation, its agents, employees and representatives, in connection with the sale and the advertising and the offering for sale of cloth or fabric in interstate commerce in the form of narrow ribbon, or in any other form, do—

Cease and desist from the use, or from causing the use by others, of the words or terms "Taffeta", "Silk", and "Pure Dye", either singly or together, in newspapers, periodicals, sample books or other publications, or by means of the radio, or by means of labels attached thereto, to describe or to designate cloth or fabric in the form of narrow ribbon or in any other form, unless the fiber of its composition is derived entirely from silk, the product of the cocoon of the silkworm.

It is further ordered, that the respondent, Edward M. Kahn Corporation, shall, within 30 days after the date of service on it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied and is now complying with the order to cease and desist hereinabove set forth.

Complaint

20 F. T. C.

IN THE MATTER OF
JULES V. RIVIERE PERFUMES, INC.

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

Docket 2250. Complaint, Nov. 23, 1934—Order, Apr. 22, 1935

Consent order requiring respondent, its officers, etc., in connection with the advertisement, sale and offer for sale of its perfumes in interstate commerce to forthwith cease and desist from (1) using the words "Paris" or "France", or the name of Jules V. Riviere or Jules Riviere or Riviere in the form of a signature, in or on labels, or display or shipping cartons or packages containing domestic made perfumes, or in connection with advertising matter, relating to domestic made perfumes, in the form of written or printed words or radio broadcast, or other form, in such a way as to represent or imply that said perfumes were made in Paris or France, and from (2) using the name of Jules V. Riviere, as aforesaid, or any inscriptions or statements in the French language, upon such cartons or packages, or in connection with such advertising matter, without clearly showing that said perfumes were made in the United States.

Mr. Robt. N. McMillen for the Commission.

Munn, Anderson & Liddy, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that Jules V. Riviere Perfumes, Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is, and at all times hereinafter mentioned was, a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business at New York City in said State. It is and has been engaged in the manufacture, compounding and sale of perfumes. Its sales are made to customers located in the various States of the Union, and pursuant to such sales shipment is made by respondent from its place of business in New York to such customers located in the various States as aforesaid. The corporate name is not the name of any person connected with respondent or its predecessor in the business.

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PAR. 2. There are in the State of New York and in various other States of the United States, other persons, firms and corporations engaged in the business of manufacturing, compounding and selling perfumes to customers located throughout the United States, and pursuant to said sales said persons, firms and corporations make shipment from their respective places of business to said customers located in various States other than the State of the location of said manufacturers. Respondent is in substantial competition with these other persons, firms and corporations.

PAR. 3. The perfumes offered for sale and sold by respondent, as aforesaid, are manufactured or compounded by it at its place of business in New York. Such manufacturing and compounding consists in adding alcohol and water to essential oils. The product is then filtered, bottled, labeled and packed for shipment.

PAR. 4. Upon the carton or outer container in which such perfume is packed and shipped appear the words:

The intention behind the packing of this product is to deliver a fine perfume in a sensible container at the minimum cost.

Above this is substantially the same statement in the French language. In a conspicuous place, and as a subscription to the French inscription, appear the words, "Jules V. Riviere, Paris." In inconspicuous letters and in an inconspicuous place on the carton appear the words, "Bottled in U. S. A." On another face of the same container or carton appear the words, "Jules V. Riviere, Paris, France." A circular enclosed in each carton contains the above quoted inscription, both in English and in French, with illustrations of bottles containing the names of the various odors in which such perfume is made, with the word "Paris" conspicuous on each bottle and in almost indistinguishable letters and in an inconspicuous place the words "Bottled in U. S. A."

PAR. 5. Perfumes manufactured and compounded in France, and particularly Paris, have for many years enjoyed widespread popularity and demand among the trade and consuming public throughout the United States, many of whom believe and consider that French perfumes are superior in quality to perfumes manufactured in the United States.

PAR. 6. The use by respondent of the French-sounding corporate name, coupled with the inscriptions in the French language, and the words "Paris" and "France" on the carton, have a tendency to and do mislead the trade and consuming public in the belief that the perfumes offered for sale by respondent are made in Paris, France, and are imported into the United States. Such deception is

prejudicial and injurious to respondent's competitors, both those who import and sell perfumes made and compounded in France and those who sell domestic perfumes which they represent as such. And such deception is prejudicial to the consuming public and constitutes an unfair method of competition within the intent and meaning of Section 5 of the Federal Trade Commission Act, approved September 26, 1914.

ORDER TO CEASE AND DESIST

It appearing to the Commission that at the time and place appointed for the respondent to appear and show cause why an order should not be entered by the Commission requiring it to cease and desist from the violation of law charged in the complaint, the respondent appeared and asked leave to withdraw its answer heretofore filed contesting the proceeding, and in lieu of said answer stated that it did not desire to contest the proceeding and that it consented that, without a hearing or trial, without the taking of evidence, and without findings as to the facts or other intervening procedure, the Commission might make, enter and serve upon respondent an order to cease and desist from the violations of law charged in the complaint, and by way of specification, but without limitation as to the scope of the Commission's order, consented to certain definite prohibitions that said order should contain.

And the Commission finding that under its rules of procedure this proffer and consent of the respondent shall be deemed to be an admission of all the allegations of the complaint, to waive a hearing thereon and to authorize the Commission, without a trial, without the taking of evidence, and without findings as to the facts or other intervening procedure, to make, enter and serve upon the respondent an order to cease and desist from the violations of law charged in the complaint.

It is therefore ordered, That the respondent be and hereby is permitted to withdraw its answer heretofore filed.

It is further ordered, That the respondent, Jules V. Riviere Perfumes, Inc., its officers, representatives and agents, in connection with the advertisement, sale and offering for sale of its perfumes in interstate commerce, do forthwith cease and desist:

(a) From using the words "Paris" or "France", or the name of Jules V. Riviere or Jules Riviere or Riviere in the form of a signature, in or on labels on, or display or shipping cartons or packages containing domestic made perfumes, or in connection with advertising matter, relating to domestic made perfumes, in the

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form of written or printed words or radio broadcast, or other form, in such a way as to represent or imply that said perfumes were made in Paris or France;

(b) From using the name of Jules V. Riviere or Jules Riviere or Riviere, or any inscriptions or statements in the French language, in or upon display or shipping cartons or packages containing domestic made perfumes, or in connection with advertising matter, relating to domestic made perfumes, in the form of written or printed words or radio broadcast, or other form, without clearly showing that said perfumes were made in the United States.

It is further ordered, That the respondent shall within 30 days after the service upon it of this order file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinabove set forth.

IN THE MATTER OF
EVANS FUR COMPANY, A. L. MELTZER, M. MELTZER,
HERMAN MELTZER, KENT FUR COMPANY, CLARENCE
BONNEM, AND S. KANE

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 2227. Complaint, Aug. 30, 1934—Decision, Apr. 24, 1935

Where two corporations, representing a community of interest and engaged under common control in purchase of fur garments from jobbers and/or manufacturers and resale thereof at retail from their place of business to purchasers residing in the various States; in advertising said products in letters and circulars, newspapers and periodicals, and radio broadcasts, respectively, read and heard by persons in other States—

- (a) Falsely represented one of said corporations as the manufacturer of the garments offered and sold by it, and that through purchasing from it, the manufacturer, the customer was saved the middleman's profit and thus effected savings amounting to as much as 50 percent of the price of similar products sold through the usual retail channels;
- (b) Falsely represented that the prices at which they offered and sold said garments represented from 75 percent to 50 percent of their real value, and of the usual selling price of products of equal quality and value, fact being said prices were as high as or higher than usual selling prices of comparable articles; and
- (c) Falsely represented, in the case of one of said corporations, that it sold garments made by it to certain popular motion picture actresses, and that such actresses wore the same, and in its advertising falsely depicted the latter attired in garments represented as its product;

With effect of diverting trade from competitors, including those who manufacture their garments and truthfully represent themselves as so doing, those who do not do so or represent themselves as so doing, and those who do not misrepresent the value or usual selling price of their products, and of deceiving purchasing public into believing they were securing greater value in said garments by purchasing direct from a manufacturer, and were securing the same at from 75 percent to 50 percent of their real value, and of the usual retail selling value of articles of equal quality and value, and with capacity and tendency so to divert:

Held, That such acts and practices, under the circumstances set forth, were to the prejudice of the public and competitors, and constituted unfair methods of competition.

Mr. John W. Hildrop for the Commission.

Mr. Eliot C. Lovett, of Washington, D. C., for respondents, along with whom *Mr. Benjamin F. Goldstein*, of Chicago, Ill., also ap-

peared for Evans Fur Co., A. L. Meltzer, M. Meltzer and Herman Meltzer.

COMPLAINT

Pursuant to the provisions of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that Evans Fur Company, a corporation, A. L. Meltzer, M. Meltzer and Herman Meltzer; and the Kent Fur Company, a corporation, Clarence Bonnem and S. Kane, hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, states its charges in that respect as follows:

PARAGRAPH 1. The Evans Fur Company is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business at Chicago in said State. A. L. Meltzer is, and was at all times hereinafter mentioned, its president and treasurer, M. Meltzer its vice president, and Herman Meltzer its secretary, and as such officers said three persons last named have caused said respondent corporation to carry on the business and to do and perform the acts and things hereinafter alleged.

PAR. 2. The Kent Fur Company is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business in Chicago in said State. Clarence Bonnem is, and was at all times hereinafter mentioned, its president and treasurer, and S. Kane its secretary, and as such officers said individuals last named have caused said respondent corporation to carry on the business and to do and perform the acts and things hereinafter alleged. Said corporation was organized by the above named respondents, Evans Fur Company, A. L. Meltzer, M. Meltzer and Herman Meltzer, and said corporation and the said respondents Clarence Bonnem and S. Kane are and have been the agents of the above named respondents, Evans Fur Company, A. L. Meltzer, M. Meltzer and Herman Meltzer, in carrying on the business, and doing the acts and things, hereinafter alleged.

PAR. 3. The said respondent corporations are now, and were at all times hereinafter mentioned, engaged in the business of buying fur garments and reselling them at retail. A substantial number of said garments when sold were and are shipped by said respondents from their places of business in Chicago to the purchasers thereof resident in the various States of the United States, and they are thus

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engaged in commerce as defined in said act. In making said sales and in doing the advertising hereinafter alleged said respondents are in substantial competition with other retailers of fur garments, a substantial number of which competitors sell and ship in commerce as hereinabove defined.

PAR. 4. Respondents, Evans Fur Company and Kent Fur Company, solicit such sales by letters and circulars and inserting advertisements in newspapers and periodicals which are mailed or otherwise sent from the place of their publication in Illinois into other States of the United States and are there read by residents of said States. Respondent Evans Fur Company further advertises by broadcasts over a number of radio stations located in the State of Illinois, whose broadcasts may be and are received and heard by persons throughout the midwestern section of the United States. Induced by the statements and representations of said advertisements, persons residing in various States purchase, and have purchased, fur garments from said corporate respondents, in some cases for shipment to them at their respective places of residence and in other cases to be immediately carried by such purchasers into other States. Thus there exists and has existed a constant current of trade and commerce between respondents in Illinois and said purchasers in divers other States.

PAR. 5. That in such newspaper and periodical advertisements and in such radio broadcasts, respondent Evans Fur Company represents that it is the manufacturer of the fur garments it offers and sells; that by purchasing from respondent, a manufacturer, the customer is saved the middleman's profit and that the savings thereby effected amount to as much as 50 percent of the price of similar garments sold through the usual retail channels. In truth and in fact said respondent is not a manufacturer of fur garments but purchases the finished or almost finished garments advertised and sold by it from jobbers and/or manufacturers.

PAR. 6. Respondent Evans Fur Company further states and represents in said advertising that the prices at which its garments are offered are from 75 percent to 50 percent of their real value and/or 75 percent to 50 percent of the usual retail selling price of garments of equal quality and value. In truth and in fact said prices are as high as, or higher than, the usual selling prices of garments of equal or similar quality and value.

PAR. 7. Said respondent further represents in said advertising that it sells to, and garments made and sold by it are worn by, certain popular moving picture actresses, and respondent in said advertising uses pictorial representations of such actresses garbed in fur

garments represented to be the product of said respondent. In truth and in fact said actresses do not purchase, and have not purchased, fur garments from respondent.

PAR. 8. Respondent Kent Fur Company in its newspaper advertising misrepresents the quality and value of the fur garments offered and sold by it by representing that the prices for which they are offered are from 75 percent to 50 percent of their real value and from 75 percent to 50 percent of the usual selling price of garments of equal or similar quality and value. In truth and in fact said prices are as high as, or higher than, the usual retail selling prices of garments of equal or similar value and quality.

PAR. 9. That such false and misleading statements and representations as aforesaid have the capacity and tendency to divert, and have diverted, to said respondents trade from their competitors, both those who are in truth manufacturers of fur garments and truthfully represent themselves as such, and those who do not manufacture the garments they sell but who resell on the same basis as these respondents but do not misrepresent their status, and from those competitors who do not misrepresent the value or usual selling price of the garments sold by them. That such misrepresentations deceive the purchasing public into the belief that they are acquiring a greater value in fur garments by reason of purchasing direct from a manufacturer and that they are purchasing fur garments at from 75 percent to 50 percent of their real value and of the usual retail selling value of garments of that quality and value.

PAR. 10. That said misrepresentations of respondents contained in their respective advertisements result in injury to their competitors and to the prejudice of the buying public and constitute unfair methods of competition within the intent and meaning of Section 5 of the Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

REPORT, FINDINGS AS TO FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents named in the caption herewith, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondents having entered their appearances and filed their answers herein and having appeared in their own proper persons and by counsel before Trial Examiner Edward M. Averill in the city of Chicago on April 3,

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1935, that being the time and place on which and at which this proceeding was set for hearing, and on the record entered into a stipulation as to the facts, that said facts might be taken in lieu of any testimony and that the Commission could proceed to find the facts and upon said stipulation draw its conclusion therefrom and make and enter an order requiring the respondents Evans Fur Company, a corporation, and Kent Fur Company, a corporation, their agents, representatives, officers, servants and employees to cease and desist from the acts of unfair competition set out in the complaint, thereupon this proceeding came on for final hearing, and the Commission having considered the record and being fully advised in the premises makes this its findings as to the facts and conclusion drawn therefrom as to respondents Evans Fur Company, a corporation, and Kent Fur Company, a corporation; dismissing this proceeding against individual respondents A. L. Meltzer, M. Meltzer, Herman Meltzer, Clarence Bonnem, and S. Kane.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The Evans Fur Company is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business at Chicago in said State. A. L. Meltzer is, and was at all times hereinafter mentioned, its president and treasurer, M. Meltzer its vice president, and Herman Meltzer its secretary, and as such officers said three persons last named have caused said respondent corporation to carry on the business and to do and perform the acts and things hereinafter alleged.

PAR. 2. The Kent Fur Company is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business in Chicago in said State. Clarence Bonnem is, and was at all times hereinafter mentioned, its president and treasurer, and S. Kane its secretary, and as such officers said individuals last named have caused said respondent corporation to carry on the business and to do and perform the acts and things hereinafter alleged. Said corporation was organized by the above named respondents, Evans Fur Company, A. L. Meltzer, M. Meltzer and Herman Meltzer, and said corporation and the said respondents Clarence Bonnem and S. Kane are and have been the agents of the above named respondents, Evans Fur Company, A. L. Meltzer, M. Meltzer and Herman Meltzer, in carrying on the business, and doing the acts and things, hereinafter alleged.

PAR. 3. The said respondent corporations are now, and were at all times hereinafter mentioned, engaged in the business of buying

fur garments and reselling them at retail. A substantial number of said garments when sold were and are shipped by said respondents from their places of business in Chicago to the purchasers thereof resident in the various States of the United States, and they are thus engaged in commerce as defined in said act. In making said sales and in doing the advertising hereinafter alleged said respondents are in substantial competition with other retailers of fur garments, a substantial number of which competitors sell and ship in commerce as hereinabove defined.

PAR. 4. Respondents, Evans Fur Company and Kent Fur Company, solicit such sales by letters and circulars and inserting advertisements in newspapers and periodicals which are mailed or otherwise sent from the place of their publication in Illinois into other States of the United States and are there read by residents of said States. Respondent Evans Fur Company further advertises by broadcasts over a number of radio stations located in the State of Illinois, whose broadcasts may be and are received and heard by persons throughout the midwestern section of the United States. Induced by the statements and representations of said advertisements, persons residing in various States purchase, and have purchased, fur garments from said corporate respondents, in some cases for shipment to them at their respective places of residence and in other cases to be immediately carried by such purchasers into other States. Thus there exists and has existed a constant current of trade and commerce between respondents in Illinois and said purchasers in divers other States.

PAR. 5. In such newspaper and periodical advertisements and in such radio broadcasts, respondent Evans Fur Company represents that it is the manufacturer of the fur garments it offers and sells; that by purchasing from respondent, a manufacturer, the customer is saved the middleman's profit and that the savings thereby effected amount to as much as 50 percent of the price of similar garments sold through the usual retail channels. In truth and in fact said respondent is not a manufacturer of fur garments but purchases the finished or almost finished garments advertised and sold by it from jobbers and/or manufacturers.

PAR. 6. Respondent Evans Fur Company further states and represents in said advertising that the prices at which its garments are offered are from 75 percent to 50 percent of their real value and/or 75 percent to 50 percent of the usual retail selling price of garments of equal quality and value. In truth and in fact said prices are as high

as, or higher than, the usual selling prices of garments of equal or similar quality and value.

PAR. 7. Said respondent further represents in said advertising that it sells to, and garments made and sold by it are worn by, certain popular moving picture actresses, and respondent in said advertising uses pictorial representations of such actresses garbed in fur garments represented to be the product of said respondent. In truth and in fact said actresses do not purchase, and have not purchased, fur garments from respondent.

PAR. 8. Respondent Kent Fur Company in its newspaper advertising misrepresents the quality and value of the fur garments offered and sold by it by representing that the prices for which they are offered are from 75 percent to 50 percent of their real value and from 75 percent to 50 percent of the usual selling price of garments of equal or similar quality and value. In truth and in fact said prices are as high as, or higher than, the usual retail selling prices of garments of equal or similar value and quality.

PAR. 9. Such false and misleading statements and representations as aforesaid have the capacity and tendency to divert, and have diverted, to said respondents trade from their competitors, both those who are in truth manufacturers of fur garments and truthfully represent themselves as such, and those who do not manufacture the garments they sell but who resell on the same basis as these respondents but do not misrepresent their status, and from those competitors who do not misrepresent the value or usual selling price of the garments sold by them. Such misrepresentations deceive the purchasing public into the belief that they are acquiring a greater value in fur garments by reason of purchasing direct from a manufacturer and that they are purchasing fur garments at from 75 percent to 50 percent of their real value and of the usual retail selling value of garments of that quality and value.

CONCLUSION

The acts and practices of respondents Evans Fur Company, a corporation, and Kent Fur Company, a corporation, under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondents' competitors and constitute unfair methods of competition within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST, ETC.

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of respondents, and the stipulation of facts entered into by and between the respondents Evans Fur Company, a corporation, and Kent Fur Company, a corporation, on the record, before Trial Examiner Edward M. Averill on the 3rd day of April, 1935, when this proceeding came on to be heard before said trial examiner, the Commission having made its findings as to the facts and conclusion that respondents Evans Fur Company, a corporation, and Kent Fur Company, a corporation, have violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes":

It is now ordered, That this proceeding be and it is hereby dismissed as to individual respondents A. L. Meltzer, M. Meltzer, Herman Meltzer, Clarence Bonnem, and S. Kane; and

It is further ordered, That respondents Evans Fur Company, a corporation, and Kent Fur Company, a corporation, their agents, representatives, officers, servants, and employees, in connection with the sale and offering for sale in interstate commerce of their fur garments cease and desist from advertising and representing, either by advertising in newspapers, magazines, journals, by radio, circular letters or otherwise—

(a) That said respondents are manufacturers and that they manufacture the garments they sell, except as to such items as are manufactured by them;

(b) That by purchasing from said respondents, as manufacturers, the purchasers of said garments are thereby saved a middleman's profit amounting to as much as 50 percent of the price of similar garments sold through the regular retail channels;

(c) That the prices at which their said garments are offered are less than the usual retail selling price of garments of equal or similar value and quality, unless, in truth and in fact, such prices are less than the usual selling price of garments of similar or equal quality and value;

(d) That the said respondents sell to, and that the garments made and sold by them are worn by, certain popular moving picture actresses, and/or representing by pictorial advertisements and representations that such actresses are garbed in fur garments made or sold by respondents or that such fur garments worn by such actresses

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are the products of respondents, unless, in truth and in fact, such actresses wear fur garments made or sold by respondents.

It is further ordered, That the Evans Fur Company and Kent Fur Company shall within 60 days after the service upon them of this order, file with this Commission a report or reports in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF
MORTON SALT COMPANY

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

Docket 2150. Complaint, Jan. 16, 1934—Decision, Apr. 30, 1935

Where a corporation engaged in the manufacture and sale of a salt product, first made by it by mixing ordinary salt with other ingredients, including burnt sugar and refined concentrate of pyroligneous acid, secured through destructive distillation of wood in the practical absence of air, and, later, by also passing the salt through a long tube, through which wood smoke was propelled in the opposite direction—

Described said product as "smoke salt" or "Morton's Smoke Salt" and so marked the containers thereof and advertised the same in magazines and newspapers of general circulation in the United States, and in booklets and pamphlets distributed by it among purchasers and prospective purchasers in various States, and by radio broadcasting, and represented that said product possessed the quality of having been smoked, and that through use thereof meats could be cured and smoked by one operation, so that the smokehouse was no longer necessary, and in a booklet called "Meat Curing Made Easy" represented said "smoke salt" as a "wonderfully improved meat curing product", and as one "that does the whole job of curing, sugar-curing, and smoking at the same time", and included in some advertisements, in relatively small and inconspicuous letters, such phrases as "refined condensed wood smoke" and "highly concentrated and condensed refined wood smoke";

The facts being that such destructive distillation of wood does not result in a substitute for natural smoke produced through combustion of said substance and no such substitute is known to science, said tube process, as employed by it, did not and could not result in more than a negligible amount of smoke in quantity and effect, at most, adhering to the salt, and in a genuine smoke salt as made by competitors through electrical precipitation in which a sufficient amount of smoke is made to adhere to the salt so as to give the same the properties and qualities of smoke sufficiently for use in curing and flavoring meats;

With effect of misleading and deceiving the purchasing public into the belief that its aforesaid "smoke salt", to which said sugar had given the dark, or honey, brown color of the genuine product, had been subjected to the action and effect of, or treated or impregnated with smoke of burning wood during combustion, and had acquired from such source alone all of its smoke and smoke effects, and had had more than mere contact with smoke, and that through use thereof meats could be cured and smoked by one operation, etc., and into the purchase thereof in reliance upon such erroneous belief, and of diverting trade to it from competitors offering or selling in interstate commerce salt for curing meats, and from competitors offering and selling genuine smoke salt or smoked salt for said purposes, truthfully described, advertised or represented, and with capacity and tendency so to mislead, deceive, and divert:

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Held, That such practices were all to the prejudice of the public and competitors, and constituted unfair methods of competition, in violation of Section 5.

Mr. James M. Brinson for the Commission.

Mr. H. H. Shelton and *Sanders, Childs, Bobb & Wescott*, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that Morton Salt Company has been or is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said 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 Morton Salt Company, for several years last past, has been and now is a corporation, organized, existing and doing business, under and by virtue of the laws of the State of Illinois, with its office and principal place of business, at Chicago in said State. It has been during its existence and still and now is, engaged in the manufacture of salt, and in its sale in commerce among and between the State of Illinois and the various other States of the United States. It causes its said product, when sold, to be transported to purchasers thereof in the various States of the United States, from its principal place of business in Chicago, Ill., and from its branch or other places of business in the various other States of the United States than the State of Illinois. In the course and conduct of its said business, respondent is now and since its organization has been in competition in commerce among and between the various States of the United States, with individuals, partnerships and corporations, offering for sale and selling salt in like commerce.

PAR. 2. In the course and conduct of its said business, respondent has offered for sale and sold, and offers for sale and sells a certain product, described and designated "Smoked Salt", or "Smoke Salt", or "Morton Smoke Salt". Respondent has widely advertised and continues advertisements of such product by and through magazines, newspapers, booklets, pamphlets and radio broadcasting.

In its advertisements by such radio broadcasting it emphasizes the value of its product particularly because of its character as "Smoke

Salt". In its advertisements in magazines, newspapers and otherwise it presents as the predominant virtue of its product, its quality of having been smoked so that the smokehouse is no longer necessary, and that by use of its smoke or smoked salt, meats can be cured and smoked by one operation.

A more particular and vivid reflection of the method of respondent in bringing the alleged merits of its so-called smoke or smoked salt to the attention of the public is presented by the following excerpts from a magazine entitled "*Meat Curing Made Easy*" published by respondent and distributed among purchasers and prospective purchasers, bearing the legend "And sent to you with the compliments of your Morton Salt Dealer". The magazine contains pictorial representations of hogs and their sucklings, and describes the equipment necessary for butchering, care of the animals before butchering, killing, scalding and subsequent processes including the curing. The front page depicts a container bearing the legend "Morton's Figaro Smoke Salt". Below appear the words "Sugar cures—Salt cures, makes smokehouse smoking unnecessary". On one page of the magazine Morton's Smoke Salt is recommended "for curing and smoking your meat". Again on same page appears "Morton's Smoke Salt is a wonderfully improved meat curing salt; it is the blending together in one convenient product the highest grade meat salt, a marvelously balanced sugar cure and refined condensed smoke". Again, respondent declares on the same page, "It is used just like ordinary meat salt but the curing results are far superior, because the salt, the sugar cure and the smoke all strike in and penetrate the meat together resulting in a better, safer and more uniform cure. It does the whole job of curing, sugar curing and smoking at the same time". The following is particularly noteworthy in that it appears on the same page with the picturization of the sow with its sucklings, and commencement of the instruction about the butchering and curing of pork; "Morton's Smoke Salt comes into this situation with an important contribution. By eliminating yesterday's tedious and long drawn out practices through providing a quicker, simpler, easier and safer way to cure and smoke meat—it renders a distinct service to the farmer. By improving upon the thoroughness of the cure and making more perfect the smoking operation it gives to the farmer a more efficient and dependable method with which to realize the advantages and economies that home killing meat affords". In same magazine respondent declares "Morton's Smoke Salt is a complete sugar curing salt with wood smoke added and therefore does the whole job of curing, sugar curing, and smoking at the same time". Its advertisements abound in such expressions as "Highly

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concentrated condensed and refined wood smoke"; "When the cure is finished, your meat is already smoked"; "When salt and smoke are combined together you get the benefit of the curative preserving qualities of both, while the meat is green".

In truth and in fact, the product which respondent sells to the public described and designated as "Smoked" or "Smoke salt", in such variety of language, in order to induce its purchase as smoked or smoke salt, has not been and is not smoked salt or smoke salt. It consists now as it has from its first introduction to the public, of ordinary salt, to which has been added sugar, pepper, saltpeter, and pyroligneous acid.

The salt offered for sale and sold by respondent as "Smoked salt" or "Smoke salt" or "Morton's Smoke Salt" has not been and is not treated in any way with natural wood smoke. The words "Smoked" or "Smoke" whenever used in connection with the curing of meat, have for many years signified and meant to the dealers, wholesale and retail, and the consuming public, and now signify and mean to them, particularly that portion thereof engaged or interested in the curing of meats, subjection to the action and effect of, or impregnation or treatment with the smoke produced by wood in process of combustion.

PAR. 3. There have been for many years last past and now are individuals, partnerships and corporations offering for sale and selling salt as "Smoked" truthfully described and designated because their products have been smoked in course of the process of burning wood, in accordance with the significance and meaning of the word, as described in paragraph 2 hereof.

PAR. 4. The practice of respondent in advertising as described in paragraph 2 hereof, and offering for sale and selling its said product as "Smoked", "Smoke", or "Morton's Smoke Salt" has had and has the capacity and tendency to mislead and deceive, and has misled and deceived, and does mislead and deceive dealers, wholesale and retail, and the consuming public into the belief that such product has been treated, impregnated with or subject to the action and effect of, the smoke of burning wood, and into the purchase of respondent's said product in reliance upon such erroneous belief.

PAR. 5. The above and foregoing practice of respondent has had and has the capacity and tendency to divert, and has diverted and does divert trade to respondent from competitors, offering for sale or selling in interstate commerce salt, actually smoked in the true acceptance of the term as described in paragraph 2 hereof.

PAR. 6. The above and foregoing practice of respondent has been and is all to the prejudice of the public and respondent's competitors, and in violation of the provisions of Section 5 of an Act of Con-

gress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served its complaint upon respondent, Morton Salt Company, charging it with the use of unfair methods of competition in interstate commerce in violation of Section 5 of said Act.

The respondent having entered its appearance and having filed its answer, testimony was taken and evidence received in support of the complaint and on behalf of the respondent before the examiner of the Commission theretofore duly appointed for such purpose.

Thereupon this matter came on regularly for decision before the Commission on the complaint, answer, testimony, evidence, briefs and oral arguments of counsel, and the Commission having duly considered the record and being fully advised in the premises, now files this its report, stating its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Morton Salt Company, has been for several years last past and now is, a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business at Chicago in said State. It is engaged in the manufacture of salt, and in its sale in commerce among and between the State of Illinois and the various other States of the United States and the District of Columbia. It has producing plants in the States of Michigan, Kansas and Texas, and causes its salt when sold to be transported from its place of business at Chicago in the State of Illinois and from its various plants in the States above named to purchasers in and through the various States of the United States other than the State of Illinois or the State or States from which its product has been or is transported to purchasers thereof.

In the course and conduct of such business respondent has been and is in substantial competition in interstate commerce with individuals, partnerships and corporations offering for sale and selling salt in such commerce, including salt described or designated as "smoke salt" or "smoked salt".

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PAR. 2. Respondent, Morton Salt Company, has been for several years last past and now is, offering for sale and selling in the course of its business described in paragraph 1 hereof, a product which it has described and now describes as "smoke salt" or "Morton's Smoke Salt". Such description or designation appears on the containers in which the product is offered for sale and sold, and respondent has particularly advertised and continues to advertise this product under such description and designation by or through magazines and newspapers of general circulation in and through the various States of the United States, booklets and pamphlets which it causes to be distributed among purchasers and prospective purchasers in various States of the United States and by means of radio broadcasting. In such advertisements and advertising matter respondent represents that the product "smoke salt" or "Morton's Smoke Salt" possesses the quality of having been smoked and that by use of such smoke salt, meats can be cured and smoked by one operation so that the smokehouse is no longer necessary. In a booklet called "Meat curing made easy" which respondent has published and distributed for several years last past and now publishes and distributes among purchasers and prospective purchasers its product called "smoke salt" or "Morton's Smoke Salt" is represented as a "wonderfully improved meat curing product" and as a "product that does the whole job of curing, sugar curing and smoking at the same time". Some of its advertisements have contained such phrases as "refined, condensed wood smoke" and "highly concentrated and condensed refined wood smoke" in relatively small and inconspicuous letters, although such words have no tendency to qualify or explain use of the description or designation "smoke salt" and would not have any such tendency had they been expressed by respondent in large or conspicuous letters.

The product was offered for sale to the public until late in 1933 in cans bearing a label carrying in large and conspicuous letters the words "Smoke Salt" or "Morton's Smoke Salt", but which labels did not contain any reference to refined, condensed wood smoke, or highly concentrated and condensed refined wood smoke.

This so-called smoke salt, which respondent so designated, advertised and sold, was manufactured until late in 1933 as aforesaid, by mixing ordinary salt with other ingredients, including burnt sugar and the product variously called by respondent as aforesaid highly concentrated and condensed refined wood smoke, or refined condensed wood smoke. This product was in fact a refined concentrate of pyroligneous acid. This acid results from the destructive distillation of wood, practically in the absence of air which it is necessary to exclude so far as possible in order to accomplish a

condensation from which results a maximum yield of volatile distillates. Such maximum yield cannot be effected from or through combustion of the wood whether perfect or imperfect, complete or incomplete, nor can the concentration or refinement of the product of destructive distillation of wood result in any substitute, nor is there any substitute known to science identical in its qualities and properties or the effects of its application or use, for the natural smoke produced by combustion of the wood. In truth and in fact the word "smoke" or "smoked", when used to describe or designate salt for use in curing and smoking or flavoring meats, signify and mean to the purchasing public that the product so described and designated has been subjected to or treated or impregnated with the smoke of burning wood during the course of its combustion, sufficiently to acquire from such source alone all of its smoke and smoke effects for curing or smoking meats.

The product which respondent mixed with its salt until late in 1933 was a product resulting from the refinement of pyroligneous acid produced by the destructive distillation of wood. It was neither smoke from burning wood nor derived from such smoke, and the designation or description of salt mixed with it as "smoke salt" or "Morton's Smoke Salt" was and is a false representation.

PAR. 3. In the latter part of the year 1933 respondent, Morton Salt Company, began the installation of another method for the manufacture of its smoke salt because of the claim made by competitors that they only were really smoking their salt, described as "smoke salt" or "smoked salt". Respondent by its new method, which in fact is no more than a modification of its former method of manufacturing its product, adopted and began to use and now uses a mechanical device by means of which natural wood smoke is brought into physical contact with salt, thereby furnishing respondent with a basis for the pretense that its salt is subjected to the action and effect of wood smoke during its process of combustion.

Adoption of such method or such modification of its former method is the acknowledgment that the purchasing public associates the word "smoke" used in connection with curing and smoking or flavoring meats with natural smoke of burning wood.

By the process of manufacture so adopted by respondent and now in use, its salt passes through a tube seventy-five feet in length in one direction, while smoke resulting from burning wood passes through the tube in the opposite direction. During such passage through the tube the salt is handled by a so-called flight conveyor, in the form of a spiral, operating as a helical screw. It slowly carries or pushes the salt through the smoke which it meets coming from the opposite direction. The so-called flight conveyor contains

mixing flights which tend to retard rapid forward movement. The tube is twelve inches in diameter and the screw practically the same, there being only one-half inch of clearance. It is impossible in the course of one hour, in the conditions above described, to produce two tons of salt to which there has been attached or is attached sufficient wood smoke for the use of such product in curing and smoking meats. Yet this is the amount of salt per hour handled by the above-described mechanical device of respondent. In the manufacture of genuine smoke salt where electrical precipitation is used to apply smoke to the salt, the amount of natural wood smoke which can be pushed through a thirty-inch drum containing salt, with a twenty-four inch exhaust fan, is so small that it is impossible from a single tube to make as much as one-half ton per hour of smoke salt. When electrical precipitation is not employed, and this is the case in the process of respondent, or where mere contact only is used, natural wood smoke containing practically no liquids whatever has almost no capacity for adhering to solid surfaces. In the course of passage through a tube under such conditions some smoke may attach to the salt but it must be negligible in quantity and effect. If salt passes through smoke in a tube of great length or repeatedly passes through such a mechanical device as that employed by respondent so that its contact with smoke is sufficiently long in point of time, the salt will acquire a visible amount of smoke, but as manufactured by respondent the so-called smoke salt must contain a mere fraction of one per cent of smoke, if that much.

Salt, which has been sufficiently smoked to acquire the properties and qualities of smoke sufficient for use in curing and flavoring meats, has a dark brown or honey brown color. Morton's Smoke Salt, or the product so designated or described by respondent, does not have such color when it emerges from the mechanical device used by respondent in its manufacture. There is added to it after its contact with smoke, burnt sugar by means of which it is made to resemble or to simulate genuine smoke salt, nor does the product of respondent after its contact with smoke possess the properties or qualities of smoke acquired from such contact sufficiently to smoke or flavor meats. There is also added as an ingredient after such contact with smoke a substantial proportion of the same pyro-ligneous concentrate which respondent designates refined condensed wood smoke that was used exclusively by respondent in the manufacture of its so-called smoke salt before its adoption or use late in 1933 of the mechanical device now employed. Respondent still uses 33 $\frac{1}{3}$ per cent or one-third as much of such concentrate, or its so-called refined condensed smoke, as it formerly used. This addition

of the pyroligneous concentrate to the salt after its contact with the smoke is occasioned by the insufficiency of such contact to smoke the salt. It would be possible to subject salt to the action of smoke by means of the mechanical device of respondent sufficiently long in point of time, that addition to the product of the pyroligneous concentrate and burnt sugar would be unnecessary. There is salt offered for sale and sold in interstate commerce in competition with the product of respondent, designated and described as smoked salt, which is subjected to the action and effect of natural wood smoke but in course of its contact with the smoke by means of electrical precipitation there is, forcibly as it were, applied to the salt such a sufficiency of smoke that when the product emerges from the mechanical device there is no necessity for addition of other ingredients either to simulate the color of genuine smoke salt or the flavoring or other properties or qualities of genuine wood smoke in order to supply deficiencies resulting from insufficient contact with the wood smoke.

PAR. 4. The word smoke or smoked, or any word or words signifying or implying that a product has been or is smoked, when used in connection with curing and smoking meats, signifies and means to the purchasing public, found in paragraph 3, that the product so described or designated has been subjected to the action and effect of, or treated or impregnated with, natural wood smoke, that is, smoke produced by burning wood during the process of its combustion. It does not signify or mean that the product has merely had contact with such smoke. The words "smoked salt" or "Morton's Smoke Salt" used in connection with salt to be employed for curing and smoking meats, signify and mean that the product has had more than mere contact with smoke, that it has had such contact as to acquire smoke and its properties and qualities, and effects of smoke to such extent that by use of the product meats can be cured and smoked.

PAR. 5. There have been and are individuals, partnerships and corporations offering for sale and selling in competition with respondent in interstate commerce salt for curing meats, and other competitors of respondent offering for sale and selling, in like commerce, salt truthfully described or designated as "smoked salt" for curing and smoking or flavoring meats.

PAR. 6. The acts and practices of respondent as described in paragraphs 2 and 3 hereof in offering for sale and selling its product described as "smoke salt" or "Morton's Smoke Salt", and in representing that by application or use of such product meats may be cured and smoked by one operation and that the smokehouse is no

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longer necessary for curing and smoking meats, have had and have, and each of them has had and has, the capacity and tendency to mislead and deceive, they have misled and deceived, and each of them has misled and deceived, and they do and each of them does mislead and deceive, the purchasing public into the belief that the product of respondent described or designated as "smoke salt" or "Morton's Smoke Salt" has been subjected to the action and effect of, or treated or impregnated with, the smoke of burning wood during its process of combustion, and that such product has acquired from such source alone all of its smoke and smoke effects, and into the purchase of the product "Morton's Smoke Salt" in reliance upon such erroneous belief.

Such acts and practices have had and have, and each of them has had and has, the capacity and tendency to divert trade, and they have diverted and do divert trade to respondent from competitors of respondent offering for sale or selling in interstate commerce salt for curing meats and competitors offering for sale and selling smoke salt or smoked salt offered for sale or sold for curing, smoking or flavoring meats, truthfully described, advertised or represented.

CONCLUSION

The aforesaid acts and practices of respondent have been and are all to the prejudice of the public and of respondent's competitors, and have been and are unfair methods of competition in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard upon the complaint issued and served upon respondent, Morton Salt Company, and its answer thereto, testimony, evidence, briefs and arguments of counsel for the Commission and counsel for respondent, and the Federal Trade Commission having made its report in writing stating its findings as to the facts with its conclusion drawn therefrom that the said respondent has been and is violating the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes";

It is now ordered, That respondent, Morton Salt Company, its officers, agents, employees and representatives, in connection with offering for sale or selling salt in interstate commerce or in the

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District of Columbia, cease and desist on brands or labels, and in magazines, trade journals, newspapers or other periodicals, or in house organs, pamphlets, radio broadcasting, or in any other form of advertisement, directly or indirectly, expressly or impliedly, from:

Using the word "smoked" or the word "smoke", or any other word or words signifying smoke, or implying use of smoke, to designate or describe salt offered for sale, or sold, for curing, preserving, smoking, or flavoring meats, unless the salt so described or designated has been or is directly subjected to the action and effect of the smoke from burning wood during its process of combustion sufficiently to acquire from such source alone all of its smoke or smoke effects for use in curing, preserving, smoking, or flavoring meats.

It is further ordered, That respondent shall file within 60 days from the service hereof a report in writing setting forth the manner and form of its compliance with this order.

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IN THE MATTER OF
JEFFERSON ISLAND SALT COMPANY

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

Docket 2151. Complaint, Jan. 16, 1934—Decision, Apr. 30, 1935

Where a corporation engaged in the sale of a salt preparation for curing and smoking meat, made by mixing salt with pyroligneous concentrate, the product of destructive distillation of pine wood, and the refinement of the pyroligneous acid resulting therefrom, and including in said mixture burnt sugar and other ingredients to impart thereto the brown color associated by purchasing public with the necessarily more expensive genuine smoke salt, i. e., salt smoked with natural wood smoke—

Falsely labeled the cans in which it sold said product with the words "Jefferson Island Country Ham Smoked Meat Salt", and, in smaller letters, the words "Liquid Smoke" or "Condensed Smoke" as the case might be, and displayed upon bags in which it also sold the same, in large letters, its corporate name, and the words "Pure Smoke Meat Salt" and set forth on the reverse side thereof, under "Directions for Use" the legend "Jefferson Island Country Ham Smoke (printed "Smoked" in leaflets originally enclosed) Salt", followed by "Is just exactly what the name implies", and an enumeration of ingredients, including "Condensed Smoke";

With effect of misleading and deceiving purchasing public into belief that said product had been subjected directly to or treated or impregnated with natural wood smoke, produced by burning wood during the process of combustion, and into purchasing said product in reliance on such erroneous belief, and of diverting trade to it from competitors offering and selling in interstate commerce salt for curing meats, and those offering the necessarily more expensive genuine smoked salts for curing and smoking the same, truthfully described or designated, and with capacity and tendency so to mislead, deceive, and divert:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and competitors and constituted unfair methods of competition in violation of Section 5.

Mr. James M. Brinson for the Commission.

Carroll & McElwain, of Louisville, Ky., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that Jefferson Island Salt Company, Inc., has been or is using unfair methods of competition in commerce, as "commerce" is defined in

said act, and it appearing to said 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, Jefferson Island Salt Company, Inc., is now and for several years last past has been a corporation organized, existing and doing business under and by virtue of the laws of the State of Kentucky and the various other States of the United States. Louisville in the State of Kentucky.

It has been and is engaged in the manufacture and the sale of a general line of salt products in commerce among and between the State of Kentucky and the various other States of the United States. Since 1930 it has included in its line of salt or salt products a so-called "smoked salt".

Respondent has been and is engaged in competition in interstate commerce with individuals, partnerships and corporations engaged in the sale of "smoked salt" in like commerce.

PAR. 2. Respondent, Jefferson Island Salt Company, Inc., has offered for sale since 1930 and now offers for sale its product in ten-pound drums and in twenty-five pound bags. The drums in which its product is marketed bear labels containing the words "Jefferson Island Country Ham Smoked Meat Salt". This is followed by the statement: "This salt contains the exact proportions necessary of liquid smoke, sugar, black and red pepper". Said label also bears the statement: "This salt is thoroughly prepared, ready for use, with the proper proportions of pepper, sugar and condensed smoke—nothing else necessary". And also the statement: "This salt if properly used will give you the most delicious country hams and bacon."

The twenty-five pound bags in which respondent sells the largest volume of its so-called smoked salt carry the label "Jefferson Island Salt Company, Inc. Pure smoked meat salt". And on the opposite side of the bag there appears the statement: "Jefferson Island country ham smoked salt is just exactly what the name implies. This salt is thoroughly prepared, ready for use with the proper proportions of pepper, sugar and condensed smoke—nothing else necessary. This salt if properly used will give you the most delicious country hams and bacon. Absolutely no smoking necessary".

In truth and in fact, the product of respondent so described and designated has not been and is not treated with or subjected to the action and effect of natural wood smoke in any way. The word "smoked" when applied or used in connection with the curing of meats has signified and meant to the retail dealers and the consuming public for many years and still and now signifies and means to

dealers and the consuming public treatment or impregnation with or subjection to the wood smoke while the wood is in process of combustion.

PAR. 3. There have been for several years last past and still are individuals, partnerships and corporations offering for sale and selling in interstate commerce salt truthfully described and designated as "smoked salt" or "smoke salt".

PAR. 4. The practice of respondent described in paragraph 2 of offering for sale and selling in interstate commerce its product as "smoked salt" has had and has the capacity and tendency to mislead and deceive, has misled and deceived and does mislead and deceive retail dealers and the consuming public into the belief that the product of respondent has been treated with or subjected to the action of natural wood smoke produced by wood in process of combustion and into the purchase of such product in reliance upon such belief.

PAR. 5. The aforesaid practice has also had and has the capacity and tendency to divert, has diverted, and does divert trade to respondent from its competitors offering for sale and selling in interstate commerce salt treated with or subjected to the action of natural wood smoke.

PAR. 6. The practices of respondent described in paragraph 2 hereof have been and are all to the prejudice of the public and respondent's competitors and have been and are unfair methods of competition in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served its complaint upon respondent, Jefferson Island Salt Company, charging it with unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act.

The respondent having entered its appearance and filed its answer, testimony was taken and evidence received in support of the complaint and on behalf of the respondent before an examiner of the Federal Trade Commission theretofore duly appointed for such purpose.

Thereupon this matter regularly came on for final hearing before the Commission on the record, briefs and oral arguments, and the Commission having duly considered the record and arguments of counsel, and being fully advised in the premises, files this its report stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Jefferson Island Salt Company, is now, and for several years last past has been, a corporation organized and existing under and by virtue of the laws of the State of Kentucky, with its principal office and place of business at Louisville in said State. It has been and now is engaged in the sale of salt in commerce among and between the State of Kentucky and the various States of the United States and the District of Columbia.

In the course and conduct of such business it has been and is in substantial competition with individuals, partnerships and corporations offering for sale and selling salt including smoked salt in interstate commerce.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent, Jefferson Island Salt Company, for more than a year last past has been, and now is offering for sale and selling a certain salt product for curing and smoking meat. It has been and is its practice to sell it in cans containing ten pounds and in bags containing twenty-five pounds. The cans bear labels upon which appear in large and conspicuous letters the words: "Jefferson Island Country Ham Smoked Meat Salt." In relatively smaller letters there is reference on such labels to use of "Liquid Smoke" in one place, and to use of "Condensed Smoke" at another place in still smaller letters. At one time respondent placed in bags with its product a leaflet in which there were directions for use of the product, expressed so far as the words "Directions for use" and "Jefferson Island Country Ham Smoked Meat Salt" are concerned, in large and conspicuous letters. In much smaller letters in the leaflet appeared as among the ingredients of the product the words "Condensed smoke". The bags now contain no leaflet and bear a circular design, a large black circle enclosing a smaller white circle and still smaller red circle. In the white circle appears the name of respondent in large black letters, in the red circle, upon a white background, appear in large conspicuous letters the words "Pure Smoke Meat Salt". On the back of the bags appears the same language which the aforesaid leaflet, entitled "Directions for use", contained when respondent followed the practice of enclosing it with its said product in its bags, except the word "Smoked" is changed

to the word "Smoke". This legend on its bags succeeded use of the leaflet which was abandoned when respondent adopted the practice of placing its "Directions for use" on the bags. Such "Directions for use" commence with the following language: "Jefferson Island Country Ham Smoked Meat Salt" on the leaflet, and "Jefferson Island Country Ham Smoke Meat Salt" on the bag, followed by the words "Is just exactly what the name implies". After this clear and definite statement that the product of respondent is just exactly what the name implies, the ingredients of the product are specified, and among them appear as hereinbefore mentioned the words "Condensed smoke".

In truth and in fact the product of respondent, Jefferson Island Salt Company, designated and described as "Jefferson Island Country Ham Smoked Meat Salt" or "Smoke Meat Salt", has not been, and is not subjected to or treated or impregnated with natural wood smoke produced by burning wood during its process of combustion. It is manufactured by the mixture of salt with a product of the American Turpentine and Tar Company of New Orleans, La., which is made from the destructive distillation of pine wood into pyroligneous acid, which is certainly not smoke in any sense, and which is then refined into a product which the manufacturer sells to respondent described as pyroligneous concentrate. Such pyroligneous concentrate, which is in fact pyroligneous acid minus some of its ingredients, respondent thereupon falsely and deceptively renames "Condensed smoke" when using small letters, and "Smoke" when using large and conspicuous letters in legends on the containers of its product.

The color of salt smoked with natural wood smoke, that is with smoke from burning wood, is brown. The mixture of white salt and pyroligneous acid, or pyroligneous concentrate is gray. In order to imitate the color of genuine smoke salt respondent, by use of burnt sugar or other ingredients, imparts to its product the brown color which the purchasing public associates with genuine smoke salt.

Respondent pays to the American Turpentine and Tar Company seventy cents per gallon for the pyroligneous concentrate which it mixes with its salt and is enabled thereby to sell its imitation smoked or smoke salt at four cents per pound retail in the area called by the respondent Louisiana territory and two cents delivered price. Its twenty-five pound bags sell for fifty-five cents, while cans of ten pounds sell for sixty cents, the higher price resulting from the high price of the cans.

Genuine smoke salt is sold to the wholesaler at six cents per pound. Respondent, therefore, has been and is enabled to produce and sell

in competition with genuine smoke salt an imitation smoke salt at prices substantially lower than those at which the genuine smoke salt is sold, since respondent sustains no expense on account of the maintenance of devices and processes for subjection of its salt to wood smoke.

PAR. 3. There have been for several years last past and now are individuals, partnerships and corporations offering for sale and selling in interstate commerce salt for curing meat and genuine smoked salt for curing and smoking meat in competition with the product of respondent, Jefferson Island Salt Company.

PAR. 4. The word "Smoke" or any word or words signifying or implying smoke, when used to describe or designate salt for curing and smoking meats or in connection with smoking meats, have for many years last past signified and meant, and now signify and mean to the purchasing public salt which has been or is subjected directly to the action and effect of, or treated or impregnated with natural wood smoke, that is, smoke produced by burning wood during its process of combustion. The product of respondent has not been and is not so manufactured and its designation or description as "smoke salt" has been and is a false representation.

PAR. 5. The practice of respondent, in offering for sale and selling its said product described and designated as Jefferson Island Country Ham Smoked Meat Salt or as Jefferson Island Country Ham Smoke Meat Salt, has had, and has the capacity and tendency to mislead and deceive, and has misled and deceived, and does mislead and deceive the purchasing public into the belief that the product of respondent so described or designated has been or is subjected directly to, or treated or impregnated with natural wood smoke, that is, smoke produced by burning wood during its process of combustion, and into the purchase of respondent's product in reliance upon such erroneous belief.

Such false and misleading description or designation of its product by respondent has had and has the capacity and tendency to divert, and has diverted and does divert trade to respondent from its competitors offering for sale and selling in interstate commerce salt for curing meats and smoked salt for curing and smoking meats, truthfully described or designated.

CONCLUSION

The acts and practices of respondent described in the above and foregoing findings as to the facts by the Commission have been and are all to the prejudice of the public and of respondent's competitors

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and have been and are unfair methods of competition in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard upon the complaint issued and served upon respondent, Jefferson Island Salt Company, and its answer thereto, testimony, evidence, briefs and arguments of counsel for the Commission and counsel for respondent, and the Federal Trade Commission having made its report in writing stating its findings as to the facts with its conclusion drawn therefrom that the said respondent has been and is violating the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes";

It is now ordered, That respondent, Jefferson Island Salt Company, its officers, agents, employees and representatives, in connection with offering for sale or selling salt in interstate commerce or in the District of Columbia, cease and desist on brands, or labels, and in magazines, trade journals, newspapers or other periodicals, or in house organs, pamphlets, radio broadcasting, or in any other form of advertisement, directly or indirectly, expressly or impliedly, from—

Using the word "smoked" or the word "smoke", or any other word or words signifying smoke, or implying use of smoke, to designate or describe salt offered for sale, or sold, for curing, preserving, smoking, or flavoring meats, unless the salt so described or designated has been or is directly subjected to the action and effect of the smoke from burning wood during its process of combustion sufficiently to acquire from such source alone all of its smoke or smoke effects for use in curing, preserving, smoking, or flavoring meats.

It is further ordered, That respondent shall file within 60 days from the service hereof a report in writing setting forth the manner and form of its compliance with this order.

Syllabus

IN THE MATTER OF

MYLES SALT COMPANY, LIMITED

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

Docket 2152. Complaint, Jan. 16, 1934—Decision, Apr. 30, 1935

Where a corporation engaged in the sale of a salt preparation for use in curing and smoking meats, made by mixing salt with pyroligneous concentrate, product of destructive distillation of pine wood, and refinement of the pyroligneous acid resulting therefrom, and by adding burnt sugar or other ingredients to the mixture to impart thereto the brown color of the necessarily more expensive genuine smoke salt—

Described and designated its said product as "Myles' Smoke Salt" and set forth upon a card attached to the containers thereof, on the face or conspicuous side, in capital letters, "USE MYLES' SMOKE SALT FOR DELICIOUS HOME-CURED MEATS. SEE OTHER SIDE FOR INSTRUCTIONS", together with its name, and displayed on the reverse or unexposed side, the legend, in large capital letters, "DIRECTIONS FOR CURING WITH MYLES' SMOKE SALT", followed by instructions and preceded by language to the effect that the product contains various ingredients, including "Condensed Smoke", and "Nothing else is necessary. This smoke salt when properly used assures you country-cured hams and bacons with delicious flavor", and, in large conspicuous capital letters, "ABSOLUTELY NO OTHER SMOKING NECESSARY."

With effect of misleading and deceiving the purchasing public into believing that said salt had been subjected directly to the action and effect of, or treated or impregnated with natural wood smoke produced by burning wood during process of combustion, and into purchasing same in reliance on such belief, and of diverting trade to it from competitors offering in interstate commerce salt for curing meats, and those offering the necessarily more expensive smoked salt for curing and smoking meat, truthfully described and designated, and with capacity and tendency so to mislead, deceive and divert:

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

Mr. James M. Brinson for the Commission.

Milling, Godchaux, Saal & Milling, of New Orleans, La., for respondent.

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COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that Myles Salt Company, Limited, has been or is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said 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, Myles Salt Company, Limited, is now and for several years last past has been a corporation organized, existing and doing business under the laws of the State of Louisiana with its principal office and place of business in the city of New Orleans and State of Louisiana. It has been and is engaged in the manufacture of a product described as "Myles' Smoke Salt" and in its sale in commerce among and between the State of Kentucky and the various other States of the United States.

It has been and is in the course and conduct of its business in competition with individuals, partnerships and corporations engaged in the sale in interstate commerce of salt in like commerce.

PAR. 2. Respondent has been and now is offering for sale and selling a certain product which it has described and designated and still describes and designates as "smoked salt" or "smoke salt". The label on the container in which the salt of respondent is packed and marketed bears a card of directions for use of the product. This card contains the legend: "Myles' smoke salt for home curing". On one side of the card of directions appears the following: "Use Myles' smoke salt for delicious home-cured meats". On the other side of this card appears: "Myles' smoke salt is carefully prepared and contains properly blended proportions of salt, sugar, cure condensed wood smoke and peppers. Nothing else is necessary. This smoke salt when properly used assures you country-cured hams and bacon with delicious flavor. Absolutely no other smoking is necessary."

In truth and in fact, the product offered for sale and sold by respondent in interstate commerce as Myles' smoke salt has not been and is not treated in any way with smoke or subjected to the action and effect of natural wood smoke. The word "smoked" or the word "smoke" when applied to or used in connection with the curing of meats has for a considerable period of time signified and meant and now signifies and means to retail dealers, and to the consuming public, subjection to the action and effect of, or treatment or impregnation with, the smoke produced by wood in process of combustion.

Findings

PAR. 3. There have been for many years last part and now are individuals, partnerships and corporations engaged in the manufacture and sale in commerce among and between the various States of the United States of salt truthfully described and designated as "smoked salt" or as "smoke salt".

PAR. 4. The practice of respondent in offering for sale or selling its product as "Myles' Smoke Salt" has had and has the capacity and tendency to mislead and deceive retail dealers and the consuming public into the belief that the product of respondent so described has been and is salt treated or impregnated with, or subjected to the action and effect of, natural wood smoke as described in paragraph 2 hereof.

The aforesaid practice of respondent has also had and has the capacity and tendency to divert trade to respondent from competitors selling smoked salt in interstate commerce truthfully designated and described.

PAR. 5. The aforesaid practices of respondent have been and are all to the prejudice of the public and of respondent's competitors and have been and are unfair methods of competition in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create the Federal Trade Commission, to define its powers and duties, and for other purposes".

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served a complaint upon respondent, Myles Salt Company, Limited, charging it with unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act.

The respondent having entered its appearance and filed its answer, testimony was taken and evidence received in support of the complaint and on behalf of the respondent before an examiner of the Federal Trade Commission theretofore duly appointed for such purpose.

Thereupon this matter regularly came on for final hearing before the Commission on the record, briefs, and oral arguments and the Commission, having duly considered the record and arguments of counsel and being fully advised in the premises, files this its report stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Myles Salt Company, Limited, is now and for several years last past has been a corporation organized and existing under and by virtue of the laws of the State of Louisiana, with its principal office and place of business in New Orleans in said State. It has been and is engaged in the manufacture of salt and its sale in commerce among and between the State of Louisiana and the various other States of the United States and the District of Columbia.

In the course and conduct of such business respondent has been and is in substantial competition with individuals, partnerships and corporations offering for sale and selling salt, including "smoked salt", in interstate commerce.

PAR. 2. It has been for more than a year last past, and now is the practice of respondent to offer for sale and sell a product which it describes and designates as "Myles Smoke Salt". It is offered for sale and sold for use in curing and smoking meats. Respondent sells it in bags to which is attached a card, the face or conspicuous side of which bears the following in capital letters: "Use Myles Smoke Salt for Delicious Homecured Meats. See other side for instructions. Myles Salt Company, Limited, New Orleans, Louisiana." The letters in which the words "Myles Smoke Salt" are expressed are the largest and most conspicuous on the card. On the reverse or unexposed side of the card, which the purchaser or user is invited to consult for instructions, appear the words in large capital letters "Directions for curing with Myles Smoke Salt"; below them are instructions for use of the product. Immediately above the words "Directions for curing with Myles Smoke Salt" and in no sense relating to instructions or directions for use of the product, appears language which would be on the face or conspicuous side of the card, if intended by respondent as a bona fide qualification or explanation of the words "Myles Smoke Salt" or as notice to the purchasing public that the so-called "smoke salt" in fact consists of salt which has been treated chemically with pyroligneous concentrate as hereinafter found, in order to produce an imitation of genuine smoke salt.

This language states that Myles Smoke Salt (the words "Myles Smoke Salt" being in large capital letters) is carefully prepared and contains properly balanced proportions of salt, condensed smoke, peppers and saltpeter. It further contains the following: "Nothing else is necessary. This smoke salt when properly used assures you country cured hams and bacons with delicious flavor. Absolutely

no other smoking necessary." The words "Absolutely no other smoking necessary" are in large, conspicuous capital letters.

In truth and in fact the product of respondent, Myles Salt Company, Limited, designated and described as "Myles Smoke Salt" has not been and is not subjected to or treated or impregnated with natural wood smoke produced by burning wood during its process of combustion. It is manufactured by the mixture of salt with a product of the American Turpentine and Tar Company of New Orleans, La., which is made from the destructive distillation of pine wood into pyroligneous acid, which is certainly not smoke in any sense, and which is then refined into a product which the manufacturer sells to respondent described as pyroligneous concentrate. Such pyroligneous concentrate, which is in fact pyroligneous acid minus some of its ingredients, respondent thereupon falsely and deceptively renames "condensed smoke" when using small letters and "smoke" when using large and conspicuous letters in the legend on the containers of its product.

The color of salt smoked with natural wood smoke, that is, with smoke from burning wood, is brown. The mixture of white salt and pyroligneous acid or pyroligneous concentrate is gray. In order to imitate the color of genuine smoke salt respondent, by use of burnt sugar or other ingredients, imparts to its product the brown color which the purchasing public associates with genuine smoke salt.

Respondent pays to the American Turpentine and Tar Company seventy cents per gallon for the pyroligneous concentrate which it mixes with its salt and is enabled thereby to sell its imitation smoked or smoke salt for less than the price of genuine smoked salt, the production of which requires maintenance of devices and processes for subjection of salt to natural wood smoke.

PAR. 3. There have been for several years last past and now are individuals, partnerships and corporations offering for sale and selling in interstate commerce salt for curing meat and genuine smoked salt for curing and smoking meat in competition with the product of respondent.

PAR. 4. The word "Smoke" or any word or words signifying or implying smoke when used to describe or designate salt for curing and smoking meats, or in connection with smoking meats, have for many years last past signified and meant, and now signify and mean to the purchasing public salt which has been or is subjected directly to the action and effect of, or treated or impregnated with natural wood smoke, that is smoke produced by burning wood during its process of combustion. The product of respondent has not

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been and is not so manufactured and its designation or description as "smoke salt" has been and is a false representation.

PAR. 5. The practice of respondent, Myles Salt Company, Limited, in offering for sale and selling its said product described and designated as "Myles Smoke Salt" has had, and has the capacity and tendency to mislead and deceive, has mislead and deceived, and does mislead and deceive the purchasing public into the belief that the product of respondent so described or designated has been or is subjected directly to, or treated or impregnated with natural wood smoke, that is, smoke produced by burning wood during its process of combustion, and into the purchase of respondent's product in reliance upon such erroneous belief.

Such false and misleading description or designation of its product by respondent has had and has the capacity and tendency to divert, and has diverted and does divert trade to respondent from its competitors offering for sale and selling in interstate commerce salt for curing meats and smoked salt for curing and smoking meats, truthfully described or designated.

CONCLUSION

The acts and practices of respondent described in the above and foregoing findings as to the facts by the Commission have been and are all to the prejudice of the public and of respondent's competitors and have been and are unfair methods of competition in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard upon the complaint issued and served upon respondent, Myles Salt Company, Limited, and its answer thereto, testimony, evidence, briefs and arguments of counsel for the Commission and counsel for respondent, and the Federal Trade Commission having made its report in writing stating its findings as to the facts with its conclusion drawn therefrom that the said respondent has been and is violating the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes":

It is now ordered, That respondent, Myles Salt Company, Limited, its officers, agents, employees and representatives, in connection with offering for sale or selling salt in interstate commerce or in the

District of Columbia, cease and desist on brands or labels, and in magazines, trade journals, newspapers or other periodicals, or in house organs, pamphlets, radio broadcasting, or in any other form of advertisement, directly or indirectly, expressly or impliedly, from:

Using the word "smoked" or the word "smoke", or any other word or words signifying smoke, or implying use of smoke, to designate or describe salt offered for sale, or sold, for curing, preserving, smoking, or flavoring meats, unless the salt so described or designated has been or is directly subjected to the action and effect of the smoke from burning wood during its process of combustion sufficiently to acquire from such source alone all of its smoke or smoke effects for use in curing, preserving, smoking, or flavoring meats.

It is further ordered, That respondent shall file within 60 days from the service hereof a report in writing setting forth the manner and form of its compliance with this order.

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IN THE MATTER OF
FEDERAL AUTO PRODUCTS COMPANY

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

Docket 2291. Complaint, Jan. 30, 1935—Order, May 1, 1935

Consent order requiring respondent, its officers, etc., in connection with the sale and offer of reconditioned or used spark plugs in interstate commerce, to cease and desist forthwith from neglecting, refusing or failing to indicate or make it known on the wrappers, boxes and cartons containing the same, or in any other way, that such spark plugs are reconditioned or used.

Mr. DeWitt T. Puckett for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that Federal Auto Products Company, a corporation, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said 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 is and has been since August of 1933, a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business at 1621 South Michigan Boulevard, Chicago, Cook County, Illinois, and is or has been since 1933 engaged in the sale and distribution by wholesale of reconditioned or rebuilt spark plugs which respondent sells and ships to its customers and retail dealers in various States of the United States of America, from its said place of business in Chicago, Ill., and is therefore engaged in interstate commerce, and is in substantial competition with divers other individuals, firms, associations, and corporations, engaged in interstate commerce in a similar and like business to that of respondent, both as to the sale and shipment in interstate commerce of rebuilt spark plugs.

PAR. 2. Respondent has purchased from various persons reconditioned spark plugs, the said plugs having been obtained by said persons from garages, service stations, and various places, which spark plugs had been reconditioned by replacing terminal brass tops, cleaning the porcelain, cleaning the electrodes or replacing them

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when necessary, sandblasting the metal parts and testing the spark plugs to the required compression in like manner as new spark plugs are tested, and respondent has offered for sale and sold said reconditioned spark plugs, in interstate commerce, without, in all instances, labeling or otherwise disclosing to the purchasing public the fact that said spark plugs were reconditioned or used spark plugs.

PAR. 3. Respondent has offered for sale and sold said reconditioned spark plugs to wholesalers, who in turn have sold same to the jobbers, who have sold said plugs to the ultimate consumer. These spark plugs have been sold by the respondent either in bulk or individually. When sold in bulk, they were placed unwrapped in cartons or wooden boxes and so delivered. When sold individually, each plug was enclosed in a carton. Three different types of cartons were used. From the beginning, a plain, white paper carton was used, upon which was stamped the word "Renewed." No other words appeared thereon. A second type of carton used was one originally designed for other purposes. On this second type of carton, nothing whatever appeared to disclose the fact that the spark plug contained therein was rebuilt or renewed. The third type of carton was a plain white paper carton. Nothing appeared on this third type of carton to disclose the fact that the enclosed spark plug had been used or reconditioned.

The foregoing methods of wrapping, selling and distributing spark plugs, in interstate commerce, have the tendency and capacity to deceive and mislead the purchasing public by causing it to believe that in the purchase of respondent's reconditioned spark plugs it is buying new and unused spark plugs, and likewise said methods have a tendency and capacity to mislead and deceive the retail merchants who order and buy in interstate commerce respondent's reconditioned spark plugs into the impression and belief that respondent was selling unused spark plugs, since nothing appeared on the cartons to disclose the fact that they were used spark plugs; and when in truth and in fact said spark plugs were not new and unused spark plugs but were used or reconditioned spark plugs, which do not give the same quality or quantity of service as do new and unused spark plugs, and when so wrapped and offered for sale, retail merchants, who purchased said used spark plugs, were and are deceived and defrauded by said nondisclosure and said retail merchants were and are thereby afforded an instrumentality for perpetrating a fraud on the buying public.

PAR. 4. Each and all of the acts of nondisclosure on the part of respondent, referred to in paragraph 3 hereof, had and have the tendency to mislead the buying public into the belief that they

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were and are buying new and unused spark plugs, and to unfairly divert trade to respondent from those individuals, firms, associations, and corporations who sell in interstate commerce, new and unused spark plugs, and to unfairly divert trade to respondent from those individuals, firms, associations and corporations who sell in interstate commerce used and reconditioned spark plugs, but who honestly and truthfully represent same, and to otherwise injure its said competitors.

PAR. 5. The acts and practices set forth in paragraph 3 hereof are all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding coming on for final hearing by the Federal Trade Commission upon the record, including the complaint of the Commission and respondent's answer thereto in which answer respondent waived hearing on the charges set forth in the complaint, refrained from contesting the proceeding and, pursuant to paragraph 2 of Rule 3 of the rules of practice of the Commission, as amended and revised August 20, 1934, consented that the Commission might make, enter and serve upon respondent, without evidence and without findings as to the facts or other intervening procedure, an order to cease and desist from the method or methods of competition alleged in the complaint, and the Commission being fully advised in the premises:

Now, therefore, it is hereby ordered, That respondent, Federal Auto Products Company, its officers, directors, agents, representatives, servants and employees in connection with the sale and offering for sale of reconditioned or used spark plugs in interstate commerce forthwith cease and desist from neglecting, refusing or failing on the wrappers, boxes and cartons containing such spark plugs or in any other way to indicate or make it known that such spark plugs are reconditioned or used.

It is further ordered, That respondent, Federal Auto Products Company, shall within 60 days after the service upon it of a copy of this order, file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinabove set forth.

Complaint

IN THE MATTER OF
OSSOLA BROS., INC.COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2236. Complaint, Sept. 29, 1934—Order, May 8, 1935*

Consent order requiring respondent, its agents, etc., in connection with the sale, or offer in interstate commerce, of "Grande Italla" tomato paste or sauce, to cease and desist from using on brands, labels, containers or packages, or in advertisements thereof or otherwise, words, phrases, pictures, pictorial designs, vignettes, maps or other devices falsely importing, implying or suggesting that said tomato paste or sauce is made in, or imported from, or made of tomatoes imported from, Italy, or any other foreign country; provided that the wording, phrasing and designs of respondent's present label, may be used as a brand or label, or in advertisements of said paste or sauce, if words, "Made from Tomatoes Grown in the United States" are printed in letters in close conjunction therewith, and in letters as large and prominent as any of those appearing upon said label, and appear on all labels, containers, packages or advertisements thereof.

Mr. E. J. Hornibrook for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that Ossola Bros., Inc., a corporation, has been or is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said 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, Ossola Bros., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal place of business in the city of Pittsburgh in said State. It is now and for more than one year last past has been engaged in the business of selling food products at wholesale in and from the cities of Pittsburgh, Pa., and New York City, N. Y. Among other things, it sells a canned tomato sauce under the brand name "Grande Italia". This sauce resembles thick catsup and is made from peeled and crushed tomatoes and is used in making sauce for spaghetti and other edible dishes. This sauce is sold to retail and jobber customers of respondent and many of such

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customers are in business outside of the States of New York and Pennsylvania, and when orders are received therefor from said customers, such orders are filled by respondent by shipping the said sauce from the said cities of Pittsburgh or New York to the respective places of business of said customers.

PAR. 2. In the course and conduct of its said business, respondent is in competition with other individuals, copartnerships and corporations engaged in the sale and transportation between and among various States of the United States of tomato sauce used for the same purposes as is respondent's; some of which tomato sauce is imported from Italy and is made from the Italian Plum Shaped Tomato grown in Italy, and some of which is made from tomatoes grown in the United States.

PAR. 3. "Grande Italia" tomato sauce is manufactured and packed for respondent in the State of California. It is made of Italian Plum Shaped Tomatoes grown in said last named State. The Italian Plum Shaped Tomato is native of Italy and is now and has been for many years grown there. The sauce which is and has been made from this Plum Shaped Italian grown tomato has an established reputation for being especially adapted as a sauce for spaghetti and other edible dishes, particularly among Italians in this country and abroad. The Italian Plum Shaped Tomato, as the name implies, is in the shape of a plum, while other tomatoes are round or globular in shape. Until about the year 1926 no Italian Plum Shaped Tomatoes were grown in the United States. Since about the year 1926 they have been grown to a small extent in the State of California and to a much lesser extent in the States of New York, New Jersey, Delaware and Maryland. The round or globular tomato, grown in the United States, is also used in the making of tomato sauce used for the same purposes as that of respondent's.

PAR. 4. In the sale of its said product, respondent causes the cans or containers thereof to be labeled as follows:

The label contains a vignette with a picture of the Italian Plum Shaped Tomato and a picture of a map of Italy, indicating the principal cities of that country and also the following words:

GRANDE ITALIA

Con Basilico

Salsa Pura di Pomidora

Uso Napoli

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Order

Naples Style

Pure Tomato Sauce

Color Added

Between the two pictures on the label in small print there is stated the following:

Packed in California

Ossola Bros., Inc.

New York

Pittsburgh

This above described label is upon the cans or containers of respondent's said tomato sauce when they reach the consuming public.

PAR. 5. The aforesaid use by respondent of the label described in paragraph 4 hereof has the tendency and capacity to deceive the purchasing public into the belief that its said brand of tomato sauce is made from the Plum Shaped Italian Tomato grown in Italy and imported into the United States from Italy, when in truth and in fact said brand is made from tomatoes grown only in the United States and is not imported, and has the tendency and capacity to unfairly divert trade from said competitors to the respondent and otherwise injure them.

PAR. 6. The above alleged acts and practices are all to the prejudice of the public and of respondent's said competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of said Act of Congress.

ORDER TO CEASE AND DESIST, ETC.

Respondent herein having filed its answer to the complaint in this proceeding and having subsequently applied to this Commission for permission to withdraw its said answer and to file in lieu thereof an answer in which it desires to waive all further proceedings and by which it consents to the entry, issuance and service upon it of an order to cease and desist, and the Commission having duly considered the same and being fully advised in the premises:

Now, therefore, it is hereby ordered, That the said answer be and the same is hereby withdrawn and the said consent answer be and the same is hereby filed in lieu of the said answer so withdrawn.

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And it is hereby further ordered, That the respondent Ossola Bros., Inc., a corporation, its agents, employees and representatives, in connection with the sale, or offering for sale in interstate commerce, of Grande Italia tomato paste or sauce, cease and desist from using on brands, labels, containers, packages, or in advertisements of the same or otherwise, words, phrases, pictures, pictorial designs, vignettes, maps or other devices importing, implying or suggesting that said tomato paste or sauce is manufactured in, or imported from Italy, or any other foreign country, or made from tomatoes imported from Italy or any other foreign country, when such is not the fact; except that the wording, phrasing and designs of respondent's present label, described in paragraph 4 of the complaint herein, may be used as a brand, label or in advertisements of tomato paste or sauce, providing the words, *made from tomatoes grown in the United States* are printed in letters in close conjunction therewith, and close proximity thereto, and as large and prominent as any of the letters appearing upon said label, and shall appear on all labels, containers, packages, or in advertisements of such tomato paste or sauce.

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

Complaint

IN THE MATTER OF
PURITAN STATIONERY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2275. Complaint, Dec. 31, 1934—Decision, May 13, 1935*

Where a corporation engaged in the sale of stationery and paper, innocently and for a limited time advertised, designated, and sold as "rag content" its "Ambassador Linen" stationery and paper, made of wood pulp or fiber and purchased by it from the manufacturer, notwithstanding fact that said product had a rag content of less than 25 percent:

Held, That such acts and practices, under the conditions and circumstances set forth, were to the prejudice of the public and competitors, and constituted unfair methods of competition.

Mr. John W. Hilldrop for the Commission.

Mr. Herman Moskowitz, of Philadelphia, Pa., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that Puritan Stationery Company, a corporation, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said 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, Puritan Stationery Company, is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principal office and place of business in the city of Philadelphia in said Commonwealth, and now and for more than one year last past has been engaged in the manufacture and sale in interstate commerce, among other commodities, of a certain brand of stationery consisting of writing paper and envelopes known and designated as "Ambassador Linen", which it manufactures at its said place of business in the city of Philadelphia, Commonwealth of Pennsylvania, and ships its

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said product into and through various of the other States of the United States to retail merchants for sale to the public at retail, and especially does the said respondent ship from its said place of business in Philadelphia, Pa., to J. G. McCrory & Company, which is the owner and operator of chain stores in various and diverse cities and States of the United States, the said commodity consisting of writing paper and envelopes known and designated as "Ambassador Linen".

In the course and conduct of its business respondent is now, and for more than one year last past has been, in substantial competition with other corporations and with persons, firms, partnerships and associations engaged in a like or similar business to that of respondent, to wit, the manufacture and sale in interstate commerce of writing paper and envelopes.

PAR. 2. The said writing paper and envelopes so manufactured and sold by respondent in interstate commerce and in competition with others engaged in a like and similar business, is by said respondent manufactured of wood pulp or fiber with a mixture of "rags" and, in the manufacture of such writing paper and envelopes, the percentage of rags used in the manufacture of writing paper and envelopes from wood pulp determines the price to be charged therefor, both by the manufacturer in selling to the retail merchant and the retail merchant in selling to the buying public. The said paper manufactured and sold by respondent in interstate commerce as aforesaid, under the name and designation of "Ambassador Linen" is made of wood fiber or pulp and a percentage of rags not over 10 percent.

PAR. 3. In the manufacture and sale of stationery, paper and envelopes, and in the advertising and labeling of same, the trade term "Rag Content" conveys to the jobbers, retail stores, and the buying public the idea and impression that the paper and envelopes thus labeled and advertised are manufactured of wood pulp or fiber with a minimum content of rags of 25 percent, while in truth and in fact the stationery, paper and envelopes so manufactured and sold in interstate commerce by respondent are not entitled to the label or advertisement, "Rag Content", for the reason that it is commonly known, accepted and understood by the manufacturers, jobbers, retail sellers and the buying public that paper with a rag content of less than 25 percent is not, in truth and in fact, a "Rag Content", and the stationery, paper, and envelopes so manufactured and sold by respondent in interstate commerce and labeled "Rag Content" and "Ambassador Linen" contain less than 10 percent of "Rag Content".

PAR. 4. Respondent in the advertising and labeling of its said commodity, manufactured and sold, with a rag content of less than

10 percent and as "Ambassador Linen", as set forth in paragraph 3 hereof, uses the trade term "Rag Content" in prominent display which, as aforesaid, has the trade meaning and conveys to the buying public and consumer the idea, impression and understanding that the paper and envelopes so advertised have a rag content of not less than 25 percent, when in truth and in fact the said commodity of respondent known and designated as "Ambassador Linen" contains less than 10 percent of rag content and is not a "linen" paper at all, but is a paper made of wood pulp or fiber with a small rag content and therefore the said product of respondent is not entitled to the trade term "Rag Content". Therefore, the said labeling and advertising of respondent's said commodity as "Rag Content", is false, unfair and misleading and has a tendency and capacity to, and does, mislead the buying public by causing it to believe that when it buys respondent's said product, it is buying a paper with a rag content and a paper of a much higher grade than it actually receives, and thereby respondent, when it advertises and ships to retail merchants its said paper and envelopes as "Rag Content" to be by said retail merchants resold to the buying public, the respondent thereby furnishes others with an instrumentality for the perpetrating of a fraud upon the public.

PAR. 5. The practice of respondent in labeling and advertising the said paper and envelopes manufactured by it and sold in interstate commerce and which contains less than 25 percent of rag content, to wit, less than 10 percent of rag content, as "Rag Content", as known and understood by the trade and the buying public, has the tendency and capacity to, and does, divert trade from the competitors of respondent, who truthfully advertise the rag content of the paper and envelopes manufactured and sold by them in interstate commerce, from those competitors of respondent who manufacture a like product containing 100 percent rag content, to respondent.

PAR. 6. The above acts and things done by respondent are all to the injury and prejudice of the public and of respondent's competitors in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent Puritan Stationery Company, a

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corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent having entered its appearance and filed its answer herein, and having entered into a stipulation as to the facts with W. T. Kelley, chief counsel of the Federal Trade Commission, in which it was agreed that the said facts may be taken in lieu of testimony and that the Commission may draw its conclusion therefrom and may make, enter, and serve upon respondent an order to cease and desist from the acts of unfair competition in commerce set out in this petition; thereupon this proceeding came on for final hearing and the Commission having considered the record, having approved the said stipulation and being fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent at the time of the filing of the complaint herein and for more than one year prior thereto was and is a corporation chartered, existing, and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principal place of business in Philadelphia in the Commonwealth of Pennsylvania; that its principal business consisted in the sale of stationery and paper, among which was stationery and paper advertised, designated and sold under the name of "Ambassador Linen"; that said paper so designated, advertised and sold as "Ambassador Linen" was by respondent shipped from its said place of business in Philadelphia, Pa., into and through various of the States of the United States of America to its customers who had bought same from respondent, and, therefore, respondent was and is engaged in interstate commerce.

PAR. 2. Respondent is now, and was at the time this complaint was filed and for more than one year prior thereto, in competition with various corporations, individuals, associations, firms and partnerships engaged in a similar and like business to that of respondent in interstate commerce.

PAR. 3. Up to the end of the year 1932 it did sell a quantity of stationery, in interstate commerce, which it designated, advertised and represented as "rag content", and at all times during the period during which said stationery was thus advertised, labeled and sold, it did not know that before it would be justified in the use of said term "rag content" its said stationery, which was made out of wood pulp or fiber, should contain not less than 25 percent of rag content; that this stationery was sold and shipped in interstate commerce by

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respondent as "Ambassador Linen"; said stationery so sold in interstate commerce by respondent with a rag content of less than 25 percent was manufactured for it by a company engaged in the manufacture of paper, and that only one "run" of paper so manufactured with the rag content of less than 25 percent was sold by respondent in interstate commerce or otherwise. Since on or about March 8, 1933, respondent has not sold in interstate commerce or otherwise any stationery with a rag content of less than 25 percent.

CONCLUSION

The acts and practices of respondent under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondent's competitors and constitute unfair methods of competition within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of the respondent and a stipulation of facts entered into by and between the respondent and the chief counsel of the Commission, the Commission having approved said stipulation and having made its findings as to the facts and conclusion that respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes"—

It is now ordered, That respondent Puritan Stationery Company, a corporation, its agents, officers, representatives and employees, in advertising, labeling and describing its certain product, stationery and paper, known and designated as "Ambassador Linen", or in labeling, advertising and describing any other such stationery and paper, in interstate commerce, cease and desist from the use of the words "rag content" unless in truth and in fact such stationery and paper is manufactured with a rag content of not less than 25 percent.

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

**JAMES M. MARNER, TRADING UNDER THE NAME OF
DISPENSARY SUPPLY COMPANY**

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

Docket 2278. Complaint, Jan. 4, 1935—Decision, May 20, 1935

Where an individual engaged in the sale and distribution of a certain proprietary preparation designated as "Dr. McCaskey's Prescription Tablets"; in advertising the same in various publications and newspapers—

Represented that said preparation constituted a remedy and competent and adequate treatment for obesity, and that through use thereof a person could reduce a definite amount, or any desired part of the body, without diet or exercise, and that it contained no drugs, through such statements as "reduce five pounds this week with the proven method of prominent New York physician. Reduce five pounds during the next week. You can—surely, safely and without discomfort, This sensational statement * * * is our absolute money back guarantee. * * * "Fifty-five pounds reduction in six weeks. Dr. McCaskey's case reports to medical journals have been sensational. * * * His prescription is not a physic—it positively contains no thyroid, no drugs, nothing that could harm a baby. No drastic diets are necessary, no exercise, * * *." "Reduce where you want to reduce * * *," and through accounts or purported accounts of and by said physician relative to his standing, experience, method and success in dealing with weight control and reduction;

The facts being that said preparation did not constitute a remedy, cure or competent and adequate treatment for obesity or fat reduction, would not reduce any desired part of the body, contained no ingredients capable of producing effects set forth, was not a safe remedy due to presence therein of certain ingredients, long continued use of which, except under direction and oversight of a physician, might endanger or injure user's health, would not cause a person to reduce a definite number of pounds within a specified time, and did not give users results similar to those obtained by Dr. McCaskey in his practice as a physician;

With capacity and tendency to confuse, mislead and deceive members of purchasing public into the belief that said preparation constituted a remedy and competent and adequate treatment for the ailments for which recommended and advertised, as aforesaid, and induce their purchase and use thereof because of such erroneous belief, thus engendered, and with effect of unfairly diverting trade from legitimate competitors truthfully advertising similar preparations for the same purpose and selling in interstate commerce preparations intended for the same ailments for which aforesaid product was offered, and thereby doing substantial injury to substantial competitors in such commerce:

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

Mr. Astor Hogg for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged in the manufacture of a certain medical preparation, known, described and designated as "Dr. McCaskey's Prescription Tablets", and in the sale thereof to wholesale and retail druggists in various parts of the United States, and also direct to the purchasing public residing in various States, through the United States mails, in competition with individuals and concerns engaged in the compounding and sale and distribution in interstate commerce of medicinal preparations intended and used for the same general purposes, with advertising falsely or misleadingly, in violation of the provisions of Section 5 of such Act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as aforesaid, represents said preparation as a remedy and competent and adequate treatment for obesity, and that through the use thereof a person can reduce a definite number of pounds within a specified time, or any particular part of the body desired, that results are guaranteed, preparation contains no drugs, weight may be reduced without diet or exercise, and users thereof will obtain results similar to those obtained by Dr. Donald McCaskey in his regular practice as a physician,¹ the facts being that said product contains certain ingredients of such a nature that long continued use thereof, except under the direction and oversight of a physician, may endanger or injure the user's health, and it is not a safe remedy, and the aforesaid representations are all false in all other respects.

Said representations as alleged, have the tendency and capacity to confuse, mislead and deceive members of the public into the belief that said preparation is a remedy and competent and adequate treatment for the ailments for which recommended and advertised, as above set forth, and to induce them to buy and use the same because of such erroneous belief thus engendered, and have the effect of diverting trade to said individual from legitimate competitors, who truthfully advertise similar preparations, and who are

¹ The false and misleading advertisements, as alleged and quoted in the complaint, are set forth verbatim in the findings, *infra*, at pp. 349, 350.

engaged in the sale of products intended and used for the same ailments; all to the injury and prejudice of the public and competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, on January 4, 1935, issued and served its complaint upon the respondent, James M. Marner, trading under the name of Dispensary Supply Company. Respondent filed no answer to the complaint. Testimony and evidence were received, duly recorded and filed in the office of the Commission; thereafter the proceeding regularly came on for a final hearing before the Commission on the complaint, the testimony and evidence and brief of counsel for the Commission (without oral argument), and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. James M. Marner is an individual trading under the name and style of "Dispensary Supply Company" with his principal place of business in New York, N. Y. Until May 28, 1934, he was the sole owner of the business of the Dispensary Supply Company which had been for more than three years immediately prior thereto engaged, under the trade name hereinbefore mentioned, in the sale and distribution of a certain proprietary preparation known as "Dr. McCaskey's Prescription Tablets" in commerce between and among the various States of the United States which sales were made to wholesale and retail druggists located in the various States of the United States. While doing business under said trade name, he caused his products, when sold, to be shipped from his principal place of business in the City of New York, aforesaid, into and through other States of the United States to the purchasers thereof located in such States other than the State of New York. In the course and conduct of said business, he was in substantial competition with other individuals, firms, partnerships and corporations engaged in the sale and distribution of like remedies and preparations, in commerce in various States of the United States and between and among the various States of the United States.

PAR. 2. Respondent, in the course and conduct of his business, represented as herein set out that Dr. McCaskey's Prescription Tab-

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lets were a remedy and competent and adequate treatment for obesity; that by the use of said preparation a person could reduce a definite number of pounds within a specified time; that with the use of said preparation a person could reduce any particular part of the body desired; that results were guaranteed; that the preparation contained no drugs; that weight could be reduced without diet or exercise. In the aid of the sale of said preparation and to create a public demand therefor, respondent made the following statements and representations through advertisements inserted in various publications and newspapers:

REDUCE
5 pounds this week with
the proven method
of a prominent
New York Physician

REDUCE 5 pounds during the next week. You can—surely, safely and without discomfort. This sensational statement is not merely an advertising claim—it is our absolute money-back guarantee.

Take Dr. McCaskey's Prescription Tablets according to the instructions found in each package and like hundreds of others you will probably remove 5 pounds the very first week.

You will feel better, look better and be better. You will realize why fashionable and famous patients have built a reputation for Dr. McCaskey that makes him an acknowledged authority on weight control.

55 POUNDS REDUCTION IN 6 WEEKS

Dr. McCaskey's case reports to medical journals have been sensational. He has shown cases where followers of his method have lost 125 pounds, reductions as much as 55 pounds in 6 weeks.

His prescription is not a physic—it positively contains no thyroid, no drugs, nothing that could harm a baby. No drastic diets are necessary, no exercises, nothing that materially interferes with your regular habits or comfort.

REDUCE WHERE YOU WANT TO REDUCE

Follow the instructions of the remarkable booklet found in each package and see how easily you can reduce abdomen, legs, ankles, hips or any other part of your body you particularly want to reduce.

Even though you are only a few pounds overweight but are constantly fighting a battle with fat you will find Dr. McCaskey's method will enable you to control your weight with comfort. And you will feel brighter, clearer and happier and look better in the size of garments you ought to be wearing.

SEND NO MONEY—TRY AT OUR RISK

The regular price of Dr. McCaskey's Prescription Tablets is \$1.00 per package. If you use the coupon we will send you three full size packages. Send no money. Merely pay the postman \$2.50 and a few cents postage. And if you

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do not reduce 5 pounds the very first week, return the package and your money will be refunded immediately. Use the coupon now and the tablets will be sent to you in plain package at once.

DONALD McCASKEY, M. D.

Recognized authority on weight control. His fine thirty year record as a physician brought him such honors as Fellowship in the New York Academy of Medicine, Membership in the Medical Society of the County of New York and an Officer's Commission in the Medical Corps of the Army. He is a licensed physician and surgeon in both New York and Pennsylvania. He has lectured and written on weight control for medical journals and magazines of general circulation.

(See True Confessions, July 1933, p. 67.)

I approached the subject of weight control as a health measure. Women who came to me complaining of feeling run down and being always tired out were quick to grasp the point when I had them stand naked before a full length mirror and look at the great gobs of fat they were carrying around on their bodies. I have pointed out to patients who were "always tired" but who weighed 30 to 40 pounds more than they should that anyone would get tired if forced to carry a 30-pound pail of water around all day long. It was hard to prescribe for a fat woman.

* * * * *

This treatment will astonish you in its quick action for removing localized areas of fat. It brings quarts of blood racing through the tiny blood vessels under the treated spot. Fatty tissue is oxidized, waste matter is carried away and fat reduction occurs. Repeat this treatment daily wherever you are most eager to reduce. Within a very short time you will notice a change from flabby, fatty tissue to firm, well-formed flesh. You will also notice a decided improvement in the texture of your skin. I have had remarkable results with this treatment in cases of neuritis and rheumatism.

* * * * *

The patient was a woman, aged 35, who presented herself for treatment, weighing 275 pounds. The date of her first visit was September 13, 1924. Five weeks after she started treatment—the same general treatment you are about to start—she had accomplished a reduction of 55 pounds and October 12, 1925, 56 weeks after her first call she had reduced her weight to 150 pounds, a reduction of 125 pounds.

* * * * *

In my continual experimenting and search for a medicine that would be effective and yet safe for patients and under all conditions I finally prepared the prescription that now bears my name. It has given me remarkably fine results with patients of all ages and classes. It is effective. It is safe. It is inexpensive and is therefore available for all people. It cannot harm a baby.

When these tablets are taken coincidentally with the simple menu recommendations, the fro-tages, baths and exercises I explain below, the patient who is overweight will undoubtedly benefit.

* * * * *

My specialized and earnest study of the subject of weight reduction convinces me that the prescription tablets bearing my name are the most efficient contribution thus far made to the subject of weight reduction but they must be accompanied by your own persistent efforts.

That in addition respondent makes other similar representations in advertising copy in different periodicals which have a circulation throughout the various States of the United States.

PAR. 3. In truth and in fact the preparation known as Dr. McCaskey's Prescription Tablets sold and advertised by respondent as hereinbefore stated is not a remedy or cure or competent and adequate treatment for obesity or fat reduction; neither will it reduce any particular area of the body desired; it contains no ingredients with properties capable of producing the effect set forth in said preparation; it is not a safe remedy, for certain ingredients contained therein are such that long continued use thereof, except under the direction and oversight of a physician, may endanger or injure the user's health; it will not cause a person to reduce a definite number of pounds within a specified time and users of said preparation do not obtain results similar to those obtained by Dr. McCaskey in his practice as a physician.

PAR. 4. The representations of respondent had the tendency and capacity to confuse, mislead and deceive members of the purchasing public into the belief that said preparation is a remedy and competent and adequate treatment for the ailments of the human body for which said preparation was recommended and advertised by respondent as aforesaid and to induce them to buy and use the same, because of said erroneous belief so engendered; that respondent unfairly diverted trade from legitimate competitors who truthfully advertise similar preparations and who are engaged in the sale in interstate commerce of preparations intended for and used for the ailments of the human body for which respondent represented his said preparation to be a remedy and competent and adequate treatment, as aforesaid, and, thereby, substantial injury was done by respondent to substantial competitors in interstate commerce.

CONCLUSION

The acts and practices of respondent under the conditions and circumstances described in the foregoing findings were to the prejudice of the public and respondent's competitors; they were unfair methods of competition in commerce and constituted violations of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the testimony in support

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of the charges of said complaint and brief filed herein on behalf of the Commission, and the Commission having made its findings as to the facts with its conclusion that said respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes":

It is ordered, That respondent, James M. Marner, trading under the name and style of Dispensary Supply Company, or under any other name, his agents, representatives, servants and employees, in connection with the sale or offering for sale in interstate commerce of Dr. McCaskey's Prescription Tablets or of said preparation under any other name forthwith cease and desist from representing, directly or indirectly:

- (1) That said preparation is a remedy or competent or adequate treatment for obesity;
- (2) That by the use of said preparation a person can reduce any definite number of pounds;
- (3) That by the use of said preparation a person can reduce any area of the body;
- (4) That the said preparation contains no drugs;
- (5) That by the use of said preparation weight may be reduced without diet or exercise.

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

Complaint

IN THE MATTER OF

DIXIE E. BOYER, TRADING AS D. E. BOYER

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

Docket 2360. Complaint, Apr. 11, 1935—Decision, May 29, 1935

Where an individual engaged in the manufacture and sale of stogies and small cigars—

- (a) Featured the words "Hand-made" on the inner face of the lids of the containers of said products and also in various places on the outer faces thereof, notwithstanding fact they were not made entirely by hand;
- (b) Encircled said products with bands containing words "Perfectos Habanas", notwithstanding fact they were not made of tobacco grown in Cuba; and
- (c) Featured the words "Wheeling Twins" and "Wheeling Twins Master Quality" on containers of said products, as hereinabove set forth, notwithstanding fact they were not made in Wheeling;

With tendency and capacity to mislead and deceive a large part of purchasing public and trade into believing said products were made in Wheeling, were hand-made, or made of tobacco grown in Cuba, as the case might be, and into purchasing same in such belief by reason of the preference of a large portion of said trade and the public for products thus made or composed, and unfairly to divert trade to said individual from competitors who actually make such products in Wheeling, or entirely by hand, or of tobacco grown in Cuba, and thus represent the same, to the substantial injury of substantial competition in interstate commerce:

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

Mr. John W. Hilldrop for the Commission.

Walker & Walker, of St. Clairsville, Ohio, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that Dixie E. Boyer, an individual trading as D. E. Boyer, hereinafter called the respondent, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said 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, Dixie E. Boyer, is an individual trading under the name and style of D. E. Boyer, with her principal

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place of business located in the city of Belmont in the State of Ohio. She is now engaged and for more than two years last past has been engaged at the said city of Belmont in the business of manufacturing stogies and small cigars and in the sale thereof between and among the various States of the United States. She now causes and for more than two years last past has caused such stogies and small cigars, when sold by her, to be transported from her place of business in the city of Belmont aforesaid to the purchasers thereof, some located in the State of Ohio and others in the various other States of the United States; and there is now and has been for more than two years last past a constant current of trade and commerce by said respondent in such stogies and small cigars between and among the various States of the United States. In the course and conduct of her business respondent is now and for more than two years last past has been in substantial competition with other persons and with corporations, firms and partnerships engaged in the sale and distribution of stogies and small cigars between and among the various States of the United States.

PAR. 2. In the course and conduct of her business described in paragraph 1 hereof, respondent, Dixie E. Boyer, trading as D. E. Boyer, in selling and offering for sale the stogies and small cigars manufactured by her, has caused and still causes the word "Hand-made" and the words "American Made", "Wheeling Twins", and "Wheeling Twins Master Quality" to appear and to be featured on the inner face of the lids of the boxes containing such stogies and small cigars, and in various places on the outer faces of such boxes. On certain of the stogies and small cigars sold and offered for sale by her, as described in paragraph 1 hereof, the respondent has placed and still places bands encircling such stogies and small cigars, which bands contain and have contained the words "Perfectos Habanas."

PAR. 3. The word "Wheeling", when applied to stogies and small cigars, now means to dealers and to the purchasing public and for more than two years last past has meant to dealers and to the purchasing public that such small cigars and stogies are manufactured in the city of Wheeling, W. Va.; the word "Hand-made", when applied to stogies and small cigars for more than two years last past, has meant and still means to the trade and the purchasing public and still means to the purchasing public that such stogies and small cigars are made entirely by hand; the word "Habana", when applied to stogies and small cigars for more than two years last past, has meant to the trade and to the purchasing public and still means to the trade and to the purchasing public that such stogies

and small cigars are made from tobacco grown on the Island of Cuba.

PAR. 4. There is a preference on the part of a large portion of the purchasing public and of a large portion of the tobacco trade for stogies and small cigars manufactured in Wheeling, W. Va.; there is also a preference on the part of a large portion of the purchasing public and of the tobacco trade for stogies and small cigars which are "Hand-made"; there is also a preference on the part of a large portion of the purchasing public and of the tobacco trade for stogies and small cigars made of tobacco grown in Cuba.

PAR. 5. In truth and in fact, the said stogies and small cigars manufactured and sold by respondent neither are nor were manufactured in Wheeling, W. Va., but are and were manufactured in the city of Belmont, Ohio, and said stogies and small cigars so manufactured, sold and distributed by the respondent neither are nor were wholly made by hand but are and were partially made by machinery. Also, said stogies and small cigars so manufactured, sold and distributed by respondent neither are nor were made of tobacco grown in Cuba.

PAR. 6. The foregoing false, exaggerated and misleading statements by respondent are and were made for the purpose, and have and have had a tendency and capacity to mislead and deceive a large part of the purchasing public and the trade and to cause them to purchase the products of the respondent under the belief that they are or were made in Wheeling, W. Va., that they are or were hand-made, and that they are or were made of tobacco grown in Cuba. Said false and misleading statements and representations used by respondent as aforesaid have and have had a capacity and tendency to unfairly divert trade to respondent from those of her competitors engaged in a like and similar business, who actually manufacture stogies and small cigars in Wheeling, W. Va., and who designate or brand their products with the word "Wheeling"; and also from those of her competitors who manufacture stogies and small cigars entirely by hand and who represent that such stogies and small cigars are hand-made. Said false and misleading statements and representations have and have had a capacity and tendency to unfairly divert trade to respondent from those of her competitors who manufacture stogies and small cigars from tobacco grown in Cuba who represent their stogies and small cigars to be made from tobacco grown in Cuba. Thereby substantial injury is done and has been done by respondent to substantial competition in interstate commerce.

PAR. 7. The foregoing alleged acts and practices of respondent, Dixie E. Boyer, trading as D. E. Boyer, are each and all to the prejudice of the public, and to the competitors of the respondent, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served its Complaint upon the respondent herein, Dixie E. Boyer, trading as D. E. Boyer, charging her with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The said respondent thereupon having entered into a stipulation with the chief counsel of this Commission that the Commission might adopt as its findings as to the facts in this proceeding the recitations in paragraphs 1, 2, 3, 4, 5, and 6 of said complaint, that it might draw its conclusion therefrom and that, having made its findings as to the facts and drawn its conclusion therefrom, the Commission might then, without any testimony, proceed to enter an order against the said respondent to cease and desist from the unfair methods of competition in the complaint set out, and the Commission having duly considered the same and being fully advised in the premises makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Dixie E. Boyer, is an individual trading under the name and style of D. E. Boyer, with her principal place of business located in the city of Belmont in the State of Ohio. She is now engaged and for more than two years last past has been engaged at the city of Belmont in the business of manufacturing stogies and small cigars and in the sale thereof between and among the various States of the United States. She now causes and for more than two years last past has caused such stogies and small cigars, when sold by her, to be transported from her place of business in the city of Belmont aforesaid to the purchasers thereof, some located in the State of Ohio and others in the various other States of the United States; and there is now and has been for more than two

years last past a constant current of trade and commerce by said respondent in such stogies and small cigars between and among the various States of the United States. In the course and conduct of her business respondent is now and for more than two years last past has been in substantial competition with other persons and with corporations, firms and partnerships engaged in the sale and distribution of stogies and small cigars between and among the various States of the United States.

PAR. 2. In the course and conduct of her business described in paragraph 1 hereof, respondent, Dixie E. Boyer, trading as D. E. Boyer, in selling and offering for sale the stogies and small cigars manufactured by her, has caused and still causes the word "Hand-made" and the words "American Made", "Wheeling Twins", and "Wheeling Twins Master Quality" to appear and to be featured on the inner face of the lids of the boxes containing such stogies and small cigars, and in various places on the outer faces of such boxes. On certain of the stogies and small cigars sold and offered for sale by her, as described in paragraph 1 hereof, the respondent has placed and still places bands encircling such stogies and small cigars, which bands contain and have contained the words "Perfectos Habanas".

PAR. 3. The word "Wheeling", when applied to stogies and small cigars, now means to dealers and to the purchasing public and for more than two years last past has meant to dealers and to the purchasing public that such small cigars and stogies are manufactured in the city of Wheeling, W. Va.; the word "Hand-made", when applied to stogies and small cigars for more than two years last past, has meant and still means to the trade and the purchasing public and still means to the purchasing public that such stogies and small cigars are made entirely by hand; the word "Habana", when applied to stogies and small cigars for more than two years last past, has meant to the trade and to the purchasing public and still means to the trade and to the purchasing public that such stogies and small cigars are made from tobacco grown on the Island of Cuba.

PAR. 4. There is a preference on the part of a large portion of the purchasing public and of a large portion of the tobacco trade for stogies and small cigars manufactured in Wheeling, W. Va.; there is also a preference on the part of a large portion of the purchasing public and of the tobacco trade for stogies and small cigars which are "Hand-made"; there is also a preference on the part of a large portion of the purchasing public and of the tobacco trade for stogies and small cigars made of tobacco grown in Cuba.

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PAR. 5. In truth and in fact, the said stogies and small cigars manufactured and sold by respondent neither are nor were manufactured in Wheeling, W. Va., but are and were manufactured in the city of Belmont, Ohio, and said stogies and small cigars so manufactured, sold and distributed by the respondent neither are nor were wholly made by hand but are and were partially made by machinery. Also, said stogies and small cigars so manufactured, sold and distributed by respondent neither are nor were made of tobacco grown in Cuba.

PAR. 6. The foregoing false, exaggerated and misleading statements by respondent are and were made for the purpose, and have and have had a tendency and capacity to mislead and deceive a large part of the purchasing public and the trade and to cause them to purchase the products of the respondent under the belief that they are or were made in Wheeling, W. Va., that they are or were hand-made, and that they are or were made of tobacco grown in Cuba. Said false and misleading statements and representations used by respondent as aforesaid have and have had a capacity and tendency to unfairly divert trade to respondent from those of her competitors engaged in a like and similar business, who actually manufacture stogies and small cigars in Wheeling, W. Va., and who designate or brand their products with the word "Wheeling"; and also from those of her competitors who manufacture stogies and small cigars entirely by hand and who represent that such stogies and small cigars are hand-made. Said false and misleading statements and representations have and have had a capacity and tendency to unfairly divert trade to respondent from those of her competitors who manufacture stogies and small cigars from tobacco grown in Cuba who represent their stogies and small cigars to be made from tobacco grown in Cuba. Thereby substantial injury is done and has been done by respondent to substantial competition in interstate commerce.

CONCLUSION

The foregoing alleged acts and practices of respondent, Dixie E. Boyer, trading as D. E. Boyer, are each and all to the prejudice of the public, and to the competitors of the respondent, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

Order

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and a stipulation entered into between the respondent herein, Dixie E. Boyer, trading as D. E. Boyer, and the chief counsel of this Commission, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes:"

Now, therefore, it is hereby ordered, That respondent Dixie E. Boyer, trading as D. E. Boyer or trading under any other name, in connection with the sale and the offering for sale of stogies and small cigars in interstate commerce, forthwith cease and desist from:

(1) Causing the word "Hand-made" or any other word or words of similar tenor, import or substance to be used on the inner face of the lids of boxes containing stogies or small cigars, or on any other place on such boxes, or on the bands encircling such stogies or small cigars, or in any other way, until and unless such stogies and small cigars are entirely made by hand;

(2) Using the words "Perfectos Habanas", "Habanas", "Habana", "Havana", or any other word or words of similar tenor, import or substance on bands encircling such stogies or small cigars, on the boxes containing such stogies or small cigars, or in any other way, until and unless such stogies and small cigars are made from tobacco grown on the Island of Cuba;

(3) Using the words "Wheeling Twins Master Quality", "Wheeling", "Wheeling Twins", or any other word or words of similar tenor, import or substance on the boxes containing such stogies or small cigars or on bands encircling such stogies or small cigars, or in any other way, until and unless such stogies or small cigars are made in the city of Wheeling, West Virginia.

And it is hereby further ordered, That the said respondent, Dixie E. Boyer, trading as D. E. Boyer, shall within 60 days after the service upon her of this order to cease and desist, file with this Commission a report in writing setting forth in detail the manner and form in which she shall have complied with the order to cease and desist hereinbefore set forth.

IN THE MATTER OF
**SOUTHERN NEW YORK CANDY DISTRIBUTORS ASSO-
CIATION OF BINGHAMTON, NEW YORK, ET AL.**

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

Docket 2292. Complaint, Feb. 4, 1935—Order, May 31, 1935

Consent order requiring respondent association, respondent individuals joined in their individual capacities, and as officers thereof and members of its executive committee, and respondent member corporations, firms and individuals, and their respective officers, directors, etc., forthwith to cease and desist, in connection with the purchase or sale of confectionery, candy, or allied products in interstate commerce, from—

- (a) Using any of the methods of competition alleged in the complaint against them, namely, uniting in a common course of action, and cooperating and confederating together and with others to prevent competing dealers from obtaining confectionery and allied products directly from the manufacturers, establish respondent members as a class of "recognized" brokers, distributors and wholesalers of said products in the trade territory involved, and fix and establish uniform prices to be observed by said members in the sale of said products and prevent others from selling at lower prices, through, as more particularly therein set forth—
- (1) **Exact**ing and procuring pledges and promises to adhere to and enforce such program from members and manufacturers;
 - (2) **Print**ing and publishing so-called "white lists" of "recognized" dealer members, and supplying same to aforesaid manufacturers and inducing and compelling latter to decline dealings with dealers and others not included therein;
 - (3) **Using** boycott and threats and other united action against manufacturers, dealers, and others, to induce compliance with their said program;
 - (4) **Holding** meetings to devise means of exerting influence to induce conformance by manufacturers, brokers and others;
 - (5) **Inform**ing and advising manufacturers of the names of recognized dealers in the territory concerned and of their program, and purpose to insist thereon, and that direct sales to nonrecognized dealers, or failure to conform, would be considered unfriendly acts;
 - (6) **Deny**ing membership and recognition to nonconforming dealers and otherwise disciplining them; and
 - (7) **Using** and engaging in other cooperative acts and methods in promoting and carrying out their aforesaid program, agreement and undertaking; and from
 - (b) **Comb**ining, conspiring or uniting in a common course of action, and cooperating and/or confederating together, among themselves and/or with others to prevent competing dealers in confectionery, candy or allied products from obtaining such products directly from the manufacturers;
 - (c) **Publish**ing so-called "white lists" containing the names of "recognized" dealer members of respondent association, so as to include therein only so-called legitimate, regular or "recognized" dealers, brokers, distributors or wholesalers of said products;

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- (d) Conspiring or uniting to fix and/or establish uniform prices at which members of respondent association or others should sell such products; or
 (e) Suppressing in any other way competition in price in the sale and distribution thereof in the trade area involved, or in any other area.

Mr. Edward L. Smith for the Commission.

Chernin & Gold, of Binghamton, N. Y., for respondents generally except Charles H. Walling and Oneonta Grocery Co., and *Mangan & Mangan* of Binghamton, N. Y., for Hewit Pharmacies, Inc.

COMPLAINT

Pursuant to the provisions of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that each and all the parties named in the caption hereof, hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce, as "commerce" is defined in 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 and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Southern New York Candy Distributors Association of Binghamton, New York, is a nonprofit corporation incorporated under the laws of the State of New York, whose membership is composed of individuals, partnerships, and corporations with their respective places of business in the cities of Binghamton, Oneonta, Walton, and/or Norwich, State of New York, engaged as brokers, distributors, and wholesalers in selling confectionery, candy, and allied products to retail dealers located in said State and in neighboring States. Said Southern New York Candy Distributors Association of Binghamton, New York, will hereinafter be referred to as the "association".

Respondents Frank G. Slauson, Frank L. Brooks, Floyd L. Maines, Roger J. Williams, and L. P. Laughlin are, respectively, president, vice president, secretary-treasurer, and members of the executive committee of said association, in charge of conducting and administering its activities and affairs.

The members of the association are as follows: Respondent Hewit Pharmacies, Inc., a corporation organized under the laws of the State of New York, and doing business under the trade name and style, Binghamton Wholesale Drug, with its office and principal place of business located at Binghamton, N. Y.; respondent Binghamton Tobacco Co., Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business

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located in the city of Binghamton, N. Y.; respondent Brooks Candy Co., Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located in the city of Binghamton, N. Y.; respondent M. B. Cordon, an individual, whose place of business is located in the city of Binghamton, N. Y.; respondent Isadore Finkelstein, Harold Finley and Abe Finley, partners, doing business under the trade name of Finley's Wholesale Supply Co., with their place of business located in the city of Binghamton, N. Y.; respondent Key Stone Tobacco Co., a corporation organized under the laws of the State of New York, with its office and principal place of business located in the city of Binghamton, N. Y.; respondent Floyd L. Maines, an individual doing business under the trade name and style of Maines Candy Co., with his place of business located in the city of Binghamton, N. Y.; Lewis Laughlin, an individual doing business under the trade name and style of Vosbury & Laughlin, with his place of business located in the city of Binghamton, N. Y.; respondent H. Raymond Almy, an individual doing business under the trade name and style of Washington Distributing Co., with his place of business located in the city of Binghamton, N. Y.; respondent Roger J. Williams, an individual, with his place of business located in the city of Binghamton, N. Y.; respondent Charles H. Walling, an individual, with his place of business located in the city of Oneonta, N. Y.; respondent Oneonta Grocery Co., a corporation organized under the laws of the State of New York, with its office and principal place of business located in the city of Oneonta, N. Y.; respondent Rosenfeld & Sons, Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located in the city of Walton, N. Y.; and respondent Charles L. Littlefair and F. M. Wilcox, partners, doing business under the trade name and style of Wilcox & Littlefair, with their place of business located in the city of Norwich, N. Y.

PAR. 2. The said confectionery, candy and allied products industry includes among its products certain widely known nationally advertised articles for which the consuming public maintains a consistent demand. These nationally advertised confectionery products are manufactured in many different States of the United States and the conduct of the aforesaid business requires the dealing in all or most of such products.

Respondent members of the association purchase the aforesaid products, confectionery, candy and allied products in which they deal, directly and immediately from manufacturers thereof located

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for the most part in States other than the State of New York, and manufacturers ship said products, when so purchased, from their respective places of business in such other States to said members in the State of New York.

In the course and conduct of their aforesaid respective businesses, respondent members, but for the matters and things hereinafter set out, would be naturally and normally in competition with each other in price, and otherwise are in such competition with other individuals, partnerships and corporations also engaged in the purchase of confectionery, candy and allied products from aforesaid manufacturers located in States other than the State of New York, and the resale thereof in the State of New York and neighboring States. Respondent members, by virtue of their membership in said association designate themselves as "recognized" members as distinguished from such brokers, distributors and wholesalers of confectionery, candy and allied products in said trade area, who are not members of said association.

The respective members of the respondent association constitute a large and important part of the brokers, distributors and wholesalers in confectionery, candy and allied products in the southern New York trade area; and such members constitute a group so large and influential in the trade as to be able to control and influence the flow of trade and commerce in such products within, to and from said trade area. Said members, as allied and banded together in said association, are enabled thereby more effectively to exercise, control and influence such trade and commerce for the promotion and enhancement of their own volume of trade and profits. The volume of consumption of confectionery, candy and allied products in said southern New York trade area, and the volume of trade and commerce dealt in by respondents in such products in, to and from said area constitute an important part of the trade and commerce of the United States in the confectionery industry. Said trade area is a large and important outlet and market for the sale of confectionery, candy and allied products by manufacturers, producers and distributors within said trade area and also by those in various other States, particularly those of the eastern half of the United States.

PAR. 3. For about one year prior to June 6, 1934, respondents united in a common course of action and cooperated and confederated together and with others to prevent said competing dealers in confectionery, candy and allied products, mentioned in paragraph 1 hereof, from obtaining confectionery, candy and allied products directly from aforesaid manufacturers thereof; to estab-

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lish respondent members as a class of "recognized" brokers, distributors and wholesalers of said products in the said southern New York trade area; to fix and establish uniform prices at which said members of respondent association should sell said products and to prevent others from selling at less prices and by and through the aforesaid means to suppress competition and especially competition in price in the selling and distribution of said products in the aforesaid territory served by respondents. To carry out the aforesaid purposes the respondents have done, among others, the following acts and things:

(a) Exacted and procured pledges and other promises of agreements from each such "recognized" dealer and each member of respondent association and from manufacturers and producers of confectionery, candy and allied products to the effect that such dealers, members, manufacturers and producers would support, adhere to and enforce the foregoing program of respondents set forth in paragraph 3 hereof.

(b) Printed and published lists (so-called "white lists") containing the names of "recognized" dealer members of said association, so as to include in said lists only so-called legitimate, regular or "recognized" dealers, brokers, distributors and wholesalers of said products, and to exclude therefrom, and thereby to identify as such, so-called "nonrecognized" dealers, brokers, distributors and wholesalers of said products, and supplied said lists to aforesaid manufacturers, and by the means and methods hereinafter set forth persuaded, induced and compelled said manufacturers to cease dealing with and to refuse to open accounts with the dealers, brokers, distributors and wholesalers so reported.

(c) Used in concert and agreement among themselves and with others, coercive and concerted action, boycott, threats of boycott, and other united action against manufacturers, dealers and others to induce and require them, and to attempt so to induce and require them, to agree and conform to and to support and enforce the said program of respondents, and to refrain from selling said products to other dealers, brokers, distributors and wholesalers who were not members of said association.

(d) Held meetings of respondent association, its members, officers and executive committee, to devise means of exerting influence, pressure, coercion, or other means of inducing, coercing and requiring manufacturers, producers, brokers, dealers and wholesalers and others engaged in said confectionery, candy and allied products, trade and industry to abide by and adhere to said program.

(e) For the purpose and with the effect of inducing or compelling manufacturers and producers to conform to said program, informed

and advised such manufacturers and producers of the names of said "recognized" dealers in said southern New York trade area, and of respondents' purpose and determination to insist upon and require such manufacturers and producers to distribute their products through the medium of said "recognized" dealers exclusively, and in conformity with the aforesaid program of respondents; and also advised such manufacturers and producers that their sale and distribution of confectionery products direct to certain nonrecognized dealers and purchasers, or their failure to conform to aforesaid program in the distribution of their products would be considered by respondents and such "recognized" dealers as "unfriendly" acts against respondents and such "recognized" dealers.

(f) Denied membership in respondent association and such "recognition" of dealers who failed to support, abide by or carry out said program of respondents, and otherwise disciplined such members and dealers.

(g) Used and engaged in other acts, cooperative and concerted action, and coercive methods and practices in promoting, establishing and carrying out the foregoing program and agreement, combination, conspiracy, confederation and undertaking set forth in paragraph 3 hereof.

PAR. 4. The capacity, tendency and effect of said agreement, combination, conspiracy, confederation and undertaking, and the said acts and practices of respondents set forth in paragraph 3 hereof are and have been, in aforesaid southern New York trade area and other related or connected territory, to close and curtail sundry outlets within the State of New York for the direct and immediate sale by manufacturers located in other States of goods shipped by such manufacturers into the State of New York; to monopolize, in said respondent members and recognized dealers, the business of dealing in and distributing confectionery, candy and allied products; to unreasonably lessen, eliminate, restrain, stifle, hamper and suppress competition in said confectionery industry in the State of New York, and to deprive the purchasing and consuming public of advantages in price, service and other considerations which they would receive and enjoy under conditions of normal and unobstructed, or free and fair, competition in said trade and industry; to otherwise operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in such trade and industry; to obstruct the natural flow of commerce in the channels of interstate trade; to oppress, eliminate and discriminate against small business enterprises which were or had been engaged in selling and distributing confectionery, candy and allied products; to

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prejudice and injure the public and manufacturers, producers, dealers, brokers, distributors and wholesalers and others who did not conform to respondents' program, or who did not desire, but were compelled, to conform to said program, and to spread into States other than New York the same methods of boycott and "white-listing" employed by respondents.

PAR. 5. The above alleged acts and things done by respondent as set forth in paragraphs 3 and 4 hereof are monopolistic practices and are methods of competition which are unfair, and they constitute unfair methods of competition in commerce within the intent and meaning, and in violation of Section 5 of said Act approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

Certain of the respondents herein having filed their respective answers to the complaint in this proceeding, and in and by such answers having waived hearing on the charges set forth in the complaint in this proceeding, and having stated in their said answers that they do not contest the proceeding, and having consented in and by their said answers that the Commission, without trial, without evidence, and without findings as to the facts or other intervening procedure, might make, enter, issue and serve upon them, an order to cease and desist from the methods of competition charged in the complaint; and the other respondents having filed their respective answers to the complaint in this proceeding, and in and by such answers having waived hearing on the charges set forth in the complaint in this proceeding, and having stated in their said answers that they do not contest the proceeding; and the Commission being fully advised in the premises:

Now, therefore, it is hereby ordered, That each and every one of the respondents herein, Southern New York Candy Distributors Association of Binghamton, New York, a corporation, Frank G. Slau-son, Frank L. Brooks, Floyd L. Maines, Roger J. Williams and L. P. Laughlin, individually and as president, vice president, secretary-treasurer and members of executive committee respectively of said association; Hewit Pharmacies, Inc., a New York corporation doing business under the trade name and style of Binghamton Wholesale Drug; Binghamton Tobacco Co., Inc., Brooks Candy Co., Inc., M. B. Cordon, Isadore Finkelstein, Harold Finley and Abe Finley, partners doing business under the trade name and style of

Finley's Wholesale Supply Co., Key Stone Tobacco Co., Floyd L. Maines, an individual doing business under the trade name and style, Maines Candy Co.; Lewis Laughlin, an individual doing business under the trade name and style of Vosbury & Laughlin; H. Raymond Almy, an individual doing business under the trade name and style of Washington Distributing Co.; Roger J. Williams, Charles H. Walling, Oneonta Grocery Co., Rosenfeld & Sons, Inc., Charles L. Littlefair and F. M. Wilcox, partners doing business under the trade name and style of Wilcox & Littlefair, their respective officers, directors, agents, servants and employees, in connection with the purchase by them or by any of them of confectionery, candy or allied products in interstate commerce, and/or in connection with the sale by them or by any of them of confectionery, candy or allied products in interstate commerce, forthwith cease and desist from (1) using any of the methods of competition alleged in the complaint; (2) combining, conspiring or uniting in a common course of action, and cooperating and/or confederating together, among themselves and/or with others to prevent competing dealers in confectionery, candy or allied products from obtaining confectionery, candy or allied products directly from the manufacturers thereof; (3) publishing lists (so-called "white lists") containing the names of "recognized" dealer members of respondent association, so as to include in said lists only so-called legitimate, regular or "recognized" dealers, brokers, distributors or wholesalers of said products; (4) conspiring or uniting to fix and/or establish uniform prices at which members of respondent association or others should sell such products; (5) or in any other way suppressing competition in price in the selling and distributing of such products in the Southern New York trade area, or in any other area.

It is hereby further ordered, That the said respondents shall within 60 days from the day of the date of the service upon them of this order, file with this Commission a report or reports in writing, stating the manner and form in which they shall have complied with this order.

IN THE MATTER OF

SARAH R. GROSSMAN, TRADING AS EYESIGHT NORMALIZING COMPANY, AND SASHA R. GROSSMAN, ALIAS ALEX R. GROSSMAN.

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

Docket 2328. Complaint, Mar. 14, 1935—Order, May 31, 1935.

Consent order requiring respondent, Sarah R. Grossman, trading as aforesaid, and respondent Sasha R. Grossman, alias Alex R. Grossman, in connection with the sale in interstate commerce, by advertisements, advertising literature, radio broadcasts, or in any other manner or means whatsoever of its so-called eye normalizing device, to cease and desist from directly or indirectly falsely representing that said device—

- (a) Will enable anyone to throw away glasses or is a new, revolutionary, scientific discovery, making unnecessary the use thereof;
- (b) Will cure or correct farsightedness, astigmatism, crosseyes, old age sight and failing vision, or, used only a few minutes a day, will cure or correct such defects;
- (c) Is an achievement of science and research, making it possible for one to enjoy perfect vision without resorting to the use of glasses, or is a scientific discovery offering persons a way out of eye trouble, and helps anyone to correct defective vision on an entirely new principle;
- (d) Is advocated in theory and principle by all internationally famous optometrists and morphologists, and is the latest and greatest discovery of research in ailments of the eye, made in the past hundred years, with thousands of happy and pleased users in all parts of the world;
- (e) Will enable one to have normal vision without glasses, and constitutes the latest sensational discovery, and that glasses may be discarded and normal vision regained; or
- (f) Is a scientific eye muscle exerciser and will help to correct nearsightedness, eye muscle trouble, weak eyes, squint eyes, and other ailments heretofore set forth, and that all credit for its construction, development and formulation is due to masters in optometry and morphology.

Mr. S. Brogdyne Teu, II for the Commission.

COMPLAINT

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission charges that Sarah Grossman, individually and trading as Eyesight Normalizing Company, and Sasha R. Grossman, alias Alex R.

Grossman, hereinafter referred to as respondents, have been, and are, using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act and states its charge in that respect as follows:

PARAGRAPH 1. Respondents, doing business individually and under the trade name and style of Eyesight Normalizing Company, have their principal place of business in the City of New York, in the State of New York. They are engaged in the manufacture, sale and distribution to individuals and wholesalers of a device known as a "Nu-Eye-Life". Respondents have caused said device sold to said individuals and wholesalers to be transported from their aforesaid place of business to, into, and through other States of the United States other than the State of origin of said business and in the District of Columbia. In the course and conduct of their business respondents are in competition with other individuals, partnerships and corporations engaged in the manufacture, sale and distribution of spectacles and other aids to vision between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of the aforesaid business the respondents have advertised in various newspapers and magazines as follows:

(1) "You can Throw Away your Eyeglasses. New Revolutionary Scientific Discovery Makes Eye Crutches Unnecessary."

(2) "If you are farsighted, astigmatic, crosseyed, old age sighted, or if your vision is failing, it is because the news of this blessed discovery has not reached you."

(3) "'Nu-Eye-Life' which if used but a few minutes a day in your home over a short period makes it easy to correct any of the above defects and enables you to discard and dispense with eyeglasses as unnecessary."

In truth and in fact the so-called "Nu-Eye-Life" device will not enable anyone to throw away eyeglasses; it will not cure or correct farsightedness, astigmatism, crosseyes or old age sight; sufferers from the aforementioned diseases or malformations of the eye cannot cure or correct said diseases or malformations of the eye by using the "Nu-Eye-Life" device a few minutes each day.

PAR. 3. In the course and conduct of the aforementioned business by the respondents the following statements appeared, and still appear, in the advertising literature of said respondents:

(1) "Through an achievement of science and research it is now possible to enjoy *perfect* vision *without* resorting to the use of eyeglasses . . .

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"Science now offers you a way out of your troubles. This new discovery called 'Nu-Eye-Life' helps to correct your vision on an entirely new principle."

(2) "Advocated in theory and principle by all internationally famous optometrists and morphologists."

(3) "Nu-Eye-Life is the latest and greatest discovery of science and research in ailments of the eye made in the past hundred years, with thousands of happy and pleased users in all parts of the world."

(4) "Now—*Vision Without Glasses*. Now—Vision without glasses with Nu-Eye-Life the latest sensational discovery. Eye Crutches Discarded, Normal Vision Regained.

Nu-Eye-Life, a scientific eye-muscle exerciser, helps correct these defects.

Nearsightedness, Farsightedness, Astigmatism, Old Age Sight, Crosseyes, Fading Vision, Eye-Muscle Trouble, Weak Eyes, Squint Eyes."

(5) "All credit for the construction, development, and formulation of Nu-Eye-Life Normalizer is due to . . . Masters in Optometry and Morphology. Our share in the work is only that of mechanics, not Scientists, and is therefore infinitesimal. These specialists and scientists have our heartfelt gratitude."

In truth and in fact the so-called "Nu-Eye-Life" device will not enable anyone to enjoy perfect vision without glasses; it is not a new scientific discovery; it is not advocated in theory or principle by internationally famous optometrists and morphologists; it will not give correct vision without glasses; it is not the latest sensational discovery; it is not a scientific eye-muscle exerciser; it will not cure or correct farsightedness, nearsightedness, astigmatism, old age sight, crosseyes, failing vision, eye-muscle trouble or squint eyes; masters in optometry and morphology have in no way shared or aided in the development of the so-called "Nu-Eye-Life" device.

PAR. 4. The said respondents, in their advertising and sales literature, credit the following professors with the development and formulation of "Nu-Eye-Life Normalizer"; G. J. Beer; Bates; Donders; Dalton; Wartman; Deconde; Paton; Pros; Kuntz; Kohn; Goronowitch; Held; Von Apathy; Froriep; Dohon; Chicarugi; Richardson; Noyes; Weir; Hewiston.

In truth and in fact none of the aforementioned professors had anything in any way to do with the so-called development of "Nu-Eye-Life".

PAR. 5. The respondents, in their advertising literature, represent that the "Nu-Eye-Life" device will cure or correct Hypertropia,

Presbyopia, Astigmatism, Asthenopia, and Strabismus, as well as other functional disorders of the eyes.

In truth and in fact the so-called "Nu-Eye-Life" will not in any way cure or correct the above mentioned functional disorders of the eyes.

PAR. 6. The said respondents, in their advertising literature, guarantee to purchasers of "Nu-Eye-Life" a refund of money paid therefor if the said device is unsatisfactory or fails to accomplish the results claimed for it.

In truth and in fact the respondents do not refund money to purchasers of the "Nu-Eye-Life" device.

PAR. 7. The use by said respondents of the aforesaid advertising phrases and representations has the capacity and tendency to mislead and deceive individuals, wholesalers and the consuming public into the belief that the said device will cure or correct the aforesaid diseases or malformations of the eye.

In truth and in fact the said device will not cure or correct the aforementioned diseases or malformations of the eye.

PAR. 8. There are among the competitors of said respondents individuals, partnerships and corporations engaged in the manufacture, sale and distribution in interstate commerce of spectacles and other aids to vision who truthfully represent their products.

All of the above acts and practices of respondents are all to the prejudice of the public and respondents' competitors and constitute unfair methods of competition within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding coming on for final hearing by the Federal Trade Commission upon the record including the complaint of the Commission issued under Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", and the respondents' answer thereto, stating that they waive hearing on the charges set forth in the complaint, refrain from contesting the proceeding, and pursuant to the provisions of the Commission's Rules of Practice with respect to answers, consent that the Commission may make, enter and serve upon the respondents without a trial, without evidence and without findings as to the facts or other intervening procedure, an order to cease and desist from the

method or methods of competition alleged in the complaint; and the Commission having duly considered the matter and being fully advised in the premises—

It is now ordered, That the respondents, Sarah Grossman, trading as Eyesight Normalizing Company, and Sasha R. Grossman alias Alex R. Grossman, individuals, in connection with the advertising and selling, in interstate commerce, of their products either by advertisements, advertising literature, radio broadcasts or by any manner or means whatsoever, cease and desist from:

1. Directly or indirectly representing that the so-called eye normalizing device will enable anyone to throw away eyeglasses, that the said eye normalizing device is a new, revolutionary, scientific discovery making unnecessary the use of eyeglasses, unless and until the said eye normalizing device will enable one to discard eye glasses and unless and until the said eye normalizing device is a new, revolutionary, scientific discovery making the use of eyeglasses unnecessary.

2. Directly or indirectly representing the so-called eye normalizing device will cure or correct farsightedness, astigmatism, cross-eyes, old age sight, and failing vision, unless and until the said eye normalizing device will cure or correct the aforementioned ocular defects.

3. Directly or indirectly representing the so-called eye normalizing device, if used only a few minutes a day will cure or correct any of the ocular defects heretofore mentioned in paragraph 2 above, unless and until the said eye normalizing device will cure or correct the ocular defects mentioned in paragraph 2 above.

4. Directly or indirectly representing the so-called eye normalizing device as an achievement of science and research which makes it possible for one to enjoy perfect vision without resorting to the use of eyeglasses, unless and until such eye normalizing device will enable one to enjoy perfect vision without the use of eyeglasses.

5. Directly or indirectly representing the so-called eye-normalizing device as a scientific discovery which offers persons a way out of eye troubles and that it helps anyone to correct defective vision on an entirely new principle, unless and until the said eye normalizing device is a scientific discovery and enables people to overcome ocular defects and unless and until the so-called eye normalizing device corrects defective vision on an entirely new principle.

6. Directly or indirectly representing the so-called eye normalizing device as being advocated in theory and principle by all internationally famous optometrists and morphologists, unless and until the said

eye normalizing device is advocated in theory and principle by all internationally famous optometrists and morphologists.

7. Directly or indirectly representing that the so-called eye normalizing device is the latest and greatest discovery of research in ailments of the eye made in the past 100 years, with thousands of happy and pleased users in all parts of the world, unless and until the so-called eye normalizing device is the latest and greatest discovery of research in ailments of the eye made in the past 100 years, and unless and until it has thousands of happy and pleased users in all parts of the world.

8. Directly or indirectly representing the so-called eye normalizing device will enable one to have normal vision without glasses; that it is the latest sensational discovery; and that eyeglasses may be discarded and normal vision regained, unless and until the said eye normalizing device is and will do the aforementioned things.

9. Directly or indirectly representing that the so-called eye normalizing device is a scientific eye muscle exerciser, and that it will help to correct nearsightedness, farsightedness, astigmatism, old age sight, crosseyes, eye muscle trouble, weak eyes, and squint eyes, unless and until the said eye normalizing device will correct the aforementioned ocular defects.

10. Directly or indirectly representing that all credit for construction development and formulation of the so-called eye normalizing device is due to Masters in Optometry and Morphology, unless and until such representations are true.

It is further ordered, That respondents Sarah Grossman trading as Eyesight Normalizing Company and Sasha R. Grossman alias Alex R. Grossman, shall within 60 days after the service upon them of a copy of this order, file with the Federal Trade 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, hereinabove set forth.

Complaint

20 F. T. C.

IN THE MATTER OF
ROCK-OLA MANUFACTURING CORPORATION

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

Docket 2350. Complaint, Mar. 30, 1935—Order, May 31, 1935

Consent order requiring respondent corporation, its officers, etc., in connection with the offer and sale of coin amusement machines of the pin-ball type, to cease and desist from—

- (1) Entering into contracts, agreements, or understandings with jobbers, or any of them, that respondent's products are to be resold by such jobbers at prices specified or fixed by respondent;
- (2) Procuring, either directly or indirectly, from its jobbers, promises or assurances that the prices fixed by respondent will be observed by such jobbers; and
- (3) Requesting its jobbers to report the names of other jobbers who do not maintain respondent's resale prices.

Mr. Astor Hogg for the Commission.

Mr. Charles R. Pollard, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission having reason to believe that Rock-Ola Manufacturing Corporation, a corporation hereinafter referred to as respondent, has been and is now using unfair methods of competition in interstate commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be to the public interest states its charges in that respect as follows:

PARAGRAPH 1. Respondent is and at all times hereinafter mentioned was a corporation organized, created and existing under and by virtue of the laws of the State of Illinois, having its main office and principal place of business in the city of Chicago, in said State. It is and for more than two years last past has been engaged in the business of manufacturing and selling coin amusement machines of the pin-ball game type. Its sales are confined principally to jobbers and retailers located throughout the United States and in the District of Columbia and pursuant to such sales shipments are made from respondent's place of business in Chicago, State of Illinois, into and through various States of the United States other than the State or point of origin of such shipments and in the District of

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Columbia. There are in the United States other persons, firms and corporations engaged in the business of manufacturing and selling amusement machines of the pin-ball type who pursuant to such sales, ship their products into and through the various States of the United States other than the State or point of origin of such shipments and with such other persons, firms and corporations respondent is and at all times hereinafter mentioned has been in active and substantial competition.

PAR. 2. In the course and conduct of its business as aforesaid, respondent adopted and for years employed a merchandising plan or policy for its amusement machines by which it established a system of resale prices for said products, which prices respondent required and still requires its various distributors to whom it sells its said products to observe as the minimum prices to be charged by them in reselling said products to purchasers thereof in their respective localities.

PAR 3. In order to carry out the said plan or policy and to secure the cooperation therein of dealers generally the respondent adopted and employed and still employs the following, among other means, by which it and those cooperating with it have undertaken to prevent and have prevented other dealers from selling said product at prices less than the said minimum resale prices so established by respondent:

(a) It issues resale price lists to the trade in which lists the various minimum resale prices for its said products are set forth and explained;

(b) It makes it generally known to the trade by letters, circulars, and other means that it expects and requires jobbers handling its products to maintain and enforce said minimum resale prices;

(c) It enters into informal agreements, understandings, and arrangements with jobbers for the maintenance of said minimum resale prices in their respective localities as a condition of handling their supply of its products;

(d) It invites and procures from jobbers handling its products reports as to the failure of other jobbers to observe and maintain said minimum resale prices;

(e) It uses information received through its distributors to induce and coerce such jobbers as have failed to observe said prices to maintain same in the future by exacting promises and assurances from them to that effect, and by threatening that if such prices are not maintained, further machines will not be supplied to them by respondent;

(f) It favors jobbers who maintain said prices by discriminating against competing jobbers who fail to observe the same;

(g) It refuses to supply such jobbers with further machines until they have given satisfactory assurances for the maintenance of such prices in the future;

(h) It seeks and secures the cooperation of its distributors generally in preventing other distributors from obtaining respondent's said products by reason of failure to maintain said resale prices;

(i) It has used and now uses other equivalent cooperative means and methods for the enforcement of said system of minimum resale prices; all with the result that its said prices have been and are generally observed and maintained by distributors handling said products.

PAR. 4. The above acts and practices of respondent have had and still have the capacity and tendency to constrain all jobbers handling said products to sell the same at or above the minimum resale prices fixed by respondent, as aforesaid, and prevents such jobbers from selling such products at such prices as they might or may deem to be warranted by their respective cost and efficiency and hence to hinder and suppress all price competition in the resale of such products in the various localities in which the same are sold; thus tending to obstruct the free and natural flow of commerce in such products and the freedom of competition in this channel of interstate trade.

PAR. 5. The above acts and practices of the respondent are all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

Respondent, Rock-Ola Manufacturing Corporation, having filed its answer to the complaint in this proceeding and having subsequently filed with this Commission its motion that it be permitted to withdraw its said answer and that it be permitted to file, in lieu thereof, as a substitute answer, the draft of proposed substitute answer annexed to the said motion, and the Commission having duly considered the said motion:

It is hereby ordered, That the said motion be and the same is hereby granted; that the said answer be and the same is hereby withdrawn; and that the said proposed substitute answer be and the same is hereby filed in lieu of the said answer so withdrawn.

And the said respondents, in and by their said substituted answer, have waived hearing on the charges set forth in the complaint in this proceeding, and having stated in their said substituted answer that they do not contest the proceedings, and having consented

in the said substituted answer that the Commission, without trial, without evidence and without findings as to the facts or other intervening proceedings might make, enter, issue and serve upon the said respondent an order to cease and desist from the methods of competition charged in the complaint; and the Commission being fully advised in the premises:

It is hereby further ordered, That respondent, its officers, agents, servants and employees, forthwith, in connection with the sale or offer for sale of its products, cease and desist from—

(1) Entering into contracts, agreements or understandings with jobbers, or any of them, that respondent's products are to be resold by such jobbers at prices specified or fixed by respondent;

(2) Procuring, either directly or indirectly, from its jobbers, promises or assurances that the prices fixed by respondent will be observed by such jobbers;

(3) Requesting its jobbers to report the names of other jobbers who do not maintain respondent's resale prices.

It is further ordered, That the respondent, Rock-Ola Manufacturing Corporation, within 60 days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

Complaint

20 F. T. C.

IN THE MATTER OF
UNIVERSAL THEATRE CONCESSION COMPANY

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

Docket 1950. Complaint, May 9, 1931—Order, June 3, 1935

Consent order requiring respondent, its officers, directors, etc., in the sale and distribution in interstate commerce of candy and candy products, to cease and desist from—

- (a) Selling and distributing to concessionaires with, and to operators, managers and proprietors of, burlesque theatres, traveling shows, tent shows, medicine shows, circuses and carnivals and other such places of amusement, candy so packed and assembled that sales thereof to the general public are to be made, or may be made, by means of a lottery, gaming device or gift enterprise;
- (b) Supplying to or placing in the hands of such concessionaires, operators, managers and proprietors, packages or assortments of candy which are or may be used, without alteration or rearrangement of the contents thereof, to conduct a lottery, gaming device or gift enterprise in the sale or distribution of the candy and candy products therein contained to the public;
- (c) Packing or assembling in the assortment, packages or small boxes of candy, for ultimate sale to the public, which are of uniform appearance but contain articles of merchandise or coupons entitling the purchaser thereof to the articles of merchandise, of varying value; and
- (d) Furnishing to such concessionaires, operators, managers and proprietors assortments of candy consisting of individual packages or small boxes thereof, for resale to the public, of uniform appearance, but containing articles of merchandise, or coupons calling for such articles, of varying value.

Mr. Henry C. Lank for the Commission.

Moses, Kennedy, Stein & Bachrach, of Chicago, Ill., for respondent.

COMPLAINT

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission charges that the Universal Theatre Concession Company, a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce, in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Illinois with its principal office and place of business located in the City of Chicago, State of Illinois. It is now and for more than two years last past has been engaged in the manufacture of candies and in the sale and distribution thereof to wholesale and retail dealers and jobbers located at points in the various States of the United States and causes said products when so sold to be transported from its principal place of business in the City of Chicago, State of Illinois, into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of its said business, respondent is in competition with other individuals, partnerships and corporations engaged in the manufacture of candies and in the sale and distribution thereof in interstate commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of the business as described in paragraph 1 hereof, respondent sells to wholesale and retail dealers and jobbers certain assortments of candies.

(a) One of the said assortments of candies is composed of a number of small packages containing candy commonly termed "kisses", which said packages retail at a price of ten cents each. Each of said small packages of candy contain, in addition to the candy, an article of merchandise, or a prize, or, in the event that the article of merchandise or prize is too large to be packed within the package, a printed coupon or premium notice entitling the holder thereof to the larger article of merchandise or prize. The majority of these articles of merchandise or prizes contained within the said packages are of very little value, but a small number of the said articles of merchandise or prizes are of a value greater than ten cents. The articles of merchandise, or prizes, or printed coupons entitling the holder thereof to a prize, are concealed from the consuming or purchasing public within the packages of candy until after the packages have been purchased and broken open by the said purchasing or consuming public. The articles of merchandise or prizes thus obtained by the purchasing or consuming public are of unequal value. The candy contained in each of the said packages is not the equivalent in quantity or quality to candy that ordinarily retails for ten cents. The purchasers of the said small packages of candy containing an article of merchandise, or prize, or coupon entitling the holder to a prize, greater in value than ten cents thus procure the article of merchandise or prize wholly by lot or chance.

(b) Another of the said assortments of candies is composed of a number of small packages containing candy commonly termed "kisses", which said packages retail at a price of twenty-five cents each. Each of said small packages of candy contain, in addition to the candy, an article of merchandise, or a prize, or, in the event that the article of merchandise or prize is too large to be packed within the package, a printed coupon or premium notice entitling the holder thereof to the larger article of merchandise or prize. The majority of these articles of merchandise or prizes contained within the said packages are of very little value, but a small number of the said articles of merchandise or prizes are of a value greater than twenty-five cents. The articles of merchandise, or prizes, or printed coupons entitling the holder thereof to a prize, are concealed from the consuming or purchasing public within the small packages of candy until after the packages have been purchased and broken open by the said purchasing or consuming public. The articles of merchandise or prizes thus obtained by the purchasing or consuming public are of unequal value. The candy contained in each of the said packages is not the equivalent in quantity or quality to candy that ordinarily retails for twenty-five cents. The purchasers of the said small packages of candy containing an article of merchandise, or prize, or coupon entitling the holder to a prize, greater in value than twenty-five cents thus procure the article of merchandise or prize wholly by lot or chance.

PAR. 3. The aforesaid wholesale dealers and jobbers of respondent resell said assortments to retail dealers in the various States of the United States, and said retail dealers, and the retail dealers to whom respondent sells direct, expose said assortments for sale and sell said candies to the purchasing public with the articles of merchandise or prizes contained within the packages in accordance with the sales plan of the respondent as described in paragraph 2 above. Respondent thus supplies to and places in the hands of others the means of conducting a lottery or lotteries in the sale of its products in accordance with respondent's said sales plan hereinabove set forth.

PAR. 4. Respondent's aforesaid practices thus tend to and do induce many of the consuming public to purchase respondent's said candies in preference to the candies of respondent's said competitors because of the chance of obtaining the larger or more valuable articles of merchandise, or prizes, free of charge.

PAR. 5. Respondent's aforesaid practices thus tend to and do induce many of the consuming public to purchase the said packages in the hope that said purchasers will obtain an article of merchandise or prize of a greater value than the selling price of the particular

package. Respondent's candies are thus distributed to the consuming public by means of a lottery.

PAR. 6. The above alleged acts and practices of respondent are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding coming on for final hearing by the Federal Trade Commission upon the record, including the complaint of the Commission and respondent's substituted answer thereto, in which answer respondent consented that, as provided by paragraph 2 of Rule III of the Commission's Rules of Practice, the Commission might make, enter and serve upon respondent an order to cease and desist from the violations of law charged in the complaint, and the Commission being fully advised in the premises,

It is hereby ordered, That the respondent, Universal Theatre Concession Company, its officers, directors, agents, representatives and employees, in the sale and distribution in interstate commerce of candy and candy products, cease and desist from:

(1) Selling and distributing to concessionaires with, and to operators, managers and proprietors of, burlesque theatres, traveling shows, tent shows, medicine shows, circuses and carnivals and other similar places of amusement, candy so packed and assembled that sales of such candy to the general public are to be made, or may be made, by means of a lottery, gaming device or a gift enterprise.

(2) Supplying to, or placing in the hands of, concessionaires with, and operators, managers and proprietors of, burlesque theatres, traveling shows, tent shows, medicine shows, circuses and carnivals and other similar places of amusement, packages or assortments of candy which are or may be used without alteration or rearrangement of the contents of such packages to conduct a lottery, gaming device or a gift enterprise in the sale or distribution of the candy or candy products contained in said packages or assortment to the public.

(3) Packing or assembling in the same assortment packages or small boxes of candy for ultimate sale to the public, which individual packages or small boxes of candy are of uniform appearance, but which contain other articles of merchandise or coupons entitling

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the purchaser thereof to other articles of merchandise, which articles of merchandise are of varying value.

(4) Furnishing to concessionaires with, or operators, managers or proprietors of, burlesque theatres, traveling shows, tent shows, medicine shows, circuses and carnivals and other similar places of amusement, assortments of candy consisting of individual packages or small boxes of candy for resale to the public, which individual or small boxes of candy are of uniform appearance, but which contain articles of merchandise or coupons calling for articles of merchandise of varying value.

It is further ordered, That the respondent, Universal Theatre Concession Company, within 30 days after the service upon it of this order, shall file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist, hereinabove set forth.

Syllabus

IN THE MATTER OF
BOB HOFELLER, INDIVIDUALLY, AND TRADING AS BOB
HOFELLER CANDY COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 2187. Complaint, May 23, 1934—Decision, June 3, 1935

Where an individual engaged in the sale and distribution of packaged or boxed assortments of "prize candy", for sale at retail at prices ranging from 5 cents to 25 cents, to concessionaires with, and to operators, managers, and proprietors of, burlesque theatres, traveling shows, tent shows, medicine shows, circuses and carnivals, within which boxes, bearing various brand names and containing assortments varying according to the wishes of the customers, there were enclosed and concealed, in addition to the pieces of candy therein contained, articles of merchandise or coupons representative thereof, as prizes, ranging in value from 1 cent to \$3, such as stick pins, transfer pictures, tops, blankets, bedspreads, etc.—
Sold said assortments or packages, so assembled and packed that they could be offered for sale by said customers to the consuming public as a lottery or gaming device, without alteration or rearrangement, and could not be resold to the public otherwise, without breaking open each package and rearranging the contents thereof, with knowledge and intent that said candy would and should thus be offered and sold to such concessionaires, operators, managers and proprietors, who found candy offered by said methods more salable, and purchased the products of said individual and of others employing the same, and displayed, offered and sold said packages to members of their audiences at their respective places of business, and thereby distributed said articles of prize merchandise wholly by lot or chance to the ultimate purchasers of said boxes of candy, in competition and potential competition with concerns which consider such a method of sale and distribution as morally bad and as encouraging gambling, and especially where children are involved, as injurious to the industry in the merchandising of a chance or lottery instead of candy, and as providing the vendors thereof with a means of violating the laws of the several States;

With the result that competitors and potential competitors who refused to sell their merchandise through such methods and who can compete on even terms only by giving the same or similar devices to their customers, were put to a disadvantage in competing and trade was diverted from them to said individual and others employing similar methods, other competitors opposed to the use of such methods for the reasons set forth were constrained to adopt the same in order to meet the competition of said

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individual and others indulging therein, in order to prevent the loss of their business or a substantial part thereof, sale of "straight goods" candy by manufacturers and jobbers dealing therein, in such places, excepting limited sales in burlesque theatres, in competition with such "novelty prize" candy was prevented, due, principally, to gambling or lottery feature connected therewith, the public policy of the United States and that of many of the States thereof, statutes of some of which make operation of lotteries and gambling devices penal offenses, were violated, freedom of fair and legitimate competition in the industry involved was restrained and impaired, and the public, and competitors and potential competitors, were prejudiced and injured:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and competitors and constituted an unfair method of competition.

Mr. Henry C. Lank for the Commission.

Mr. William Friedman, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that Bob Hofeller, individually, and trading as Bob Hofeller Candy Company, hereinafter referred to as respondent, has been or is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said 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 is an individual and uses the trade name, Bob Hofeller Candy Company, and has his principal office and place of business in the City of Chicago, State of Illinois. Respondent is now and for more than two years last past has been engaged in the business of packing and assembling candy into assortments, and selling and distributing such assortments of candy to concessionaires who sell candy at carnivals, medicine shows, circuses, tent repertoire shows, and burlesque theatres, and to wholesale and retail candy dealers. Such purchasers are located at points in the various States of the United States, and respondent causes said products when so sold to be transported from his principal place of business in the City of Chicago, State of Illinois, into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of his said business, respondent is in active competition with other individuals, partnerships and corporations engaged in the sale and distribution of candy in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent sells to concessionaires who sell candy at carnivals, medicine shows, circuses, tent repertoire shows, and burlesque theatres, and to wholesale and retail dealers, certain packages or assortments of candy so packed and assembled as to involve the use of a lottery scheme when distributed to the consumers thereof.

One of the said assortments of candies is composed of a number of small packages of candy which said packages retail at the price of 10 cents each. Each of said small packages of candy contain, in addition to the candy, an article of merchandise or a prize, or in the event that the article of merchandise or prize is too large to be packed within the package, a printed coupon or notice entitling the holder thereof to the larger article of merchandise or prize. The majority of these articles of merchandise or prizes contained within the said packages are of very little value, but a small number of the said articles of merchandise or prizes are of a value greater than 10 cents. The articles of merchandise or prizes or printed coupon entitling the holder thereof to a prize are concealed from the consuming or purchasing public, within the package of candy, until after the packages have been purchased and broken open by the said purchasing or consuming public. The articles of merchandise or prizes to be obtained by the purchasing or consuming public are of unequal value. The candy contained in each of the said packages is not the equivalent in quantity or quality to candy that ordinarily retails for 10 cents. The purchasers of the said small packages of candy containing an article of merchandise or prize or coupon entitling the holder to a prize greater in value than 10 cents thus procure the article of merchandise or prize wholly by lot or chance.

The respondent distributes numerous assortments of candy, some of which retail at 25 cents per package, others at 15 cents per package, others at 10 cents per package as described above, and still others at 5 cents per package, all of which assortments are distributed by methods similar to that described herein.

PAR. 3. Aforesaid concessionaires selling respondent's candy, and retail dealers purchasing respondent's candy, expose said assortments for sale and sell said assortments to the purchasing public in accordance with the above-described sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his products in accordance with the sales plan hereinabove set forth.

PAR. 4. Respondent's aforesaid practices tend to and do induce many of the consuming public to purchase respondent's said candies

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in preference to the candies of respondent's said competitors, because of the chance of obtaining the larger or more valuable articles of merchandise or prizes free of charge.

PAR. 5. Aforesaid practices tend to and do induce many of the consuming public to purchase the said packages in the hope that said purchasers will obtain an article of merchandise or prize of a greater value than the selling price of the particular package. Respondent's candies are thus distributed to the consuming public by means of lot or chance.

PAR. 6. The above alleged acts and practices of respondent are all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served a complaint upon the respondent, Robert Hofeller (erroneously named in the complaint as Bob Hofeller), individually, and trading as Bob Hofeller Candy Company.

After the issuance of said complaint and the filing of respondent's answer thereto, testimony and evidence were received, duly recorded and filed in the office of the Commission; thereafter the proceeding came regularly on for a final hearing before the Commission on the said complaint, answer, testimony, and evidence, briefs of counsel for the Commission and counsel for the respondent and oral arguments, and the Commission having duly considered the same and being fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Robert Hofeller, is an individual doing business as Bob Hofeller Candy Company, with his principal office and place of business in the City of Chicago, State of Illinois. He is now, and for more than two years last past has been, engaged in

the sale and distribution of packaged candy to concessionaires with, and to operators, managers and proprietors of burlesque theatres, traveling shows, tent shows, medicine shows, circuses and carnivals. Such purchasers are located in the various States of the United States, and respondent causes said candy packages when sold to be shipped from his principal place of business in the City of Chicago, Ill., to the purchasers thereof at their respective points of location in States other than the State of Illinois. In so carrying on said business respondent has been engaged in interstate commerce and is, and has been, in active and substantial competition with other individuals and with partnerships and corporations engaged in the sale and distribution in interstate commerce, of candy and candy products.

PAR. 2. Respondent does not manufacture the candy sold by him, but buys certain kinds of caramel candy and chocolate covered cream candy, from the manufacturers thereof. He places this candy in boxes bearing various brand names, together with prizes consisting of certain other merchandise or coupons, entitling the consuming purchaser to certain specified merchandise.

These assortments vary according to the wishes or direction of respondent's customers, but they all make use of the same chance feature, and a description of one of said assortments is descriptive of the principle involved in all. One such assortment assembled and distributed by respondent is designated by him as and has the brand name "Oriental Love Drops". This assortment consists of a number of boxes, each containing five pieces of caramel candy and another article of merchandise as a prize. A list of prizes in said boxes includes: stickpins, paper watches, transfer pictures, snap games, moving picture books, water flowers, eyeglasses, tops, strip pictures, lamps, wall decorations, blankets, stockings, bedspreads and pillows. If a particular article of merchandise is too large to be placed in the box of candy, a coupon is inserted therein which entitles the ultimate purchaser to receive such article. Such articles of merchandise or coupons are concealed in said boxes and the nature of the prize or the particular article of merchandise cannot be ascertained until the box has been purchased and opened. The retail value of the prizes ranges from 1 cent to \$3.

Respondent's customers display these boxes of candy at the several places of amusement as referred to in paragraph 1 hereof, and offer the same for sale and sell them to members of audiences at such places of amusement. The articles of prize merchandise are thus distributed wholly by lot or chance to the ultimate purchasers of said boxes of candy.

PAR. 3. The packages of candy containing other articles of prize merchandise are variously described in the candy trade as: "Prize packages", "Premium packages", "Novelty Candy packages", "Novelty Prize Candy" and "Novelty packages". Candy sold without any prize or without any lot or chance feature is referred to in the candy trade as "Straight Candy".

PAR. 4. The majority of the packages of candy distributed by respondent retail at 10 cents each, but a few are sold at retail at 5 cents, a few at 15 cents, and a few at 25 cents. The candy contained in said packages is not the equivalent in value of "straight" candy sold at corresponding prices.

PAR. 5. Numerous concessionaires and managers, operators, or proprietors of the places of amusement referred to in paragraph 1 hereof, purchase the assortments described in paragraph 2 hereof from respondent or similar assortments from others distributing similar types of candy assortments, and such concessionaires, managers, operators or proprietors offer the same for resale to the customers or patrons of such burlesque theatres or other places of amusement, and such assortments are sold and distributed to the consuming public in the manner and by the sales plan outlined in paragraph 2 hereof.

PAR. 6. All sales made by respondent are absolute sales, and respondent retains no control over the goods after they are delivered to his customers. The packages are assembled and packed in such manner that they can be offered for sale by respondent's customers to the consuming public by the sales plan outlined in paragraph 2 hereof without alteration or rearrangement. The testimony clearly indicates that the packages or assortments of candy sold and distributed by the respondent cannot be resold to the public by respondent's customers, except as a lottery or gaming device, unless respondent's customers break open each package and rearrange the contents thereof.

In the sale and distribution of his merchandise, respondent has knowledge that said candy will be resold to the purchasing public by his customers by lot or chance, and he packs and assembles such candy in the way and manner described so that it may and shall be resold to the public by lot or chance.

PAR. 7. Respondent's merchandise is sold as "Prize Candies" in burlesque theatres, traveling shows, tent shows, medicine shows, circuses and carnivals. In these places, with the exception of the burlesque theatres, no other candy is ordinarily offered for sale. In burlesque theatres some "straight" candies are occasionally offered for sale and sold. The evidence discloses and the Commission finds

that in theatres other than burlesque theatres candy bars and small packages of candy are quite often offered for sale and sold. Candy manufacturers and candy jobbers testified and the Commission finds that, if this "prize" or "novelty package" candy was not offered for sale, "straight" candy in bars or small packages could be sold in substantial quantities in burlesque theatres, traveling shows, tent shows, medicine shows, circuses and carnivals, the sale of said "novelty package" candy prevents the sale of "straight" candy and thus eliminates competition of manufacturers and jobbers selling such "straight" candy. The Commission finds that such manufacturers and jobbers of "straight" candy are potential competitors of the respondent insofar as the sale of the "straight" candy in the aforementioned places of amusement is concerned.

PAR. 8. The sale and distribution of candy by respondent's customers by the sales plan or method described herein is the sale and distribution of said packages by lot or chance and constitutes a lottery or gaming device.

Competitors and potential competitors of respondent appeared as witnesses in this proceeding and testified that and the Commission finds as a fact that many competitors and potential competitors regard such method of sale and distribution as morally bad and encouraging gambling, and particularly where these packages are offered to audiences made up in part of children; as injurious to the candy industry, because it results in the merchandising of a chance or lottery instead of candy; and as providing the vendors thereof with a means of violating the laws of the several States. Because of these reasons, some competitors and potential competitors of respondent refuse to sell candy so packed and assembled that it can be resold to the public by lot or chance. Other competitors are opposed to such method of sale for the reasons just above stated and testified, and the Commission finds as a fact, that they are nevertheless compelled to adopt such methods in order to meet the competition of respondent and others indulging in like methods, in order to prevent the loss of their business or a substantial part thereof. The competitors and potential competitors of respondent who refuse to sell their merchandise by such methods are thereby put to a disadvantage in competing. Certain concessionaires, operators, managers and proprietors of places of amusement as described herein, who find that they can dispose of more candy by using the method of sale as described, buy respondent's products and the products of others employing the same methods of sale and thereby trade is diverted to respondent and others using similar methods from respondent's competitors and potential competitors. Said

competitors and potential competitors can compete on even terms only by giving the same or similar devices to their customers. This they are unwilling to do, and their sales of "straight goods" candy is injuriously affected.

The use of the method by respondent as described herein in the sale and distribution of his candy is prejudicial and injurious to the public and to respondent's competitors and potential competitors, and has resulted in the diversion of trade to respondent from his said competitors and potential competitors, and thus is a restraint upon, and a detriment to, the freedom of fair and legitimate competition in the candy industry.

PAR. 9. There are in the United States many manufacturers of candy who do not manufacture and sell lottery or prize packages of candy and who sell their "straight goods" candy in interstate commerce in competition with the "novelty prize" candy, and the sale of "straight goods" candy has been injuriously affected by the sale of "novelty prize" candy, and this effect is principally due to the gambling or lottery feature indicated with the "novelty prize" candy.

PAR. 10. In addition to the assortments described in paragraph 2 hereof, the respondent sells and distributes candy to wholesale dealers and jobbers without any lottery or chance feature. He began the sale and distribution of the assortments as described in paragraph 2 at the time he commenced business in the year 1932, and has continuously to the time of taking testimony in this case sold and distributed assortments involving the distribution of candy by lot or chance.

The exact amount of respondent's annual volume of business is not shown, but the respondent testified, and the Commission finds, that the volume of his business involving the sale and distribution of candy by lot or chance is substantial.

PAR. 11. The sale and distribution of candy by lot or chance is against the public policy of the United States and of many of the States thereof, and some of the said States have laws making the operation of lotteries and gambling devices penal offences.

CONCLUSION

The aforesaid acts and practices of respondent, Robert Hofeller, individually, and trading as Bob Hofeller Candy Company, under the conditions and circumstances set forth in the foregoing findings as to the facts are all to the prejudice of the public and respondent's competitors and potential competitors, and constitute unfair methods of competition in commerce, and constitute violations of Section 5 of an Act of Congress approved September 26, 1914, entitled "An

Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes”.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony taken, the briefs filed and the oral argument of counsel, and the Commission having made its findings as to the facts and its conclusion that the said respondent has violated the provisions of an Act of Congress, approved September 26, 1914, entitled “An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes”:

It is now ordered, That the respondent, Robert Hofeller (erroneously named in the complaint as Bob Hofeller), individually, and trading as Bob Hofeller Candy Company, his agents, representatives and employees, in the sale and distribution in interstate commerce of candy and candy products, do cease and desist from:

(1) Selling and distributing to concessionaires with, and to operators, managers and proprietors of, burlesque theatres, traveling shows, tent shows, medicine shows, circuses and carnivals and other similar places of amusement, candy so packed and assembled that sales of such candy to the general public are to be made, or may be made, by means of a lottery, gaming device or a gift enterprise.

(2) Supplying to, or placing in the hands of, concessionaires with, and operators, managers and proprietors of, burlesque theatres, traveling shows, tent shows, medicine shows, circuses and carnivals and other similar places of amusement, packages or assortments of candy which are or may be used without alteration or rearrangement of the contents of such packages to conduct a lottery, gaming device or a gift enterprise in the sale or distribution of the candy or candy products contained in said package or assortment to the public.

(3) Packing or assembling in the same assortment packages or small boxes of candy for ultimate sale to the public, which individual packages or small boxes of candy are of uniform appearance, but which contain other articles of merchandise or coupons entitling the purchaser thereof to other articles of merchandise which articles of merchandise are of varying value.

(4) Furnishing to concessionaires with, or operators, managers or proprietors of, burlesque theatres, traveling shows, tent shows, medicine shows, circuses and carnivals and other similar places of amusement, assortments of candy consisting of individual packages or small boxes of candy for resale to the public, which individual

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or small boxes of candy are of uniform appearance, but which contain articles of merchandise or coupons calling for articles of merchandise of varying value.

It is further ordered, That the respondent, Robert Hofeller, individually, and trading as Bob Hofeller Candy Company, within 30 days after the service upon him of this order, shall file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist, hereinabove set forth.

Complaint

IN THE MATTER OF
GORDON HOWARD COMPANY

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

Docket 2212. Complaint, July 20, 1934—Order, June 3, 1935

Consent order requiring respondent, its officers, directors, etc., in the sale and distribution in interstate commerce of candy and candy products, to cease and desist from—

- (a) Selling and distributing to concessionaires with, and to operators, managers and proprietors of, burlesque theatres, traveling shows, tent shows, medicine shows, circuses and carnivals and other such places of amusement, candy so packed and assembled that sales thereof to the general public are to be made, or may be made, by means of a lottery, gaming device or gift enterprise;
- (b) Supplying to or placing in the hands of such concessionaires, operators, managers and proprietors, packages or assortments of candy which are or may be used, without alteration or rearrangement of the contents thereof, to conduct a lottery, gaming device or gift enterprise in the sale or distribution of the candy and candy products therein contained to the public;
- (c) Packing or assembling in the assortment, packages or small boxes of candy, for ultimate sale to the public, which are of uniform appearance but contain articles of merchandise or coupons entitling the purchaser thereof to the articles of merchandise, of varying value; and
- (d) Furnishing to such concessionaries, operators, managers and proprietors assortments of candy consisting of individual packages or small boxes thereof, for resale to the public, of uniform appearance, but containing articles of merchandise, or coupons calling for such articles, of varying value.

Mr. Henry C. Lank for the Commission.

Mr. H. R. Brandt, of Kansas City, Mo., and *Moses, Kennedy, Stein & Bachrach*, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that Gordon

Howard Company has been or is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said 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 is a corporation, organized and existing under the laws of the State of Missouri, with its principal office and place of business in the City of Kansas City, State of Missouri, where it is now, and has been for more than two years last past, engaged in the business of packing and assembling candy into assortments, and selling and distributing such assortments of candy to concessionaires who sell such candy at carnivals, medicine shows, circuses, fairs, tent repertoire shows, and burlesque theatres, and to wholesale and retail candy dealers. Such purchasers are located at various points in the several States of the United States, and respondent causes said products when so sold to be transported from its principal place of business in the City of Kansas City, State of Missouri, into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of its said business, respondent is in active competition with other individuals, partnerships and corporations engaged in the sale and distribution of candy in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business as described in paragraph 1 herein, respondent sells to concessionaires who sell candy at carnivals, medicine shows, circuses, fairs, tent repertoire shows and burlesque theatres, and to wholesale and retail dealers, certain packages or assortments of candy so packed and assembled as to involve the use of a lottery scheme when distributed to the consumers thereof.

One of the said assortments of candies is composed of a number of small packages of candy which said packages retail at the price of 10 cents each. Each of said small packages of candy contains, in addition to the candy, an article of merchandise or a prize, or in the event that the article of merchandise or prize is too large to be packed within the package, a printed coupon or notice entitling the holder thereof to the larger article of merchandise or prize. The majority of these articles of merchandise or prizes contained within the said packages are of very little value, but a small number of the said articles of merchandise or prizes are of a value greater than 10 cents. The articles of merchandise or prizes or printed coupon entitling the holder thereof to a prize are concealed from the consuming or purchasing public, within the package of candy, until after the

packages have been purchased and broken open by the said purchasing or consuming public. The articles of merchandise or prizes to be obtained by the purchasing or consuming public are of unequal value. The candy contained in each of the said packages is not the equivalent in quantity or quality to candy that ordinarily retails for 10 cents. The purchasers of the said small packages of candy containing an article of merchandise or prize or coupon entitling the holder to a prize greater in value than 10 cents thus procure the article of merchandise or prize wholly by lot or chance.

The respondent distributes numerous assortments of candy, some of which retail at 25 cents per package, others at 15 cents per package, and others at 10 cents per package as described above, all of which assortments are distributed by methods similar to that described herein.

PAR. 3. Aforesaid concessionaires selling respondent's candy, and retail dealers purchasing respondent's candy, expose said assortments for sale and sell said assortments to the purchasing public in accordance with the above-described sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plan hereinabove set forth.

PAR. 4. Respondent's aforesaid practices tend to and do induce many of the consuming public to purchase respondent's said candies in preference to the candies of respondent's said competitors, because of the chance of obtaining the larger or more valuable articles of merchandise or prizes free of charge.

PAR. 5. Aforesaid practices tend to and do induce many of the consuming public to purchase the said packages in the hope that said purchasers will obtain an article of merchandise or prize of a greater value than the selling price of the particular package. Respondent's candies are thus distributed to the consuming public by means of lot or chance, and trade is diverted to this respondent from its said competitors.

PAR. 6. The use by respondent of said practice tends to lessen competition between respondent and those of its said competitors who do not use the same or a similar sales policy. Certain of respondent's said competitors in the sale of candy do not use the same or a similar sales policy, and the use of said practice by respondent tends to create monopoly by excluding said competitors from such competitive trade, and making it impossible for potential competitors to enter said competitive trade or business, unless they shall adopt and use the same or a similar unfair practice or method of competition in commerce.

PAR. 7. The above alleged acts and practices of respondent are all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding coming on for final hearing by the Federal Trade Commission upon the record, including the complaint of the Commission and respondent's answer thereto in which answer respondent consented that as approved by paragraph 2 of Rule III of the Commission's Rules of Practice, that the Commission might make, enter and serve upon respondent an order to cease and desist from the violations of law charged in the complaint, and the Commission being fully advised in the premises—

It is hereby ordered, That the respondent, Gordon Howard Company, its officers, directors, agents, representatives and employees, in the sale and distribution in interstate commerce of candy and candy products, cease and desist from:

(1) Selling and distributing to concessionaires with, and to operators, managers and proprietors of, burlesque theatres, traveling shows, tent shows, medicine shows, circuses and carnivals and other similar places of amusement, candy so packed and assembled that sales of such candy to the general public are to be made, or may be made, by means of a lottery, gaming device or a gift enterprise.

(2) Supplying to, or placing in the hands of, concessionaires with, and operators, managers and proprietors of, burlesque theatres, traveling shows, tent shows, medicine shows, circuses and carnivals and other similar places of amusement, packages or assortments of candy which are or may be used without alteration or rearrangement of the contents of such packages to conduct a lottery, gaming device or a gift enterprise in the sale or distribution of the candy or candy products contained in said package or assortment to the public.

(3) Packing or assembling in the same assortment packages or small boxes of candy for ultimate sale to the public, which individual packages or small boxes of candy are of uniform appearance, but which contain other articles of merchandise or coupons entitling the purchaser thereof to other articles of merchandise, which articles of merchandise are of varying value.

(4) Furnishing to concessionaires with, or operators, managers or proprietors of, burlesque theatres, traveling shows, tent shows,

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medicine shows, circuses and carnivals and other similar places of amusement, assortments of candy consisting of individual packages or small boxes of candy for resale to the public, which individual or small boxes of candy are of uniform appearance, but which contain articles of merchandise or coupons calling for articles of merchandise of varying value.

It is further ordered, That the respondent, Gordon Howard Company, within 30 days after the service upon it of this order, shall file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist, hereinabove set forth.

MEMORANDUM

UNION CONCESSION Co. (Docket 2188.) The Commission, as of June 4, 1935, made a similar consent order in the case of the aforesaid respondent (against which respondent complaint identical, or substantially identical, with that in the principal case, except for the inclusion in the latter of the allegation covered by paragraph 6, was made on May 23, 1934), it appearing that respondent is an Illinois corporation, with principal office and place of business in Chicago, for more than five years last past engaged in the business of packing and assembling candy into assortments, and in the sale and distribution of such assortments to concessionaires who sell the same at carnivals, etc., as alleged against the respondent in the principal case. The Commission was represented in the matter by *Mr. Henry C. Lank*. Respondent was represented by *Moses, Kennedy, Stein & Bachrach*, of Chicago, Ill.

Complaint

20 F. T. C.

IN THE MATTER OF
HAIR-TEX CORPORATION

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

Docket 2271. Complaint, Dec. 20, 1934—Order, June 11, 1935

Consent order requiring respondent corporation, in connection with the manufacture and sale of upholstery fillings in interstate commerce, to cease and desist from directly or indirectly using or causing to be used the word "Hair" either alone or in connection or conjunction with the letters "Tex" or with any other letters, word or words, or in any way in its advertisements, advertising matter, on its labels or any of its printed matter or in any other place so as to import or imply or which may have the capacity and tendency to confuse, mislead or deceive purchasers or prospective purchasers into the belief that said product is composed of hair, when such is not the fact, provided, however, that nothing herein contained shall prohibit the respondent from using the word "Hair-Tex" if in conjunction therewith the words "Made from Tampico Fibre" appear in its advertisements, labels, and in every other place in conspicuous type.

Mr. Morton Nesmith for the Commission.

Seidman & Seidman and *Mr. Percy H. Moore*, of Cleveland, Ohio, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that the Hair-Tex Corporation has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint.

PARAGRAPH 1. Respondent, Hair-Tex Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio and having its principal place of business at Cleveland, in the State of Ohio.

Respondent corporation for more than one year last past has been, and is now, engaged in the business of manufacturing, offering for sale and selling upholstery fillings in commerce between and among the several States of the United States. Respondent has caused and still causes its upholstery fillings, when so sold, to be transported from its place of business in the City of Cleveland, State of Ohio,

into and across the several States of the United States to purchasers thereof located at various places in such several States.

Other persons, firms, associations and corporations have been engaged in the manufacture, offering for sale, selling and transporting in said commerce competitive upholstery filling.

In the course and conduct of its said business respondent corporation has been and is in competition with all such other persons, firms, associations and corporations so engaged in the manufacture, offering for sale and selling in said commerce between and among the several States of the United States said competitive upholstery fillings.

PAR. 2. Respondent corporation in the manufacture, sale and offering for sale of its said product, has supplied to its customers located in various States of the United States labels and tags for attachment, and which were attached, to furniture stuffed with the aforesaid product, on which labels and tags the said product was designated and referred to as "Hair-Tex". Respondent's display cards, reading, in part, "This Quality Furniture Filled with Hair-Tex", also were furnished said customers and said cards were used by said customers in locally advertising their merchandise stuffed or filled with said product—when, in truth and in fact, respondent's said product known and designated as "Hair-Tex", although simulating hair in appearance, is not composed of hair, but is composed of a material or materials other than hair.

PAR. 3. The use of said false and misleading statements and representations with reference to respondent's product has the tendency and capacity to deceive and mislead the public into the erroneous belief that said product is composed of hair, and that said statements and representations are true, and to induce the public to purchase said product in and because of said erroneous belief. Respondent's said use of said false and misleading statements and representations has the tendency and capacity to divert trade to respondent and from its said competitors, to the unfair advantage of respondent and to the injury of respondent's competitors and of the purchasing public.

PAR. 4. The above alleged acts and practices of respondent are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding coming on for final hearing by the Federal Trade Commission upon the record including the complaint of the Com-

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mission and the respondent's answer thereto, that it waives hearing on the charges set forth in the complaint, refrains from contesting the proceeding and pursuant to paragraph (2) of Rule III of the Rules of Practice of the Commission, as amended and revised August 20, 1934, consents that the Commission may make, enter and serve upon the respondent, without evidence and without findings as to the facts or other intervening procedure, an order to cease and desist from the method or methods of competition alleged in the complaint; and the Commission having duly considered the matter and being fully advised in the premises—

It is now ordered, That the respondent Hair-Tex Corporation in connection with the manufacture, soliciting the sale of and selling its products in interstate commerce, cease and desist from:

Directly or indirectly using or causing to be used the word "Hair" either alone or in connection or conjunction with the letters "Tex" or with any other letters, word or words, or in any way in its advertisements, advertising matter, on its labels or any of its printed matter or in any other place so as to import or imply or which may have the capacity and tendency to confuse, mislead or deceive purchasers or prospective purchasers into the belief that said product is composed of hair, when such is not the fact provided, however, that nothing herein contained shall prohibit the respondent from using the word "Hair-Tex" if in conjunction therewith the words "Made from Tampico Fibre" appear in its advertisements, labels, and in every other place in conspicuous type.

It is further ordered, That respondent, Hair-Tex Corporation, shall within 30 days after the service upon it of a copy of this order, file with the Federal Trade Commission, a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist as hereinbefore set forth.

Complaint

IN THE MATTER OF

VARDI OF LONDON, INC., AND EMIL VARDI, INDIVIDUALLY AND TRADING AS VARDI OF LONDON, AND EMIL POLLAK, INDIVIDUALLY AND TRADING AS NEW ART PLATING COMPANY

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

Docket 2345. Complaint, Mar. 25, 1935—Order, June 11, 1935

Consent order requiring respondents, Vardi of London, Inc., and Emil Vardi, individually and trading as Vardi of London, and representative officers, etc., in the course of or in connection with the sale or distribution of silverware in interstate commerce, and respondent Emil Pollak, individually and trading as New Art Plating Co., his officers, etc., in the course of or in connection with the sale or distribution of silverware in interstate commerce, or preparation of silverware for such interstate sale or distribution, to cease and desist from directly or indirectly using or causing to be used, or aiding or abetting others to use or cause to be used (a) the English hallmark for silverware or any hallmark, stamp, brand, label or other mark or device upon any such silverware which simulates or imitates such English hallmark, unless such silverware has been manufactured in England and has been submitted to Goldsmith's Hall of England and has met the standards prescribed thereby for use of the English hallmark, or (b) any mark, stamp, brand or other device upon or in connection with any such silverware which represents or indicates directly or by implication that such silverware has been manufactured in England or has been submitted to Goldsmith's Hall of England, or has met the tests or requirements prescribed by Goldsmith's Hall of England, or is silverware of a certain hallmark, grade, quality, standard, design or manufacture when such is not true in fact.

Mr. Astor Hogg for the Commission.

Rorke & Kane, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that Emil Pollak individually and trading as New Art Plating Company, Vardi of London, Inc., and Emil Vardi, individually and trading

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as Vardi of London, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce as "commerce" is defined in said act of Congress and in violation of the Act of Congress approved June 16, 1933, known and designated as the National Industrial Recovery Act, and, it appearing to said 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:

Count 1

PARAGRAPH 1. The respondent, Emil Pollak, trading as New Art Plating Company, is and at all times hereinafter mentioned, has been an individual trading under the name of New Art Plating Company, with his principal place of business in New York City, State of New York. He is engaged in the business of repairing, manufacturing and selling silverware. The sales are made directly to the purchasing public and to wholesalers and retailers principally located in the State of New York. The respondent, Vardi of London, Inc., is, and at all times hereinafter mentioned has been, a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business in New York City, State of New York. It is engaged in the business of selling and distributing various kinds of Old English Silver and Old Sheffield Plate. Its sales are to the purchasing public located throughout the United States and in the District of Columbia and, pursuant to such sales, shipment is made from respondent's place of business in New York into and through various States of the United States other than the States of the point of origin of such shipments and in the District of Columbia. The respondent, Emil Vardi, an individual trading under the name of Vardi of London, with his principal place of business in New York City, State of New York, is engaged in the business of selling and distributing various kinds of Old English Silver and Old Sheffield Plate. His sales are to the purchasing public located throughout the United States and the District of Columbia and, pursuant to such sales, shipment is made from respondent's place of business in New York into and through various States of the United States other than the States of the point of origin of such shipments and in the District of Columbia.

PAR. 2. There are in the United States other persons, firms and corporations engaged in the manufacture, sale and distribution of similar competing products who, pursuant to such sales, ship their products into and through the various States of the United States other than the States of the point of origin of such shipments, and

with which such other persons, firms and corporations, respondents are, and at all times hereinafter mentioned have been, in active and substantial competition.

PAR. 3. In England there exists an outgrowth of the Guild System which requires that articles made of silver be submitted to Goldsmith Hall where such articles are assayed. If and when such articles of silver as are assayed are found to be of the standard prescribed, the Hall causes certain marks to be stamped upon the article. These marks and imprints, called hallmarks, so placed on the article, indicate the place and year of manufacture. The practice of using hallmarks in England dates back several centuries. These well known and understood hallmarks, when impressed upon the silver, convey to the purchasing public the information that the article of silverware is Old English and of ancient origin, and Old English Silverware and Sheffield Plate that have been manufactured and stamped and imprinted with the genuine English hallmark have for many years enjoyed widespread popularity, good will and demand among the using public throughout the United States, many of whom believe and consider that Old English Silverware and Sheffield Plate bearing the genuine English hallmark is superior in quality and other desirable characteristics, including antiquity, to silverware manufactured in the United States; and many of the using and purchasing public throughout the United States purchase Old English Silverware and Sheffield Plate bearing the imprint of the English hallmark, which silverware has been imported into the United States in preference to silverware manufactured in the United States.

PAR. 4. In the course and conduct of his business, the respondent, Emil Pollak, individually and trading as New Art Plating Company, has, at the instance and request and under the direction of Vardi of London, Inc., and Emil Vardi, an individual trading as Vardi of London, and others likewise engaged in the sale and distribution of silverware in interstate commerce, willfully, knowingly, corruptly and fraudulently, by the use of prints, stamps, dyes, false British Assay Office marks and imitation hallmarks simulating the Old English hallmark, counterfeited and misbranded modern silverware, manufactured in the United States and which was not Old English Silverware or Sheffield Plate; and such stamping, hallmarking and imprinting on such American manufactured modern silverware indicated, conveyed and does indicate and convey to the purchasing public located throughout the various States of the United States that the said silverware so hallmarked or stamped is of antique origin and possesses other desirable characteristics not common to modern silverware manufactured in the United States. After so

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fraudulently stamping, hallmarking and imprinting such silverware, the respondent, Emil Pollak, individually and trading as New Art Plating Company, delivers and has delivered said spurious product to respondents, Vardi of London, Inc., and Emil Vardi, trading as Vardi of London, and others, which respondents Vardi of London, Inc., and Emil Vardi, trading as Vardi of London, and others, with the aid, assistance, encouragement, knowledge, acquiescence and cooperation of the said Emil Pollak, individually and trading as New Art Plating Company, have sold and do sell and distribute said falsely marked modern silverware to the purchasing public located throughout the various States of the United States in the way and manner set out in paragraph 1 hereof.

PAR. 5. The aforesaid fraudulent stamping and hallmarking of said modern silverware, as aforesaid, and the sale and distribution thereof in the manner hereinabove set out, had and have the capacity to and do mislead and deceive many of the purchasing public of the United States into the belief that said silverware so fraudulently marked and counterfeited with the hallmark simulating the English hallmark, is manufactured in England and imported into the United States and is of antique origin, and said public purchase said silverware in that belief, when in truth and in fact said silverware, so fraudulently hallmarked and imprinted, sold and distributed, is not of English manufacture nor of antique origin.

PAR. 6. By his conduct in so misbranding and marking such silverware, all as hereinabove set out, the respondent, Emil Pollak, trading as New Art Plating Company, places in the hands of Vardi of London, Inc., and Emil Vardi, trading as Vardi of London, and others, an instrument and means whereby they may and do commit fraud upon a substantial portion of the purchasing public of the United States by selling such spurious product under the pretense and offer that it is of genuine quality and Old English Silverware, which had been assayed and hallmarked in England.

PAR. 7. There are, among the competitors of respondents mentioned in paragraph 2 hereof, many who deal in and sell Old English Silverware and Sheffield Plate which has been genuinely manufactured and hallmarked in England and imported into the United States, and who rightfully and lawfully represent said silverware to be such. There are others of such competitors who manufacture and sell silverware manufactured in the United States and who in no manner whatsoever represent said silverware to be manufactured in England and who in no manner counterfeit the English hallmark on silverware. The respondents' acts and practices, all as in this complaint hereinbefore set out, tend to and do unfairly

divert business from and otherwise injure and prejudice said competitors.

PAR. 8. For about ten years last past respondents have engaged in the acts and practices under the aforesaid circumstances and conditions and with the results hereinbefore set out.

PAR. 9. The above alleged methods, acts and practices of the respondents are all to the prejudice of the public and to respondents' competitors and constitute unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

Count 2

PARAGRAPH 1. The respondent, Emil Pollak, trading as New Art Plating Company, is and at all times hereinafter mentioned has been an individual trading under the name of New Art Plating Company, with its principal place of business in New York City, State of New York. He is engaged in the business of repairing, manufacturing and selling silverwear. The sales are made directly to the purchasing public and to wholesalers and retailers principally located in the State of New York. The respondent, Vardi of London, Inc., is, and at all times hereinafter mentioned has been, a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business in New York City, State of New York. It is engaged in the business of selling various kinds of Old English Silver and Old Sheffield Plate. Its sales are to the purchasing public located throughout the United States and the District of Columbia and, pursuant to such sales, shipment is made from respondent's place of business in New York into and through various States of the United States other than the States of the point of origin of such shipments and in the District of Columbia. The respondent, Emil Vardi, an individual trading under the name of Vardi of London, with his principal place of business in New York City, State of New York, is engaged in the business of selling and distributing various kinds of Old English Silver and Old Sheffield Plate. His sales are to the purchasing public located throughout the United States and the District of Columbia and, pursuant to such sales, shipment is made from respondent's place of business in New York into and through various States of the United States other than the States of the point of origin of such shipments and in the District of Columbia.

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PAR. 2. As one of the grounds for this paragraph of this complaint, the Federal Trade Commission reiterates, adopts and relies upon all matters and things set out in paragraphs 2 to 8, inclusive, of count 1 hereof, to the same extent as though each and all of the allegations thereof were set out at length and in full in this paragraph. Further, Emil Pollak, trading as New Art Plating Company, in the manufacture, sale and distribution of silverware in the United States and in the sale and distribution of Old English Silverware has failed and refused and does fail and refuse to mark his products with the manufacturer's name or with a registered trade mark for the purpose of identifying the maker of such silverware.

PAR. 3. On December 23, 1933, pursuant to the provisions of the National Industrial Recovery Act, the President of the United States made, issued and approved a Code of Fair Competition for the silverware manufacturing industry, which became effective on December 23, 1933. Such Code has been and is now in full force and effect and became and still is binding upon every member of said industry.

The said National Industrial Recovery Act, Section 3, Article B, provides "If the President shall have approved any such Code, the provisions of such Code shall be the standards of fair competition for such trade or industry or subdivision thereof. Any violation of such standards in any transaction in or affecting interstate or foreign commerce shall be deemed an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act, as amended; but nothing in this title shall be construed to impair the powers of the Federal Trade Commission under such act, as amended."

In Article VIII, under the heading of Trade Practices of said Code, appears the following: "No member of the industry shall fail to adequately mark all products with the manufacturer's name or registered trade mark or with some other such mark which shall have been registered with the Code Authority for the purpose of identifying the makers, but no member of the industry shall falsely mark or brand any product of the industry which has a tendency to mislead or deceive customers or prospective customers, whether as to the grade, quality, quantity, substance, character, nature, origin, size, finish or preparation of any produce of the industry or otherwise."

Notwithstanding the said provisions of said Code of Fair Competition respondent, Emil Pollak, trading as New Art Plating Company, continues to and does use said methods of competition hereinabove alleged and described and has resorted to and indulged in

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the practice of fraudulently hallmarking and branding modern American manufactured silverware with an imitation Old English hallmark, as set out in count 1 hereof, and in failing and refusing to mark his products with the manufacturer's name or registered trade mark in the manner hereinabove set forth.

PAR. 4. The above alleged methods, acts and practices of the respondent, Emil Pollak, trading as New Art Plating Company, are and have been in violation of the standards of fair competition as set forth in said Code of Fair Competition. Such violation of such standards in the aforesaid transactions in interstate commerce, and which affect interstate commerce in the manner set forth above, are in violation of Section (3) of the National Industrial Recovery Act, and they are unfair methods of competition in commerce within the meaning of the Federal Trade Commission Act as amended.

ORDER TO CEASE AND DESIST

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 717) the Federal Trade Commission on March 25, 1935, issued its complaint against the above named respondents, in which it is alleged that the respondents are and have been using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act. On June 10, 1935, the respondents filed their amended answers to the said complaint, wherein the respondents consent that the Federal Trade Commission may make, enter and serve upon them, in accordance with the provisions of paragraph (b) of Rule V of the Rules of Practice of the Commission, an order to cease and desist from the practices alleged in the complaint in connection with the sale in interstate commerce of silverware, and the Commission being fully advised in the premises:

It is now ordered, That the respondents, Vardi of London, Inc., and Emil Vardi, individually and trading as Vardi of London, their respective officers, agents, representatives, servants and employees, in the course of or in connection with the sale or distribution of silverware in interstate commerce, and that the respondent, Emil Pollak, individually and trading as New Art Plating Co., his officers, agents, representatives, servants and employees, in the course of or in connection with the sale or distribution of silverware in interstate commerce, or in the course of or in connection with the preparation of silverware for such interstate sale or distribution, cease and desist:

(1) From directly or indirectly using or causing to be used, or aiding or abetting others to use or cause to be used, the English hall-

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mark for silverware or any hallmark, stamp, brand, label or other mark or device upon any such silverware which simulates or imitates such English hallmark, unless such silverware has been manufactured in England and has been submitted to Goldsmith's Hall of England and has met the standards prescribed thereby for use of the English hallmark.

(2) From directly or indirectly using or causing to be used, or aiding or abetting others to use or cause to be used, upon or in connection with any such silverware any mark, stamp, brand or other device which represents or indicates directly or by implication that such silverware has been manufactured in England or has been submitted to Goldsmith's Hall of England, or has met the tests or requirements prescribed by Goldsmith's Hall of England, or is silverware of a certain hallmark, grade, quality, standard, design or manufacture when such is not true in fact.

It is further ordered, That the charges set out in count 2 of the complaint be and they are, hereby, dismissed.

It is further ordered, That the respondents, Vardi of London, Inc., and Emil Vardi, individually and trading as Vardi of London, and Emil Pollak, individually and trading as New Art Plating Co., within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to desist hereinbefore set forth.

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IN THE MATTER OF
JAMES KELLEY

MODIFYING CEASE AND DESIST ORDER

Docket 1610. Order, June 15, 1935

Order granting motion of Commission's chief counsel to modify a cease and desist order entered against said respondent in Docket 1610, on April 7, 1930, 13 F. T. C. 284, 290, prohibiting certain misrepresentations by said respondent, his representatives, etc., in connection with the sale of fountain pens, as hereinbelow set forth.¹

Mr. Martin A. Morrison for the Commission.

Koenig, Bachner & Koenig, of New York City, for respondent.

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In the above-entitled matter, there was this day submitted for the consideration of the Commission:

¹ The entire order against respondent in said case, charged and found to have practiced various unfair methods of competition in connection with the conduct of a mail-order jobbing business in fountain pens, pencils, and specialties purchased from manufacturers and resold to street fakers and peddlers, and doing no manufacturing, though assembling certain of the pens dealt in, and with only a few employees, as reported in 13 F. T. C. 284 et seq., follows as thus modified:

It is now ordered, That respondent, James Kelley, his representatives, agents, servants and employees forthwith cease and desist from—

(1) Representing that he is a manufacturer of fountain pens, pencils and specialties, until and unless said James Kelley engages in the actual manufacturing of fountain pens, pencils and specialties.

(2) Representing that the business of the said James Kelley is that of a large mail order concern, unless and until the volume of business done by the said James Kelley is such as is usually done by a large mail order concern.

(3) Representing that purchasers from the said James Kelley save the "middleman's profit", until and unless said James Kelley manufactures and sells directly to his customers such articles manufactured entirely by him;

(4) Using the name "Iridium" on any part of fountain pens sold by him, until and unless the pen points of such fountain pens are tipped with iridium;

(5) Supplying his customers with fictitious price tags, in the shape of rings to encircle said fountain pens, bearing the figures \$2.50, \$7, \$8, \$10 or any other sum, and supplying his customers with fictitious price tags in any other form;

(6) Assisting, abetting and advising by the use of fictitious price tags and fictitious prices the resale by his customers of fountain pens sold by him to them;

(7) Furnishing his customers with coupons advertising that ultimate purchasers of fountain pens from such customers may obtain such fountain pens at a large reduction for a short time only from a so-called "regular price", stated in such coupons to be of a much greater amount than the price asked in pretended partial consideration of the surrender of said coupons;

(8) Representing the pen points of his fountain pens as being "Warranted 14K", "Warranted" or "14K", until and unless said pen points are 14 carat gold.

(9) Using as a trade name for fountain pens or for pencils the name "Waterson" or any other name in sound or appearance simulating the name "Waterman", or the name of any other manufacturer of fountain pens or of pencils, or any trade name under which any other fountain pens or pencils are commonly known and sold by any other producer or, dealer in, fountain pens or pencils.

(10) Simulating barrel, levers or cap clips or any other part or parts of fountain pens or of pencils manufactured by L. E. Waterman Company or by any other manufacturers of fountain pens or of pencils.

And it is hereby further ordered, That said respondent, James Kelley, shall on or before the first day of August, A. D. 1935, file with this Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist issued by the Federal Trade Commission in the above-entitled proceeding on the seventh day of April, A. D. 1930, as the said order is amended hereby.

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A motion filed in the above-entitled proceeding on the 27th day of May, A. D. 1935, by W. T. Kelley, chief counsel for the Commission, asking that the Commission make and enter in said Docket No. 1610 an order modifying the certain cease and desist order made and entered in said proceeding on the 7th day of April, 1930, in the particulars in said motion to modify specifically set forth.

It appearing that said motion to modify said cease and desist order was on the 28th day of May, A. D. 1935, duly and regularly submitted to the Commission for consideration; that on said day the Commission made and entered in said Docket No. 1610 a certain order, wherein the Commission fixed 2 o'clock p. m. on Monday the 10th day of June, A. D. 1935, at the office of the Commission in the City of Washington, D. C., as the time and place when and where said motion to modify said order would be taken for consideration and action by the Commission; that the Commission as a part of said order so made and entered on the 28th day of May, A. D. 1935, directed the secretary of the Commission to serve due notice upon respondent James Kelley of the filing and pendency of said motion to modify, and of the time and place when and where said motion to modify would be taken up by the Commission for consideration and action; that as a part of said order and as a part of said notice so to be given to respondent by the secretary, the respondent was commanded to appear at said time and place and show cause, if any he has, why said motion to modify should not be sustained by the Commission, or why said order to cease and desist should not be modified as prayed in said motion so filed by the chief counsel; that a copy of the chief counsel's said motion to modify, and a copy of the Commission's said order were by the secretary incorporated in a written notice of the time and place so fixed by the Commission for the consideration of said motion and for action thereon, and said notice was duly served upon the respondent by the secretary; and that attorneys Koenig, Bachner and Koenig, of 70 Pine Street, New York, N. Y., filed with the Commission on May 8, 1935, a written appearance and answer for and on behalf of respondent James Kelley and as his counsel herein; Now, therefore, said motion to modify said cease and desist order, together with said appearance and answer thereto so filed by said counsel for respondent, are now submitted to, and taken up by, the Commission for consideration and action.

The Commission having fully considered the same and being fully advised in the premises, it is ordered:

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1. That said motion to modify said cease and desist order be, and the same hereby is, sustained.

2. That said order to cease and desist heretofore, to wit: April 7, 1930, made entered and issued by the Commission in said Docket No. 1610, be, and the same hereby is, modified and amended in the several particulars hereinafter enumerated, to wit:

1. That said paragraph (9) of said order be amended to read as follows, to wit:

(9) Using as a trade name for fountain pens or for pencils the name "Waterson" or any other name in sound or appearance simulating the name "Waterman", or the name of any other manufacturer of fountain pens or of pencils, or any trade name under which any other fountain pens or pencils are commonly known and sold by any other producer of, or dealer in, fountain pens or pencils.

2. That said paragraph (10) of said order be amended to read as follows, to wit:

(10) Simulating barrel, levers or cap clips or any other part or parts of fountain pens or of pencils manufactured by L. E. Waterman Company or by any other manufacturers of fountain pens or of pencils.

3. That the last paragraph of said order be amended to read as follows, to wit:

And is hereby further ordered, That said respondent, James Kelley, shall on or before the first day of August, A. D. 1935, file with this Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist issued by the Federal Trade Commission in the above-entitled proceeding on the seventh day of April, A. D. 1930, as the said order is amended hereby.

IN THE MATTER OF
DANIEL WALCOFF, DOING BUSINESS AS INTERSTATE
CLOTHING COMPANY, TRANSCONTINENTAL CLOTH-
ING MANUFACTURERS, ETC.

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

Docket 2242. Complaint, Oct. 29, 1934—Decision, June 17, 1935

Where an individual engaged under various trade names in the sale and distribution of men's ready-to-wear clothing, which he purchased from the manufacturers, ready-made and completely finished, and ordered only in "regular" sizes, with no variations, and in inadequate quantities to provide a sufficient stock from which at all times to supply all sizes of the various samples, even in the "regular" sizes, or to enable him properly to fit his customers, which he rarely altered, and did not alter so as to fit as well as clothing usually sold by a ready-to-wear store, and which he sold through agents, called "dealers", who took customer's order, were compensated by receipt, as commission of latter's down payment, and transmitted said order to him, for shipment, by mail, C. O. D. balance, of the clothing ordered, and with place of business consisting of a room used as office and for storage of said clothing and for shipment therefrom by mail to the purchasers, and with office girl and person engaged in such shipping, his only two employees;

In pursuance of a system of business and a method of competition which involved the practice of changing, from time to time, the trade name employed by him and under which he knowingly took advantage of the misrepresentations of his agents, to the detriment of his customers and his own profit, and, notwithstanding frequent notice thereof, took no adequate measures to prevent such misrepresentations or to advise customers thereof other than to insert in contract and receipt form, which the customer usually had no opportunity to read before signing the order and making the down payment, notice that the garments were "kept in stock" and provision intended to relieve himself from misrepresentations of his agents—

- (a) Represented that he operated, owned, or controlled a manufacturing establishment through use of such trade names as Transcontinental Clothing Manufacturers, Interstate Tailoring Company and Lucky Stripe Tailoring Company, and through describing himself as a manufacturer in the order blanks, receipts, and other printed matter used in effecting sales, notwithstanding fact that he neither owned, operated, nor controlled any factory, establishment or place in which the clothing was made, nor had in his employ persons who made the clothing dealt in by him, none of the operations in the manufacture of such clothing was conducted in his place of business or any other place under his direction, supervision, or control, said clothing was cut and made for him by manufacturers on contract and delivered fully made, and at no stage in the processes involved did the goods or partially completed garments pass through his place of business;
- (b) Represented through use of word "Tailoring" and through said agents or so-called "dealers", and the order forms furnished them, with illustrated

directions for taking eight different measurements similar to those taken by tailors, that the garments were tailor-made or made to the purchaser's individual measure, notwithstanding fact that clothing in question was ready-made and completely finished when delivered to him, and failed to advise prospective purchasers as to the facts other than by the aforesaid general statement in contract and receipt form to the effect that garments in question were "kept in stock";

- (c) Represented to prospective customers through said agents that the clothes were made of all-wool cloth, and, in some cases, displayed through them, high-grade all-wool samples superior in quality to those furnished by him, and falsely represented through them that the prices at which said clothing was offered were introductory or advertising prices, or gave other false reasons for their low price, facts being that such clothing was not made of all-wool material or high-grade cloth, but consisted, mostly, of all-cotton material or of cotton with a small mixture of wool, and in many cases was of very poor quality, and the prices charged were the usual and regular prices fixed by said individual;
- (d) Filled orders sent in, in a great number of cases, by sending clothing, which, in material, pattern, or color differed from that ordered by the customer or was inferior to the sample exhibited by the salesman and which, in many cases, varied in a number or all of the aforesaid respects, and supplied, in some instances, suits, the pieces of which failed to match, and, in some cases, filled orders with a garment which differed from that ordered, and frequently sent customers suits and garments which varied widely from those specified, and were wholly unsuited to the wearer; and
- (e) Made very few refunds to customers, who mostly became discouraged after unsatisfactory negotiations and gave up efforts to get adjustments, and failed to refund the money paid, in some cases in which customers refused to accept substitute garments offered in exchange, pursuant to his practice of offering garments, in response to complaints, as unsatisfactory, usually, as the original shipment, and made it a general practice not to refund any of the down payment to the salesman, in cases in which C. O. D. payments for balance had been returned;

With tendency and capacity to confuse, mislead, and deceive members of the public into the belief that he owned, operated, or controlled an establishment in which clothing was made, his clothing was all wool and tailor-made or made to individual measure, and would fit the customer and be of the material, pattern, and color selected from samples, and that orders given would be filled by sending garments of the kind and description ordered, and to induce members of the public to order said clothing and pay therefor because of the erroneous beliefs thus engendered, and divert trade to him from competitors, including those who in no wise misrepresent their product in the particulars or manner above set forth or otherwise, or use such methods, and to their substantial injury and prejudice, and with the effect of defrauding his customers, in that they were sent articles of clothing of a kind and description which they did not order or intend to buy and which, in many cases, they could not use:

Held, That such practices, under the conditions and circumstances set forth, were all to the injury and prejudice of the public and competitors, and constituted unfair methods of competition in commerce, in violation of the provisions of Section 5.

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Mr. Harry D. Michael for the Commission.

Obermeier & Gardener, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that Daniel Walcoff, doing business at various times under various trade names including Interstate Clothing Company, Transcontinental Clothing Manufacturers, Nation Wide Clothing Company, Coast to Coast Clothing Company, Interstate Trousers Company, Specialty Clothing Company, and Interstate Tailoring Company, as well as other trade names, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. That said respondent, Daniel Walcoff, trading under one or another of the trade names as aforesaid, as well as other trade names, is now and has been for more than two years last past engaged in the sale and distribution in interstate commerce of men's ready-made clothing, with his office and principal place of business in the City of New York in the State of New York. That said respondent in the course and conduct of his said business causes his said clothing, consisting of men's suits, trousers, overcoats, and topcoats, to be transported in interstate commerce from his said place of business in New York to, into, and through States of the United States other than New York to various and numerous persons in such other States to whom said clothing is or has been sold.

PAR. 2. That during the time above mentioned, other individuals, firms, and corporations in various States of the United States are and have been engaged in the sale and distribution in interstate commerce of men's clothing, consisting of suits, trousers, overcoats, and topcoats, and such other individuals, firms, and corporations have caused and do now cause their said clothing, when sold by them, to be transported from various States of the United States to, into, and through States other than the State of origin of the shipment thereof. Said respondent has been, during the aforesaid time, in competition in interstate commerce in the sale of his said clothing with such other individuals, firms, and corporations.

PAR. 3. That said respondent in his order blanks, in his receipts and elsewhere in his printed matter describes himself as a manufac-

turer of clothing. That in the trade name most recently used by respondent, to wit, Transcontinental Clothing Manufacturers, and in a previous trade name used by him, to wit, Interstate Tailoring Company, it was and is represented thereby that respondent operates or owns or controls a manufacturing tailoring establishment. That, in truth and in fact, respondent did not during said period and does not now own, operate, or control a factory or place where clothing is manufactured or made, nor does he have nor has he had during said period persons in his employ who make the clothing which he sells. That respondent's sole place of business used in the conduct of his business as aforesaid is a combined office and storeroom where the ready-made clothing which he sells is stored and from which it is shipped out to the persons to whom it is sold. That the only persons in his employ in the conduct of said business are a girl or woman who attends to the office work and a boy or young man who attends to shipping out the said ready-made clothing.

PAR. 4. That respondent, in conducting the sale of his ready-made clothing, makes use of salesmen who are designated as dealers but who, for all practical purposes, are the agents and representatives of respondent. That such so-called dealers receive as payment for their services the down payments made by purchasers which are in fact commissions on such sales. That respondent furnishes his said representatives with sample kits, order forms, and receipts, and fixes the prices at which his said clothing is to be sold. That orders are signed by the ultimate purchaser and not by the so-called dealer and are forwarded to respondent and accepted by him as orders from the customers. That such orders are filled by respondent by direct shipment to the purchaser by C. O. D. mail without the intervention of the so-called dealer in any way. That many of such representatives of respondent have been accustomed to and do represent to prospective customers that respondent's clothes are made of all-wool cloth, and that they are tailor-made or made to the purchaser's individual measure. That, in truth and in fact, respondent's clothing is not made of all-wool cloth and is not tailor-made or made to the purchaser's individual measure but is procured by respondent in large quantities in stock sizes and not even minor alterations are made to conform to the purchaser's measurements.

That respondent, in the order forms furnished by him, provides for numerous measurements to be taken for the clothing ordered and thereby causes the customer to believe that the clothing offered for sale is made to measure and contributes to and encourages the misrepresentations of the salesmen. That many of said salesmen have represented on numerous occasions that the prices at which respond-

ent's clothing is sold are introductory or advertising prices or that they are below the regular or usual prices when, in fact, the prices charged are the usual and regular prices at which respondent's said clothing is sold. That respondent is well aware of all of such misrepresentations and practices used by his salesmen and has done nothing to prevent the same or to inform prospective purchasers thereof before orders are signed and payments made. That respondent has sought to relieve himself from liability for such misrepresentations and practices by restrictive provisions in his form of receipt.

PAR. 5. That respondent, in filling orders sent in by his salesmen, as aforesaid, in a great number of cases has filled the same by sending clothing of different material, pattern, or color from that ordered, or of inferior material to the sample shown. In some cases the different pieces of suits have not matched in material, pattern, or color. In some cases orders have not been filled as given, but an article of clothing different from that ordered has been sent to the purchaser. In a great number of cases suits and other articles of clothing have been sent to purchasers in sizes widely at variance from the sizes ordered and wholly unsuited to the wearer. That, in many of such cases, when complaint is made, respondent offers to make exchanges, but the exchanges are usually as unsuitable and unsatisfactory to the customers in one or more of the particulars as aforesaid as were the original shipments. That in some cases where customers have refused to accept substitute garments, respondent has failed to make refund of the money paid.

PAR. 6. That the representations of respondent and his salesmen as aforesaid have had and do have the tendency and capacity to confuse, mislead, and deceive members of the public into the belief that respondent owns or operates or controls an establishment where clothes are made, that his clothing is all-wool and that it is tailor-made or made to individual measure, that clothing ordered will fit the customer and will be of the material, pattern, and color as selected from sample, and that orders given will be filled by sending garments of the kind and description ordered, when such are not the facts.

That respondent's practices in filling orders as aforesaid result in defrauding his customers in that they are sent articles of a kind and description which they did not order or intend to buy.

That said representations of respondent and his salesmen have the tendency and capacity to induce members of the public to order respondent's clothing and to pay money therefor because of the erroneous beliefs engendered as above set forth, and to divert trade to respondent from competitors engaged in the sale of men's clothing in

interstate commerce. That respondent has been enabled to continue his practices as herein set out by frequent change of the trade name under which he operates.

PAR. 7. The above acts and things done by respondent are all to the injury and prejudice of the public and the competitors of respondent in interstate commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served its complaint upon the respondent, Daniel Walcoff, doing business under the various trade names as above set forth, charging him with the use of unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

Respondent having entered his appearance and filed his answer to said complaint, hearings were had and evidence was introduced in support of the allegations of said complaint and in opposition thereto before a trial examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon this proceeding came on for final hearing, and counsel for the Federal Trade Commission and counsel for respondent having submitted briefs, and the matter having been set down for oral argument before the Commission, and counsel for respondent having failed to appear after due notice of the same, the matter is now considered upon the record and upon the briefs filed without oral argument, and the Commission, having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Daniel Walcoff, was, at the time of issuance of the complaint and during the period of time in which hearings were conducted in this case, engaged in the sale and distribution in interstate commerce of men's ready-to-wear clothing with his office and principal place of business located in the City of New York in the State of New York. Respondent had been so engaged in said business for a period of five years or more prior to the is-

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suance of complaint herein. Respondent has conducted said business under various trade names among which were those named in the title hereof, to wit: Interstate Clothing Company, Transcontinental Clothing Manufacturers, Nation Wide Clothing Company, Coast to Coast Clothing Company, Interstate Trouser Company, Specialty Clothing Company, and Interstate Tailoring Company. For the most part, said names were used at different times and one trade name succeeded another in the conduct of the sale of respondent's clothing.

The said name "Interstate Clothing Company" appears to have been used by respondent in certain transactions such as banking relations and relations with the clothing industry during the greater part of said period. It was also used as a trade name in the sale of clothing for considerable time. The trade name "Transcontinental Clothing Manufacturers" was the last trade name used generally by respondent in the sale of clothing. The trade name "Interstate Trouser Company" was used by respondent for a time in the sale of trousers only. Other trade names used by respondent were "Grand Clothing Company" and "Lucky Stripe Tailoring Company." Respondent, in the course and conduct of his business, has caused his said clothing, consisting of men's suits, trousers, overcoats, and topcoats, to be transported in interstate commerce from his place of business in the State of New York to, into, and through States of the United States other than the State of New York to various and numerous persons in such other States to whom such clothing has been sold.

PAR. 2. During the period of time above mentioned, other individuals, firms, and corporations in various States of the United States are and have been engaged in the sale and distribution in interstate commerce of men's clothing consisting of suits, trousers, overcoats, and topcoats, and such other individuals, firms, and corporations have caused and do now cause their said clothing, when sold by them, to be transported from various States of the United States to, into, and through States other than the State of origin of the shipment thereof. The respondent has been, during the aforesaid time, in direct and substantial competition in interstate commerce in the sale of his said clothing with such other individuals, firms, and corporations.

PAR. 3. Respondent, in the conduct of his business, as aforesaid, has represented that he operates, owns, or controls a manufacturing tailoring establishment. Some of such representations have been made through the use of some of the names under which he has conducted his business, to wit: Transcontinental Clothing Manufactur-

ers, Interstate Tailoring Company, and Lucky Stripe Tailoring Company. In truth and in fact, respondent did not during the period when such representations were made own, operate, or control a factory, establishment, or place where clothing was manufactured nor has he had, during such period, persons in his employ who made the clothing which he has had for sale. None of the operations in the manufacture of the clothing which he has had for sale was conducted in his place of business or at any other place under his direct supervision or control. During said period respondent's place of business has consisted of one room, used as an office and also as a storeroom where the ready-made clothing, which he has had for sale, has been stored, and from which it has been shipped out by mail to the persons to whom it has been sold. The only persons in his employ have been an office girl, who attended to the office work, and a young man, who attended to shipping out the ready-made clothing. Said clothing was cut and made for respondent by clothing manufacturers on contract and delivered fully made. At no stage of such processes did the goods or partially completed garments pass through respondent's place of business.

In addition to the aforesaid representations by use of said trade names, respondent has described himself as a manufacturer in the order blanks, receipts, and other printed matter used by him in effectuating sales.

PAR. 4. Respondent, in conducting the sale of his ready-made clothing, has made use of salesmen who are designated by him as "dealers". Such salesmen received as payment for their services the down payments made by purchasers. Respondent furnished said salesmen with sample kits, printed order forms and receipts. He fixed the prices at which his clothing was to be sold. Orders were signed by the ultimate purchasers and not by the so-called "dealers". Such signed orders were forwarded to respondent by the salesmen and were accepted and acted upon by respondent as orders from the purchasers by sending clothing by C. O. D. mail direct to such purchasers and receiving the C. O. D. payments made as a result thereof. Such so-called "dealers" had no connection with the transactions after mailing the orders taken to respondent. Such salesmen were, at least for the purposes of this case, the representatives or agents of respondent and were not independent dealers, as usually understood. They bought nothing from respondent. They neither acquired title to the clothing ordered nor did they handle the same in any way. The down payments received by said salesmen were, in fact, commissions on the sales they made.

Many or all of the representatives of respondent were accustomed to and did falsely represent to prospective customers that respondent's clothes were made of all-wool cloth, that they were tailor-made or made to the purchaser's individual measure. On the order forms furnished by respondent were directions for taking eight different measurements, together with pictures illustrating the same. These measurements are similar to those taken by tailors in taking measurements for suits made to individual measure. Such directions and pictorial representations imply that the clothing for which such measurements are taken will be made to measure. Other instructions given on the order form add to the implication that the clothing will be tailor made or made to measure. In some cases, respondent's salesmen have used high grade all-wool samples superior in quality to the samples furnished by respondent.

The clothing shipped by respondent to his customers was not tailor-made or made to measure. It was not made of all-wool material or of high-grade cloth. In most cases it was made of all-cotton material or of cotton with a small admixture of wool. Much of it was a very poor quality. Many of respondent's salesmen were accustomed to falsely represent and did represent to prospective customers that the prices at which respondent's clothing was offered were introductory or advertising prices, contrary to the facts, or gave other false reasons to explain the low price thereof, when in fact the prices charged were the usual and regular prices as fixed by respondent.

Respondent is and has been at all times well aware of the practices of his salesmen in thus falsely representing his clothing, as aforesaid. He has continually received complaints of such misrepresentations from customers detailing the nature of such misrepresentations as aforesaid. Such complaints have numbered well into the hundreds during the course of only a few months. Respondent has taken no adequate measures to prevent such practices or to advise customers of the same or to properly adjust their transactions on account thereof. The only measure taken to inform prospective purchasers in this regard is a general statement in the contract and receipt forms to the effect that the garments involved "are kept in stock" and also a provision intended to relieve respondent from liability for misrepresentations. These provisions are rarely read by customers and then only after the transaction has been closed. Customers usually have no opportunity to read such contract and receipt before the order is signed and the down-payment made.

Respondent's clothing is ready-made and completely finished when delivered to him. He orders it only in what is called "regular" sizes.

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He has no variations in any one size. No alterations are made by him except in very rare instances. He has not kept a sufficient stock on hand at all times to supply all sizes of the various samples, even in regular sizes. He has not carried a stock of clothing so as to enable him properly to fit his customers nor has he had alterations made so that the clothing would fit as well as that usually sold by a ready-to-wear store.

PAR. 5. Respondent, in filling orders sent in by his salesmen, as aforesaid, in a great number of cases has filled the same by sending clothing of different material, pattern, or color from that ordered or of inferior material to the sample shown, and, in many cases, variations have occurred in a number or all of such particulars. In some cases, the different pieces of suits have not matched. In some cases orders have not been filled as given but an article of clothing different from that ordered has been sent to the purchaser. In a large number of cases suits and other articles of clothing have been sent to purchasers in sizes widely at variance from the sizes ordered and wholly unsuited to the wearer. When complaints have been made in all of such cases as aforesaid, respondent has pursued the practice of offering to make exchanges, but the clothing sent in exchange has been usually as unsuitable and unsatisfactory to the customer in one or more of the particulars, as aforesaid, as were the original shipments. Refunds of money paid have been very few. In most cases as hereinbefore set out, customers of respondent have become discouraged after unsatisfactory negotiations and have given up efforts to get adjustments. In some cases where customers have refused to accept substitute garments, respondent has failed to make refund of the money paid. Respondent has made it a general practice not to refund any of the money paid to salesmen in cases where C. O. D. payments have been refunded.

PAR. 6. Respondent's practices as heretofore outlined became so general and continued for such a period of time as to become a system of business and a method of competition. He has knowingly and deliberately, over a period of years, taken advantage of the misrepresentations and fraudulent practices of his salesmen to the detriment of his customers. He has knowingly profited by such transactions and has continued to do so after notice of the practices involved had been specifically brought to his attention.

PAR. 7. The representations of respondent and his salesmen, as aforesaid, have the tendency and capacity to confuse, mislead, and deceive members of the public into the belief that respondent owns or operates or controls an establishment where clothing is made; that respondent's clothing is all-wool and that it is tailor-made or

made to individual measure; that clothing ordered from him will fit the customer and will be of the material, pattern, and color as selected from samples; and that orders given will be filled by sending garments of the kind and description ordered, when such are not the facts. He had advised his customers that the respondent's practices in filling orders and his methods as aforesaid result in defrauding his customers in that they are sent articles of clothing of a kind and description which they did not order or intend to buy and which, in many cases, they cannot use, because of the said representations of respondent and his salesman have the tendency and capacity to induce members of the public to order respondent's clothing and to pay money therefor because of the erroneous beliefs engendered as above set forth, and to divert trade to respondent from competitors engaged in the sale of men's clothing in interstate commerce. Respondent has been enabled to continue his said practices and methods by changes of the trade names under which he has operated.

¶ PAR. 8. There are and have been among the competitors of respondent in the sale of men's clothing, those who in no wise misrepresent their clothing in the particulars or in the manner as above set forth or otherwise, or who in no wise use the methods of respondent as above set forth, and respondent's acts and practices as hereinbefore set forth have tended to divert business to respondent from his competitors, to the substantial injury and prejudice of such competitors.

CONCLUSION. The practices of said respondent, under the conditions and circumstances described in the foregoing findings, are all to the injury and prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce and are in violation of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

This proceeding having been duly heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, the testimony in support of the charges of said complaint and in opposition thereto and briefs filed herein, oral argument not having been had on account of failure of counsel for respondent to appear at the time and place fixed therefor after notice thereof duly given, and the Commission having made its findings as

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(in Order)

to the facts and its conclusion that said respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That respondent, Daniel Walcott, doing business under his own name or under any trade name including the following, to wit: Interstate Clothing Company, Transcontinental Clothing Manufacturers, Nation Wide Clothing Company, Coast to Coast Clothing Company, Interstate Trouser Company, Specialty Clothing Company, Interstate Tailoring Company, Grand Clothing Company, and Lucky Stripe Tailoring Company or directly or indirectly in any other way, name or manner, his agents, representatives, servants, and employees, in connection with the sale, offering for sale, or distribution in interstate commerce and in the District of Columbia of men's clothing, do cease and desist from:

1. Representing directly or by implication or by the name under which his business is conducted or through salesman or by other means that he is manufacturer of men's clothing unless and until he owns and operates or controls and operates a clothing manufacturing establishment.

2. Representing directly or by implication or by the use of the word "Tailoring" or word of like significance in the name under which his business is conducted, or otherwise, that he conducts a tailoring establishment unless and until he owns and operates or controls and operates an establishment where tailor-made clothing is made to the customer's individual measure.

3. Representing directly or by implication or through salesman that the material from which his clothing is made is all-wool or of high-grade or that his clothing is tailor-made or made to measure, unless and until such are the facts, or accepting and failing to refund money collected by him and his salesman where money has been paid as a result of such misrepresentations where refunds have been demanded by customers who have returned the clothing received or who offer to do so.

4. Filling orders for clothing with articles other than those ordered or in sizes wholly unsuited to the customers and at unreasonable variance from the sizes ordered.

It is further ordered, That respondent within 60 days from and after the date of the service upon him of this order shall file with the Commission a report in writing, setting forth in detail the manner and form in which he is complying with the order to cease and desist hereinabove set forth.

and place of business in the city of Chicago in said State.

Complaint

20 F. T. C.

IN THE MATTER OF
DEWAN LABORATORIES, INC.

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

Docket 2259. Complaint, Dec. 11, 1934—Order, June 19, 1935

Consent order requiring respondent, its officers, agents, etc., in connection with the sale or offer of any depilatory in interstate commerce, forthwith to cease and desist from—

- (a) Using the word "Permanent" or any other word of similar meaning, or the word "Perm-Nent" or any other word coined from the word "Permanent" as the name of any depilatory made by it;
- (b) Representing in advertisements, catalogs, bulletins, or otherwise that such depilatory devitalizes the hair roots and causes destruction of the hair bulb;
- (c) Representing as aforesaid that such depilatory will not cause any burning, smarting, or irritation of the skin; provided that nothing herein shall prohibit the use of such representations if coupled in all cases with the statement in advertisements, and every other form of printed matter, that such burning, etc., will not be caused only if directions furnished by it for the use of such depilatory are strictly followed; or
- (d) Representing as aforesaid that such depilatory gives lasting results and retards further regrowth of the hair, unless such representations be qualified by appropriate language to the effect that such depilatory will not, in all instances, give lasting results or retard such further regrowth.

Mr. Edward L. Smith and Mr. John W. Hilldrop for the Commission.

Petit, Olin & Overmyer, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that DeWan Laboratories, Inc., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said 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, DeWan Laboratories, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business in the city of Chicago in said State. It is now

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and for more than two years last past has been engaged in the manufacture and sale, in commerce between and among the various States of the United States, of a certain alleged depilatory, and has caused and still causes said alleged depilatory, when sold by it, to be shipped from its place of business in the city of Chicago aforesaid to the purchasers thereof located in the State of Illinois and in States other than the State of Illinois, and there is now and has been at all times hereinafter mentioned a constant current of trade and commerce by said respondent in said alleged depilatory between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business the respondent is now and has been at all times hereinafter mentioned in substantial competition with other corporations and with partnerships, firms, and individuals engaged in interstate commerce in the sale and distribution of products offered for sale and sold for the purposes for which respondent's alleged depilatory is advertised and represented, as hereinafter set forth, to be useful and effective.

PAR. 2. The said alleged depilatory manufactured and sold by the respondent, as hereinabove mentioned, has been and is designated by it as "DeWans Perm-Nent Hair Remover", "DeWans Permanent Hair Remover", and "DeWans Special Facial Hair Remover". In the course and conduct of its business, as described in paragraph 1 hereof, the respondent, in soliciting the sale of the aforesaid alleged depilatory manufactured and sold by it, has falsely represented and still falsely represents in its advertisements, circulars and catalogs, and in other printed matter distributed by it generally through the mails, among other things, as follows:

- (1) "A facial hair remover that gives lasting results."
- (2) "It actually gives lasting results."
- (3) "Without smarting or reddening the skin, even the least little bit."
- (4) "Definitely discourages further regrowth."
- (5) "No burning or smarting."
- (6) "Really lessens the regrowth."
- (7) "* * * not irritating even in the slightest."
- (8) "Won't smart or irritate."
- (9) "Doesn't smart or irritate."
- (10) "It immediately dissolves and removes all surface hair and a portion of each hair below the skin surface. But DeWans does not attack or irritate the skin and does not make the skin rough, red or coarse."
- (11) "DeWans tends to devitalize the roots of the hairs to which it is applied, to discourage hair growth. If regrowth does

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and come it is the soft, downy hair you knew as a child, not the stiff, coarse stubble charged to razors and other less modern ways. (12) "Leave on for four minutes, but if, using on the arms or legs where the hair has been coarsened by shaving, leave on five to seven minutes." Then, rinse off gently with water. (13) "Before using DeWans, put a clock in front of you and time your treatment. Apply whenever necessary. Usually, every two or three weeks will suffice, but more frequent and consistent treatments, oftener than once every four days, will tend to more quickly bring about a change in the hair growth and in time should cause a destruction of the bulb." (14) "Don't attempt to use DeWans on your eyebrows. A small portion of the powder or paste might get into your eyes and cause a very painful irritation. Take your bottle of DeWans to a beauty shop, where, with your head in a reclining position and your eyes covered, the eyebrow treatment may be safely given." (15) "Don't allow the water used in applying DeWans to get into your eyes. Hood and Janothum products are important." (16) "Don't apply DeWans twice the same day or the same area." (17) "Always apply cold cream after removing DeWans."

PAR. 3. In truth and in fact said alleged depilatory, when used on the face or skin, will not permanently remove hair therefrom or definitely discourage or lessen future regrowth or devitalize the hair roots; and in truth and in fact said alleged depilatory will not safely remove hair from the body or accomplish any of the results represented by the respondent, as set out in paragraph 2 hereof, or any of such results; and in truth and in fact the use of the said alleged depilatory will cause burning, smarting, and irritation and will have other deleterious effects upon the skin or parts treated.

PAR. 4. The "aforesaid misrepresentations of the respondent, as set out in paragraph 2 hereof, and its use of the words 'Permanent' and 'Perm-Nent' as a part of the name of its alleged depilatory have the capacity and tendency to mislead and deceive and have misled and deceived purchasers and prospective purchasers into the beliefs that the misrepresentations made by the respondent, as set out in paragraph 2 hereof, are true and it purchase such alleged depilatory from respondent in such beliefs, thereby trade has been diverted to respondent from competitors engaged in interstate commerce in the sale of depilatories, and as a consequence thereof substantial injury has been done by the respondent to substantial competition in interstate commerce and interstate commerce of the United States."

4241.102

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PAR. 15. The above alleged acts and things done by respondent are all to the injury and prejudice of the public and competitors of the respondent in interstate commerce (within the meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914,

ORDER TO CEASE AND DESIST

The respondent herein having filed its answer to the complaint in this proceeding and having subsequently filed with this Commission its motion that it be permitted to withdraw its said answer and that it be permitted to file in lieu thereof as a substituted answer, the draft of a proposed substituted answer annexed to the said motion; and the Commission having duly considered the said motion—

It is hereby ordered, That the said motion be and the same is hereby granted; that the said answer be and the same is hereby withdrawn; and that the said proposed substituted answer be, and the same is hereby filed in lieu of the said answer so withdrawn.

And the said respondent in and by its said substituted answer having waived hearings on the charges set forth in the complaint in this proceeding, and having stated in its said substituted answer that it does not contest the said proceeding, and having consented in its said substituted answer that the Commission, without trial, without evidence, and without findings as to the facts or other intervening procedure, might make, enter, issue and serve upon the said respondent, an order to cease and desist from the methods of competition charged in the complaint; and the Commission being fully advised in the premises—

It is hereby further ordered, That the respondent, DeWan Laboratories, Inc., its officers, agents, servants, and employees in connection with the sale or the offering for sale by said DeWan Laboratories, Inc., of any depilatory in interstate commerce, forthwith cease and desist from using the word "Permanent" or any other word of similar meaning, and the word "Perm-Nent" or any other word coined from the word "permanent" as the name of any depilatory manufactured and sold by it.

And it is hereby further ordered, That the said DeWan Laboratories, Inc., its officers, agents, servants, and employees in connection with the sale or the offering for sale by said DeWan Laboratories, Inc., of any depilatory in interstate commerce, forthwith cease and desist from representing in and by advertisements, catalogs, bulletins, or in any other way:

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1. That such depilatory devitalizes the hair roots and causes destruction of the hair bulb;

2. That such depilatory will not cause any burning, smarting or irritation of the skin; provided that nothing herein shall prohibit the use of such representations if the representations in all cases are coupled with the statement in advertisements, catalogs, bulletins, and every other form of printed matter, that burning, smarting or irritation of the skin will not be caused only if directions furnished by said DeWan Laboratories for the use of such depilatory are strictly followed;

3. That such depilatory gives lasting results and retards further regrowth of the hair unless such representations be qualified by appropriate language to the effect that such depilatory will not, in all instances, give lasting results or retard further regrowth of the hair.

And it is hereby further ordered, That the said respondent shall within 60 days from the day of the date of the service upon it of this order, file with this Commission its report in writing stating the manner and form in which it shall have complied with this order.

Syllabus

IN THE MATTER OF
 BUTTERICK PUBLISHING CO. ET AL.

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

Docket 2171. Complaint, Apr. 26, 1934—Decision, June 20, 1935

Where five corporations engaged in publication and sale of various periodicals among the States and Territories, and three corporations engaged in the sale and distribution thereof, with an aggregate business amounting to substantially more than 12,000,000 copies of each issue, and in competition with one another and with other publishers and sellers of periodicals, and also with distributors of the much lower priced, second-hand or back-number magazines, including two dealers in whole back-number magazines, distributed by them in eastern Massachusetts through some eight hundred retailers, 90 percent of whom dealt also in current periodicals; acting through a committee created by them to deal with the matter—

(a) Notified some thirteen wholesalers distributing to the above involved territory, 90 percent. of whose retailer outlets therein were included among those through whom the two aforesaid dealers distributed their whole back-number magazines, that they, the retailers, would no longer be permitted to handle both back-number magazines and current issues, and must choose between the two, and that if they continued dealing in the former, they would be denied supplies of the latter;

With the result that about half of the retail dealers affected in said territory by the aforesaid notice and demand, duly transmitted to and made upon, them by said wholesalers, discontinued dealing in the back-number periodicals of the said two distributors thereof, and they had difficulty in securing other retail outlets; and

(b) Sought to interfere with the sources of supply of back-number distributors by bringing pressure to bear upon the Salvation Army and other sources of supply of back-number magazines, to prevent their sale to those concerns distributing the same to retail dealers;

With the result that competition between them and their wholesalers on the one hand, and said distributors of back-number magazines on the other, was substantially lessened, and the public, to a substantial extent, was deprived of the benefits that would normally flow therefrom;

Held, That such acts and practices, under the circumstances set forth, were to the injury of competitors and to the prejudice of the public, and constituted unfair methods of competition in violation of Section 5.

Mr. Robt. N. McMillen for the Commission.

Mr. Manheim Rosenzweig, of New York City, for Butterick Publishing Co. and International Circulation Co., Inc., who also appeared along with *Mr. Chester W. Johnson*, of Minneapolis, Minn., and *Mr. John F. McGovern*, of Washington, D. C., for Midwest Distributors, Inc.

Mr. Joseph Schultz, of New York City, for McFadden Publications, Inc., and Street & Smith Publications, Inc.

Complainant

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Mr. Robert W. Maloney, of New York City, for Frank A. Munsey Co.

Burroughs & Brown, of New York City, for Pictorial Review Co. Whitman, Ransom, Coulson & Goetz, of New York City, for S-M News Co.; Inc.

COMPLAINT

Pursuant to the provisions of an Act of Congress entitled "An Act to create a Federal Trade Commission to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that Butterick Publishing Co., McFadden Publications, Inc., Frank A. Munsey Co., Street & Smith Publications, Inc., Pictorial Review Co., International Circulation Co., Inc., S-M News Co., Inc., and Midwest Distributors, Inc., hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in 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:

Respondents, Butterick Publishing Co., McFadden Publications, Inc., Frank A. Munsey Co., and Street & Smith Publications, Inc., are all corporations organized, existing, and doing business under and by virtue of the laws of the State of New York, each with its principal office and place of business in the City and State of New York.

Respondent, Pictorial Review Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business in the City of New York in the State of New York. All of the said respondents are now and for more than three years last past have been engaged in printing and publishing periodical magazines and other periodical publications and in selling the same between and among the various States and Territories of the United States and the District of Columbia. They have caused, and still cause, such periodical magazines and other publications when sold by them to be shipped to the purchasers thereof located in the State of New York and in other States of the United States, the Territories thereof, and the District of Columbia, and there is now and has been for more than three years last past a constant current of trade and commerce in such periodical magazines and other periodical publications, between and among the various States of the United States and the District of Columbia. In the course and conduct of their business hereinbefore described, the said respondents are now and

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have been for more than three years last past in competition in interstate commerce with other publishers of and dealers in periodical magazines and other periodical publications. **Par. 2.** Respondents; International Circulation Co., Inc., and S. M. News Co. are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, each with its principal office and place of business in the City of New York in said State. Respondent; Midwest Distributors, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of South Dakota, with its principal office and place of business in the City of New York in the State of New York. The said respondents named in this paragraph are now and for more than three years last past have been engaged in the distribution and sale of periodical magazines and other periodical publications between and among the various States and Territories of the United States and the District of Columbia. They have caused and still cause, said periodical magazines and other publications sold by them to be shipped to the purchasers thereof located in the State of New York and in States other than the State of New York, and there is now and has been for more than three years last past a constant current of trade and commerce in such periodical magazines and other periodical publications between and among the various States and Territories of the United States and the District of Columbia. In the course and conduct of their business hereinbefore described the said respondents are now and have been for more than three years last past in competition in interstate commerce with other sellers and distributors of and dealers in periodical magazines and other periodical publications. **Par. 3.** The periodical magazines and other periodical publications printed, published, and sold by the respondents named in paragraph 1 hereof and the periodical magazines and other periodical publications sold by the respondents named in paragraph 2 hereof, have a wide circulation throughout the United States and there is a constant demand by the purchasing public for such periodical magazines and other periodical publications, wherefore retailers of periodical magazines and other periodical publications find it advisable and necessary to deal therein. **Par. 4.** There are now and have been for more than three years last past among the competitors in interstate commerce of the respondents named in paragraphs 1 and 2 hereof sellers and dealers in second-hand and used periodical magazines and other periodical publications. Such dealers in used and second-hand periodical magazines and other periodical publications purchase their supplies

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thereof in various States of the United States other than the States in which they have their respective places of business, and cause such second-hand and used periodical magazines and other periodical publications to be shipped to themselves in interstate commerce to their respective places of business. After acquiring such second-hand and used periodical magazines and other periodical publications, said dealers therein sell the same between and among the various States and Territories of the United States and the District of Columbia. They have caused, and still cause, said second-hand and used periodical magazines and other periodical publications sold by them to be shipped to the purchasers thereof located in the States in which such dealers have their respective places of business and in other States of the United States and Territories thereof and the District of Columbia. There is now and has been for more than three years last past a constant current of trade and commerce in such second-hand and used periodical magazines and other periodical publications between and among the various States and Territories of the United States and the District of Columbia, and such dealers in second-hand and used periodical magazines and other periodical publications use the same kinds and class of dealers through which their used and second-hand periodical magazines and other periodical publications ultimately reach the ultimate buyer as do the respondents named in paragraphs 1 and 2 hereof. These are chiefly proprietors of book stores, magazine stores and news stands in railroad stations, hotels and other places.

PAR. 5. In November 1931 or thereabouts, the respondents named in paragraphs 1 and 2 hereof, for the purpose of eliminating competition between themselves in the sale in interstate commerce of periodical magazines and other periodical publications and dealers in used and second-hand periodical magazines and other periodical publications, entered into and have since carried out and are still carrying out an agreement, combination, understanding, and conspiracy among themselves to destroy the business done in the United States in the purchase and sale in interstate commerce of used and second-hand periodical magazines and other periodical publications. Pursuant to and for the purposes of carrying out the said agreement, combination, understanding and conspiracy, the said respondents named in paragraphs 1 and 2 hereof have done, among other things, the following:

(a) By agreement among themselves have eliminated competition between the sale of periodical magazines and other periodical publications sold by them, and used and second-hand periodical

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magazines and other periodical publications sold by dealers therein.

(b) Agreed to refuse, in pursuance of such agreement, have refused and still refuse to continue to sell periodical magazines and other periodical publications dealt in by them to dealers, whether at wholesale or retail, in used and second-hand periodical magazines and other periodical publications.

(c) Agreed to discontinue, and in pursuance of such agreement have discontinued to sell periodical magazines and other periodical publications dealt in by them to dealers, whether wholesale or retail, in second-hand and used periodical magazines and other periodical publications unless such dealers would agree to discontinue the sale of used and second-hand periodical magazines and other periodical publications.

(d) Sought and secured agreements from dealers in periodical magazines and other periodical publications dealt in by them by which agreements such dealers, whether wholesale or retail, agreed not to sell used and second-hand periodical magazines and other periodical publications.

(e) Refused and still refuse to continue to sell periodical magazines and other periodical publications dealt in by them to dealers, whether wholesale or retail, of used and second-hand periodical magazines and other periodical publications because such dealers refuse to discontinue the sale of used and second-hand periodical magazines and other periodical publications.

PAR. 6. The aforesaid alleged acts and practices of, all of the respondents are all to the prejudice of the public and to the prejudice of competitors of the respondents; have a dangerous tendency to and have actually hindered and prevented competition in the sale between and among the various States of the United States, the Territories thereof and the District of Columbia of periodical magazines and other periodical publications; have tended to create in the said respondents a monopoly in the sale in interstate commerce of periodical magazines and other periodical publications; have unreasonably restrained interstate commerce in periodical magazines and other periodical publications, and particularly in used and second-hand periodical magazines and other periodical publications; have restricted competition in interstate commerce and the common liberty to engage therein; and constitute unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes"; approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties and for other purposes", the Federal Trade Commission issued and served its complaint on respondents, Butterick Publishing Company, a corporation; McFadden Publications, Inc., a corporation; Frank A. Munsey Company, a corporation; Street & Smith Publications, Inc., a corporation; Pictorial Review Company, a corporation; International Circulation Company, Inc., a corporation; S-M News Company, Inc., a corporation; and Midwest Distributors, Inc., a corporation, charging them with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act.

Respondents entered their appearances and filed answers, and hearings were had before a duly qualified examiner of the Federal Trade Commission, at which evidence was introduced in support of the complaint. Thereafter, the respondents filed motion to dismiss the complaint upon the ground that the evidence introduced in support thereof failed to establish any cause of action against the respondents, which motion was by the Commission, on due consideration, overruled, saving to respondents the privilege of renewing said motion at time of final argument on the merits. Thereafter, at a hearing, convened for the introduction of evidence by the respondents, they announced that they waived the introduction of any evidence and stood upon their motion to dismiss. Thereafter briefs were filed in support of the complaint and by the respondents in opposition thereto and the matter was orally argued before the Commission. And now the Commission, having duly considered the whole record and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS:

PARAGRAPH 1. The Butterick Company, known also as the Butterick Publishing Company, McFadden Publications, Inc., Frank A. Munsey Company and Street & Smith Publications, Inc. are corporations organized under the laws of the State of New York with their principal places of business at the City of New York in said State. The Pictorial Review Company is a corporation organized under the laws of the State of Delaware with its principal place of business at the City of New York in the State of New York. The International Circulation Company, Inc., and S-M

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News Company are corporations organized under the laws of the State of New York, each with its principal place of business in New York in said State. Midwest Distributors, Inc., is a corporation organized under the laws of the State of South Dakota with its principal place of business at the City of New York in the State of New York. The corporations above named were in existence, and their principal places of business were located as above stated, at all times hereinafter mentioned.

Respondents The Butterick Company, McFadden Publications, Inc., Frank A. Munsey Company, Street & Smith Publications, Inc., and Pictorial Review Company are, and at all times hereinafter mentioned have been, engaged in the printing and publishing of periodical magazines and other periodical publications and in selling the same into and among the various States and Territories of the United States and the District of Columbia. During all such time they have caused such magazines and other publications when sold by them to be shipped to the purchasers thereof located in the State of New York and in other States of the United States, the Territories thereof, and the District of Columbia, and there is now and has been during all such time a constant current of trade and commerce in such periodical magazines and other publications between and among the various States and Territories of the United States and the District of Columbia.

The respondents International Circulation Company, Inc., SIM News Company, and Midwest Distributors, Inc., are now, and during all times hereinafter mentioned have been, engaged in the sale and distribution of periodical magazines and other periodical publications between and among the various States and Territories of the United States and the District of Columbia, and have caused said magazines and other publications so sold by them to be shipped to the purchasers thereof located in the State of New York and in other States and Territories and have at all times hereinafter mentioned, carried on a constant trade and commerce in such publications between and among the various States and Territories of the United States and the District of Columbia. Hereinafter when the word "publishers" is used it shall be deemed to include also these last-named three respondents. All of said respondents are now, and at all times hereinafter mentioned have been, in substantial competition in interstate commerce among themselves and with other publishers and sellers of magazines and other periodical publications, and with the distributors of second-hand or back-number magazines as hereinafter set forth. The aggregate business of these respondents amounts to substantially more than twelve million copies of each issue.

PAR. 3. In the distribution of the magazines so published and sold by the respondent, sales are principally to so-called "distributors" or wholesalers located throughout the United States, although to a minor extent sales are made direct to retailers, consisting principally of drug stores, news stands, etc., located in those districts not served by wholesalers. The legal relationship between respondents, with the exception of McFadden Publications, Inc., and Midwest Distributors, Inc., and said wholesalers and retailers is that of vendor and vendee. In the two excepted cases the relationship is that of consignor and consignee.

At all times hereafter mentioned and for an undetermined period prior thereto it has been the custom of the industry and trade that all magazines remaining unsold in the hands of the wholesaler and retailer would be returned to the publishers from whom received and the wholesaler or retailer reimbursed or credited in the amount paid therefor, so that the publishers received payment only for those magazines actually sold by their wholesalers and retailers during the current period, that is, from the time they were placed on sale until the succeeding issue of the same magazines were placed on sale. Also, it has been and is the custom that the wholesaler would reimburse or give credit to the retailer for all magazines remaining unsold in his hands at the end of the current period, so that the wholesaler receive payment only for those magazines which are sold by the retailer during the current period. Also, it is and has been the custom that instead of shipping back the entire unsold magazine, the cover only is returned, as a token that the same remains unsold, and wholesalers and retailers have been and are privileged to sell the remaining body of the magazine as waste paper, for their own account. This body of the magazine, from which the cover has been removed and for which the wholesaler or retailer has been reimbursed, is known in the industry and trade as a "coverless" magazine, or "coverless return" or "return".

PAR. 4. At all times hereinafter mentioned there were and now are throughout the United States, persons, firms, and corporations hereinafter to be referred to as back-number distributors, engaged in the business of collecting noncurrent cast-away magazines, particularly story magazines, and selling them to retail dealers, consisting principally of news stands, drug stores and other retailers handling current magazines. These noncurrent magazines, hereinafter to be referred to as "back-numbers", regularly retail at from one-third to one-fourth the sale price of the same magazine while current. The sources of supply of these back-number distributors were and are principally waste paper dealers located throughout the

United States and, to a minor extent, such organizations as the Salvation Army, junk dealers, etc. The back-number magazines have been and are in active, substantial competition with the current numbers.

PAR. 5. Among the back-number distributors above referred to were Back Number Wilkins, Inc., a corporation, and Eastern Back Number Magazine Company located, respectively, at Danvers and at Lynn and East Saugus, Mass. These two distributors at the times hereinafter mentioned dealt only in entire back-number magazines, as distinguished from coverless magazines or returns, and were the principal distributors of back-number magazines in eastern Massachusetts, and in the early part of the year 1932 had an aggregate of approximately 800 retail dealers in that area, 90 percent of whom were dealers in current magazines. The principal sources of supply of these two back-number distributors were waste paper concerns located in Massachusetts, New Hampshire, New York, Michigan, Pennsylvania, Ohio, Illinois, and Missouri. When second-hand magazines were purchased by them from these sources of supply, they were regularly shipped from said States to them at their respective places of business in Massachusetts.

PAR. 6. The retail dealers of the back-number distributors above named handled only entire, covered back-numbers and did not sell or offer for sale coverless magazines or returns.

PAR. 7. In eastern Massachusetts the magazines of respondents were distributed by some thirteen wholesalers located in Boston and other towns and cities in that area. Respondents regularly sold and delivered current magazines from their respective places of business, located as aforesaid, to these wholesalers, who in turn supplied the retail dealers in that area, including 90 percent of the retailers handling the magazines of the back-number distributors hereinabove named.

PAR. 8. On or about November 5, 1931, representatives of the respondents, at a meeting in the City of New York, formed the Special Committee on Magazine Distribution, consisting of a representative from each of the respondent companies, to take action for and on account of respondents. The formation of said Special Committee, and the action thereafter taken by it, was with the full knowledge and consent of the responsible executive officers of the respondent corporations. Thereafter and beginning on the first of April 1932, and continuing until about August 15 of that year, the Special Committee dispatched letters to all of the wholesalers in eastern Massachusetts handling the magazines of the respondents demanding that they inform their retail dealers that they, the retail dealers, would

no longer be permitted to handle back-number magazines; that if they handled back-number magazines they would be denied further supplies of current issues. Upon receipt of these letters, the said wholesalers notified their retail dealers, both in writing and orally, that they would be required to choose between handling current issues and back-number magazines; that if they continued to handle back-number magazines they would no longer be supplied with current issues.

PAR. 9. Because of the above-mentioned demands of respondents upon their wholesalers and of the notices of the wholesalers to their retailers, approximately half the retail dealers handling both the current issues of respondents and the back-number magazines of the two distributors named discontinued handling back-number magazines, and said distributors had difficulty in securing other dealers for the same reason.

PAR. 10. During the same period of time the above-mentioned letters to wholesalers in eastern Massachusetts were being dispatched the Special Committee on Magazine Distribution was also seeking to interfere with the sources of supply of the back-number distributors, by bringing pressure to bear upon the Salvation Army and other sources of supply to prevent the sale of back-number magazines to those concerns distributing the same to retail dealers.

PAR. 11. The result of the joint action of these respondents, as hereinabove found, has been and is to substantially interfere with and lessen competition between respondents and their wholesalers, on the one hand, and the said distributors of back-number magazines, on the other hand, thus depriving the public to a substantial extent of the benefits that would normally flow from such competition.

CONCLUSION

The acts and practices of the respondents under the circumstances hereinabove found and set forth, have been and are to the injury of their competitors and prejudicial to the public interest and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of the Act of Congress hereinabove entitled

ORDER TO CEASE AND DESIST

This proceeding, being before the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, the evidence taken, the briefs and argument of counsel for the Commission and for the respondents

And the Commission having made its findings as to the facts and its conclusion drawn therefrom that the respondents have violated the provisions of an Act of Congress approved September 26, 1914,

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entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" -

It is now ordered, That the respondents, The Butterick Company, also known as the Butterick Publishing Company, a corporation, McFadden Publications, Inc., a corporation, Frank A. Munsey Company, a corporation, Street & Smith Publications, Inc., a corporation, Pictorial Review Company, a corporation, International Circulation Company, Inc., a corporation, S. M. News Company, a corporation, and Midwest Distributors, Inc., a corporation, their agents, employees, and representatives, in connection with the sale and distribution of magazines and other periodical publications in interstate commerce, forthwith cease and desist from the following acts and practices:

- (a) By agreement, combination, or concert of action among themselves, or between, or among, any two or more of them, or with others, preventing or seeking to prevent any person, firm or corporation lawfully owning the same, from selling to distributors thereof or dealers therein, second-hand or back-number magazines or other periodical publications; or
- (b) By agreement, combination, or concert of action among themselves, or between or among any two or more of them, or with others, preventing, or seeking to prevent, or causing or seeking to cause wholesalers of magazines to prevent newsdealers or other retailers of magazines from buying and selling or dealing in second-hand or back-number magazines or other periodical publications, or in any manner interfering with the business of distributors of or dealers in such second-hand or back-number magazines or other periodical publications.

Provided, however, That nothing in this order contained shall prevent respondents from making such agreement or arrangements with, or taking such action against, wholesalers and retailers of their magazines or other periodical publications, as may be reasonably necessary to prevent unsold publications, for which respondents have reimbursed or credited such wholesalers or retailers, from being again placed on sale as reading matter.

It is further ordered, That within 30 days from the date of the service of this order upon respondents, they shall file with the Commission a report in writing setting forth in detail the manner and form in which they shall have complied with this order.

IN THE MATTER OF
CURT A. SCHWARTZ, INDIVIDUALLY AND TRADING AS
AKRON CANDY COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933

Docket 2251. Complaint, Nov. 24, 1934—Decision, June 21, 1935

Where an individual engaged in the manufacture and sale of candy, including "break-and-take" assortments composed of individually wrapped penny suckers or lollipops, within a few of which there was concealed the statement "super dum-dum free", together with a number of larger pieces, thus referred to, for sale by the retailer to the consumer under a plan by which the chance purchaser of one of the aforesaid individually wrapped penny suckers, containing said legend, received one of the larger pieces free, and the purchaser of the last penny sucker in the assortment also received, without charge, one of said larger pieces—

Sold said assortments, together with explanatory display cards for the advice of the ultimate consumer and retailer, to wholesalers and jobbers, so packed and assembled that they could be displayed for sale and distribution to the purchasing public, as hereinbefore set forth, without alteration or rearrangement, and could not be resold to the public except as a lottery or gaming device, without unwrapping, unpacking, disassembling, or rearranging the same, with the knowledge and intent that said candy would and should thus be resold by the retailer; in competition with concerns who regard such a method of sale and distribution as morally bad and one which encourages gambling, and especially among children, and as injurious to the industry in merchandising a chance or lottery rather than candy, and providing retailers with the means of violating the laws of the several States, and who refuse to sell candy so packed and assembled that it can be resold to the public by lot or chance;

With the result of putting at a disadvantage, by reason of their said refusal to adopt such a practice, said competitors, who can compete on even terms only through following the same to meet the demand and preference for such candy from certain dealers and small retailers, chiefly, and that of the children, from the frequently nearby schools, who purchase said candy by reason of the gambling feature connected therewith, in preference to the so-called "straight goods", and who constitute by far the largest class of purchasers and consumers thereof, and who supply the principal demand therefor, some competitors began the sale and distribution of candy for resale to the public by lot or chance, to meet the constant demand and preference for candy thus sold, trade was diverted to said individual from competitors declining to follow such a practice, to their prejudice and injury and that of the public, freedom of fair and legitimate competition in the industry concerned was restrained and harmed, sales of those dealing in the "straight goods" products exclusively were markedly decreased whenever and wherever the competition of the break-and-take assortments, with their necessarily smaller pieces or inferior quality, was encountered, by reason, principally, of the gambling or lottery feature connected with

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the latter, gambling among children was taught and encouraged, and the public policy of many of the States, some of which have laws making the operation of lotteries and gambling devices penal offenses, was violated: *Held*, That such acts and practices, under the conditions and circumstances set forth, were all to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. Henry C. Lank for the Commission.

Mr. Walter C. Hughes, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that Curt A. Schwartz, individually and trading as the Akron Candy Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and in the Act of Congress approved June 16, 1933, known as the National Industrial Recovery Act, and it appearing to said 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:

Count 1

PARAGRAPH 1. Respondent is an individual and trades as the Akron Candy Company, with his principal office and place of business in the City of Akron, State of Ohio. Respondent for several years last past has been engaged in the manufacture of candy and in the distribution thereof to wholesale dealers and jobbers located at points in the various States of the United States, and causes said products when so sold to be transported from his principal place of business in the City of Akron, Ohio, to purchasers thereof in the State of Ohio, and to other purchasers thereof in other States of the United States and in the District of Columbia at their respective places of business, and there is now and has been for more than two years last past a constant course of trade and commerce by the said respondent in such candy in the State of Ohio and between and among the States of the United States and in the District of Columbia. In the course and conduct of the said business, respondent is in competition with other individuals, partnerships, and corporations engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States and within the District of Columbia.

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PAR. 2. In the course and conduct of his business, as described in paragraph 1 herein, respondent sells and has sold to wholesale dealers and jobbers certain packages or assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

One of the said assortments of candy is composed of pieces of candy of uniform size, shape, and quality, together with a number of larger pieces of candy, which larger pieces of candy are to be given as prizes to purchasers of said pieces of candy of uniform size, shape, and quality in the following manner:

The said pieces of candy of uniform size, shape, and quality in said assortment are contained within wrappers and a small number of the said wrappers have reprinted thereon the words "super dum dum free," but the remaining pieces of said candy do not have any such printing on the wrapper. The printed language above referred to is effectively concealed from the prospective purchaser until a selection or purchase has been made and the wrapper removed. The pieces of candy of uniform size, shape, and quality in said assortment retail at the price of 1 cent each or five for 5 cents, but the purchaser who procures a piece of said candy having the words "super dum dum free" printed thereon is entitled to receive and is to be given free of charge one of the said larger pieces of candy herebefore referred to. The purchaser of the last piece of candy in said assortment is entitled to receive and is to be given free of charge one of the said larger pieces of candy. The aforesaid purchaser of said candies who procures a candy with a wrapper bearing the words "super dum dum free" is thus to procure one of the said larger pieces of candy wholly by lot or chance.

Respondent in these instances furnished the said wholesale dealers and jobbers a display card with said assortment to be used by retail dealers in offering said candies for sale. The display card bears a legend or legends informing the purchaser that said candy is being sold in accordance with the sales plan above mentioned. The said display card furnished by respondent also bears a notice to the retail dealer as to the manner in which the assortment of the "super dum dum" should be displayed and how it should be presented.

PAR. 3. The wholesale dealers and jobbers resell said assortments of candy to retail dealers and said retail dealers expose said assortments of candy for sale and sell said candies to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his products in accordance with the sales plan hereinabove set forth, as a means of inducing purchasers thereof.

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to purchase respondent's said product in preference to candies offered for sale and sold by his competitors, to the detriment of the purchasing public. The sale of said candy to the purchasing public as above alleged involves a game of chance, of the sale of a chance to procure such larger pieces of candy in the manner alleged. Such a game of chance and, likewise, along with the sale of such candy of such chance to procure such larger pieces of candy in the manner alleged, are contrary to the established public policy of the several States of the United States and the District of Columbia and of the Government of the United States, and in many of the States of the United States are contrary to local criminal statutes. In evidence in proof of this fact, many persons, firms, and corporations who make and sell candy in competition with respondent, as above alleged, are unwilling to offer for sale or sell candies so packed and assembled as above alleged, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, or the sale with such candy of a chance to procure larger pieces of candy by chance; and such competitors refrain therefrom.

Many dealers in and ultimate purchasers of candies are attracted by respondent's said method and manner of packing said candy and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said candy so packed and sold by respondent in preference to candies offered for sale and sold by said competitors of the respondent who do not use the same or an equivalent method. Many dealers in candies are induced to purchase said candies so offered for sale and sold by respondent in preference to all others because said ultimate purchasers thereof give preference to respondent's said candies on account of said game of chance so involved in the sale thereof. The use of said method by respondent has the tendency and capacity unfairly, and because of said game of chance alone, to divert to respondent trade and custom from his said competitors who do not use the same or an equivalent method; to exclude from said candy trade all competitors who are unwilling to and do not use the same or an equivalent method; to lessen competition in said candy trade, and to tend to create a monopoly of said candy trade in respondent and such other distributors of candy as use the same or an equivalent method; and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by respondent has the tendency and capacity unfairly to eliminate from said candy trade all actual competitors, and to exclude therefrom all potential competitors, who do not adopt and use said method or an equivalent method that is contrary to public policy and

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to criminal statutes as above alleged. Many of said competitors of respondent are unwilling to adopt and use said method, or any method involving a game of chance or the sale of a chance to win something by chance, because such method is contrary to public policy or to the criminal statutes of certain of the States of the United States, or because they are of the opinion that such a method is detrimental to public morals and to the morals of the purchasers of said candy, or because of any or all of such reasons.

PAR. 7. The aforementioned method, acts, and practices of the respondent are all to the prejudice of the public and of respondent's competitors as hereinabove alleged. Said method, acts, and practices constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

Count 2

PARAGRAPH 1. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 1 of count 1 of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 1 of count 1 of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 1 of said count 1 were repeated verbatim.

PAR. 2. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 2 of count 1 of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 2 of count 1 of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 2 of said count 1 were repeated verbatim.

PAR. 3. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 3 of count 1 of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 3 of count 1 of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the sev-

eral averments of said paragraph 3 of said count 1 were repeated verbatim.

PAR. 4. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 4 of count 1 of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 4 of count 1 of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 4 of said count 1 were repeated verbatim.

PAR. 5. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 5 of count 1 of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 5 of count 1 of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 5 of said count 1 were repeated verbatim.

PAR. 6. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 6 of count 1 of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 6 of count 1 of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 6 of said count 1 were repeated verbatim.

PAR. 7. Under and pursuant to the provisions of Section 2 of said National Industrial Recovery Act, the President of the United States on the 16th day of June 1933 by his executive order in writing appointed Hugh S. Johnson to be administrator for Industrial Recovery under Title I of said Act.

Under and pursuant to the provisions of said National Industrial Recovery Act, National Confectioners' Association of the United States, Inc., a corporation, as a representative of the Candy Manufacturing Industry, submitted to the President of the United States an application for the approval of a code of fair competition for the Candy Manufacturing Industry.

Said application was duly referred to said Hugh S. Johnson, as such administrator, by and before whom such further action was taken and proceedings were had that on the 9th day of June 1934

said Johnson, as such administrator, submitted a certain Code of Fair Competition for the Candy Manufacturing Industry to the President of the United States, together with his written report containing an analysis of said code of fair competition, and with his recommendations and findings with respect thereto, wherein said administrator found that the said code of fair competition complies in all respects with the pertinent provisions of Title I of the National Industrial Recovery Act, and that the requirements of classes (1) and (2) of subsection (c) of Section 3 of said Act had been met. The concluding paragraphs of said report are in the following words, to wit:

It is the purpose of this paragraph to state that the Code of Fair Competition for the Candy Manufacturing Industry has been submitted to the President of the United States for his approval and signature. The Code is designed to remove and prevent obstructions to the free flow of interstate and foreign commerce, which tend to diminish the amount thereof and will provide for the general welfare by promoting the distribution of goods and services, by promoting the growth of a high level of organization of industry for the purpose of cooperative action among the trade groups, by inducing and maintaining united action of labor and management under adequate governmental sanctions and supervision by maintaining fair competitive practices, by promoting the fullest possible utilization of the present productive capacity of industries, by avoiding undue restrictions of production (except as may be temporarily required), by increasing the consumption of industrial and agricultural products through increasing purchasing power, by reducing and relieving unemployment, by improving standards of labor, and by rehabilitating industry.

(a) The Code is not designed to and will not permit monopolies or restraints of trade in violation of the provisions of said Title I of said Act, including without limitation, subsection (a) of Section 3, Subsection (a) of Section 7, and Subsection (b) of Section 10 thereof; and that the applicant association is a trade association truly representative of the aforesaid industry; and that said association imposes no unreasonable restrictions on admission to membership therein.

(c) The Code is not designed to and will not permit monopolies or restraints of trade in violation of the provisions of Section 7 of said Act, and will not operate to discriminate against any enterprise; and those engaged in other steps of the economic process have not been deprived of the right to be heard prior to approval of said Code.

It is recommended, therefore, that the Code be approved and published pursuant to the provisions of said Title I of the National Industrial Recovery Act, and that the President of the United States, as a representative of the United States, do so. Whereafter, and on the 11th day of June, 1934, the President of the United States made and issued his certain written executive order wherein and whereby he adopted and approved the report, recommendations, and findings of said administrator, and ordered that the said code of fair competition be, and the same thereby was, approved, and by virtue of said National Industrial Recovery Act the provisions of said code became, and still are, the standard of

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fair competition for the Candy Manufacturing Industry, and became and still are binding upon every member thereof, except that said code of fair competition when so approved was approved with a proviso that Rule 19, Article VIII thereof, was stayed for a period of 10 days. Successive subsequent administrative orders were severally duly made and entered by which the provisions of said Rule 19, Article VIII, were stayed for fixed periods designated in said several orders, the latest date to which said Rule 19 was stayed being July 30, 1934. On July 30, 1934, said Rule 19, Article VIII, became in full force and effect. On and since said July 30, 1934, the said code of fair competition, including said Rule 19, Article VIII, has been and is in full force and effect and became, and still is, binding upon every member of said Industry.

Rule 19, Article VIII, of said Code provides as follows:
 No member of the industry shall sell or distribute the type of merchandise commonly referred to as "break and take", "picks", or "draws", or merchandise of a like character, serving the same purpose.
 Among persons engaged in said trade and among the purchasing public the language of said Rule 19 is understood to refer to and include candies offered for sale and sold by the method used by respondent as above alleged. The language of said Rule 19 does refer to and include candies so offered for sale and sold. Candies offered for sale and sold by the method so used by respondent are of the type of merchandise commonly referred to as "break and take", "picks", or "draws", and are merchandise of a like character, serving the same purpose, within the intent and meaning of said Rule 19, Article VIII.

Notwithstanding said provisions of said Rule 19, Article VIII, of said code of fair competition, respondent has continued to and does use said method of competition hereinabove alleged and described, and has been and is offering for sale and selling to wholesaler and retail dealers, jobbers and retail dealers certain packages or assortments of candy, so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers, thereof as hereinabove alleged and set forth.
 The above alleged method, acts, and practices of the respondent in violation of the standard of fair competition for the Candy Manufacturing Industry of the United States both in transactions in interstate commerce and in transactions affecting interstate commerce, constitute unfair methods of competition in commerce within the meaning of Section 5 of an Act of Congress as amended, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served a complaint in two counts upon the respondent, Curt A. Schwartz, individually and trading as Akron Candy Company, charging in count 1 of the aforesaid complaint that the said respondent had been and was using unfair methods of competition in commerce as "commerce" is defined in said act of Congress and charging in count 2 of the aforesaid complaint that the said respondent had been and was using unfair methods of competition in commerce in violation of the Act of Congress approved June 16, 1933, known as the National Industrial Recovery Act, and thereafter respondent duly filed answer thereto. Testimony and evidence were received, duly recorded and filed in the office of the Commission and subsequently the proceeding came regularly on for a final hearing before the Commission on said complaint, answer, testimony, and evidence, briefs of counsel for the Commission and counsel for the respondent. Oral argument was waived and the Commission having duly considered the matter and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this, its findings as to the facts as to count 1 of the aforesaid complaint and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Curt A. Schwartz, is an individual doing business under the trade name Akron Candy Company and has his principal office and place of business in the City of Akron, State of Ohio. Respondent is now and for several years last past has been engaged in the manufacture of candy in Akron, Ohio, and in the sale and distribution of said candy to wholesale dealers and jobbers in the State of Ohio and in other States of the United States. He causes said candy when sold to be shipped and transported from his principal place of business in the State of Ohio to purchasers thereof in Ohio and in the States of the United States other than the State of Ohio. In so carrying on said business, respondent is and has been engaged in interstate commerce and is and has been in active competition with other individuals and with corporations and partnerships engaged in the manufacture of candy and in the sale and distribution of same in interstate commerce.

PAR. 2. Among the candies which respondent manufactured, sold, and distributed at the time of the issuance of the complaint in this

case was an assortment composed of a number of small pieces of hard candy on a stick, commonly referred to as suckers or lollipops, together with a number of larger pieces of hard candy. The small pieces of candy were described by respondent as "dum dums" and the larger pieces of hard candy were described by respondent as "super dum dums." Each of the small pieces of candy were contained within wrappers and printed on a few of the wrappers were the words "super dum dum free." The wrappers were so arranged as to conceal the words "super dum dum free" from the purchasers and prospective purchasers until a selection had been made and the wrapper removed. The small pieces of candy in said assortment retailed at the price of 1 cent each but the purchaser who procured a piece of said candy having the words "super dum dum free" printed thereon was entitled to receive and was to be given free of charge one of the said larger pieces of candy referred to above. The purchaser of the last small piece of candy in said assortment was entitled to receive and was to be given free of charge one of the said larger pieces of candy. The aforesaid purchaser of said candy who procured a piece of candy having the words "super dum dum free" printed on the wrapper thereof was thus to procure one of the said larger pieces of candy wholly by lot or chance.

Respondent furnished said wholesale dealers and jobbers a display card with the assortment of candy referred to above to be used by retail dealers in offering said candies for sale, which display card bore a legend or statement informing the prospective purchaser that said assortment of candy was being sold in accordance with the sales plan above described. The said display card also bore a notice to the retail dealers as to the manner in which the assortment should be displayed. The respondent discontinued the printing of the words "super dum dum free" on the wrappers of the small pieces of candy and discontinued furnishing the display card at or about the time the complaint in this case was issued by the Commission but subsequent to the time that the Commission began its investigation of the aforementioned acts and practices of the respondent.

PAR. 3. The lottery, prize, or draw packages described in paragraph 2 above, are generally referred to in the candy trade or industry as "break and take" or "draw" packages. The packages or assortments of candy without the lottery, prize or draw features in connection with their resale to the public are generally referred to in the candy trade or industry as "straight goods." These terms will be used hereafter in these findings to describe these respective types of candy.

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PAR. 4. Numerous retail dealers purchased the assortment described in paragraph 2 above from wholesale dealers or jobbers who in turn had purchased said assortment from respondent and such retail dealers displayed said assortment for sale to the public as packed by the respondent and the candy contained in said assortment was sold and distributed to the consuming public by lot or chance.

PAR. 5. All sales made by respondent were absolute sales and respondent retained no control over the goods after they were delivered to the wholesale dealer or jobber. The assortments were assembled and packed in such manner that they could be displayed by the retail dealer for sale and distribution to the purchasing public as above described, without alteration or rearrangement. An examination of the assortment of candy described in paragraph 2 herein as packed, assembled and sold by respondent shows that said assortment could not be resold to the public by the retail dealers, except as a lottery or gaming device, unless said retail dealers unwrapped, unpacked, disassembled or rearranged the said assortment.

PAR. 6. In the sale and distribution to jobbers and wholesale dealers for resale to retail dealers of assortments of candy assembled and packed as described in paragraph 2 herein, respondent had knowledge that said candy would be resold to the purchasing public by retail dealers by lot or chance and he packed and assembled such candy in the way and manner described so that it might and should be resold to the public by lot or chance by said retail dealers.

PAR. 7. The sale and distribution of candy by the retail dealers by the method described in these findings is the sale and distribution of candy by lot or chance and constitutes a lottery or gaming device.

Competitors of respondent appeared as witnesses in this proceeding and testified, and the Commission finds as a fact that many competitors regard such method of sale and distribution as morally bad and, encouraging gambling, especially among children; as injurious to the candy industry, because it results in the merchandising of a chance or lottery instead of candy; and as providing retail merchants with the means of violating the laws of the several States. Because of these reasons some competitors of respondent refused to sell candy so packed and assembled that it can be resold to the public by lot or chance. These competitors are thereby put to a disadvantage in competing. Certain retailers who find that they can dispose of more candy by the "break and take" or "draw" methods; buy respondent's products and the products of others employing the same methods of sale, and thereby, trade is diverted to respondent and others using similar methods, from said competitors. Said competitors can compete on even terms only by giving the same or similar

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devices to retailers. This they are unwilling to do, and their sales of "straight goods" candy show a continued decrease. There is a constant demand for candy which is sold by lot or chance, and in order to meet the competition of manufacturers who sell and distribute candy which is sold by such methods, some competitors of respondent have begun the sale and distribution of candy for resale to the public by lot or chance. The use of such method by respondent in the sale and distribution of his candy was prejudicial and injurious to the public and his competitors, and has resulted in the diversion of trade of respondents from his said competitors, and was a restraint upon and a detriment to the freedom of fair and legitimate competition in the candy industry.

PAR. 7. The principal demand in the trade for the "break and take" or "draw" candy comes from the small retailers. The stores of these small retailers are in many instances located near schools and attract the trade of the school children. The consumers or purchasers of the lottery or prize package candy are principally children, and because of the lottery or gambling feature connected with the "break and take" or "draw" package, and the possibility of becoming a winner, it has been observed that the children purchase them in preference to the "straight goods" candy when the two types of packages are displayed side by side.

Witnesses from several branches of the candy industry testified in this proceeding to the effect that children prefer to purchase the lottery or prize package candy because of the gambling feature connected with its sale. The sale and distribution of "break and take" or "draw" packages or assortments of candy or of candy which has connected with its sale to the public the means or opportunity of obtaining a prize or becoming a winner by lot or chance, teaches and encourages gambling among children, who comprise by far the largest class of purchasers and consumers of this type of candy.

PAR. 8. The pieces of candy in the "break and take" or "draw" packages of all manufacturers of that type of candy are either smaller in size than the corresponding pieces of straight goods candy or the quality of the candy in the "break and take" or "draw" packages is poorer than that in the straight goods assortments. It is necessary to make this difference between either the size of the individual pieces of candy or the quality of the candy in order to compensate for the value of the prizes or premiums which are distributed with the "break and take" or "draw" goods.

PAR. 9. There are in the United States many manufacturers of candy who do not manufacture and sell lottery or prize assortments of candy and who sell their "straight goods" candy in interstate

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commerce in competition with the "break and take" or "draw" candy and manufacturers of the "straight goods" type of candy have noted a marked decrease in the sales of their products whenever and wherever the lottery or prize candy has appeared in their markets. This decrease in the sales of "straight goods" candy is principally due to the gambling or lottery feature indicated with the "break and take" or "draw" candy.

PAR. 10. In addition to the assortment described in paragraph 2 herein the respondent manufactured and continues to manufacture candy which he sells to wholesalers and jobbers without any lottery or chance feature.

PAR. 11. The sale and distribution of candy by lot or chance is against the public policy of many of the States of the United States and some of said States have laws making the operation of lotteries and gambling devices penal offenses.

CONCLUSION

The aforesaid acts and practices of respondent, Curt A. Schwartz, individually and trading as Akron Candy Company, under the conditions and circumstances set forth in the foregoing findings of fact are all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in commerce and constitute violations of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST, ETC.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission (in two counts, count 1 thereof charging a violation of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", and count 2 thereof charging a violation of the National Industrial Recovery Act), the answer of the respondent, the testimony taken, and the briefs filed, and the Commission having made its findings as to the facts and conclusion that as to count 1, the respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes"—

It is hereby ordered, That the respondent, Curt A. Schwartz, individually and trading as Akron Candy Company, his agents, representatives, and employees, in the manufacture, sale, and distribution in interstate commerce, of candy and candy products, do cease and desist from:

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(1) Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, candy so packed and assembled that sales of such candy to the general public are to be made or may be made by means of a lottery, gaming device, or gift enterprise.

(2) Supplying to or placing in the hands of wholesale dealers and jobbers, packages or assortments of candy which are used or may be used without alteration or rearrangement of the contents of such packages or assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy or candy products contained in said assortment to the public.

(3) Packing or assembling in the same package or assortment of candy, for sale to the public at retail, small pieces of candy together with larger pieces of candy which said larger pieces of candy are to be given as prizes to the purchaser procuring a small piece of candy contained within a wrapper bearing the words "super dum dum free" or words of similar import and effect.

(4) Furnishing to wholesale dealers and jobbers display cards either with packages or assortments of candy or candy products or separately bearing a legend or legends or statements informing the purchaser that the candy or candy products are being sold to the public by lot or chance in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

(5) Furnishing to wholesale dealers and jobbers display cards or other printed matter for use in connection with the sale of respondent's candy or candy products which said advertising literature informs the purchasers and purchasing public that upon the obtaining by the ultimate purchaser of a piece of candy contained within a wrapper bearing certain printed words that a larger piece of candy will be given free to said purchaser.

It is further ordered, That respondent, Curt A. Schwartz, individually and trading as Akron Candy Company, within 30 days after the service upon him of this order, shall file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinabove set forth.

And it is hereby further ordered, That by reason of the decision of the Supreme Court of the United States in *A. L. A. Schechter Poultry Corporation v. United States of America*, decided May 27, 1935,¹ count 2 of the complaint in this proceeding be and the same hereby is dismissed.

¹ 295 U. S. 495.

IN THE MATTER OF
BONITA COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND AN ACT OF CONGRESS APPROVED JUNE 16, 1933

Docket 2263. Complaint, Dec. 15, 1934—Decision, June 21, 1935

Where a corporation engaged in the manufacture and sale of candy including, among other break-and-take merchandise, (a) assortments of penny candies of uniform size, shape, and quality, together with a number of larger pieces or small boxes of candy, to be given as prizes to chance purchasers of a few of the aforesaid smaller pieces, the color of the enclosed, concealed centers of which differed from that of the majority, and to the purchaser of the last of said penny pieces therein contained, together with explanatory display cards for retailer's use, (b) assortments and display cards involving a similar plan in which chance selection of one of a few of the individually wrapped pieces composing the assortment, the enclosed, concealed color of which differed from that of the majority, entitled purchaser to one of the prizes, (c) assortments composed of large and small pieces, or of uniform pieces and box of candy, and push cards or punch boards, with explanatory legends, in which acquisition of large or small piece, or one, two, or more pieces, or box of candy, as case might be, was dependent upon a 5-cent chance punch and number thereby secured, and (d) assortments consisting of two boxes containing, respectively, (1) pieces of uniform size, shape and quality, the color of the enclosed, concealed centers of a few of which differed from that of the majority, and (2) larger pieces or bars of candy, the number of which corresponded approximately with that of the different colored centers in the other, so packed that they might be displayed as a single assortment in which the larger pieces were to be distributed as prizes to chance purchasers of the smaller candies with the different colored centers—

Sold such assortments, together with explanatory display cards or push cards or punch boards, as the case might be, to wholesalers and jobbers, so packed and assembled that they could be displayed for sale and distribution to the purchasing public, as hereinbefore set forth, without alteration or rearrangement, and could not be resold to the public (except in the case of said last-named two-box assortments) except as a lottery or gaming device, without unwrapping, unpacking, disassembling, or rearranging the same, with knowledge and intent that said candy would and should thus be resold by the retailer; in competition with concerns who regard such a method of sale and distribution as morally bad and one which encourages gambling, and especially among children, and as injurious to the industry in merchandising a chance or lottery rather than candy, and providing retailers with the means of violating the laws of the several States, and who refuse to sell candy so packed and assembled that it can be resold to the public by lot or chance;

With the result of putting at a disadvantage, by reason of their said refusal to adopt such a practice, said competitors, who can compete on even terms only through following the same to meet the demand and preference for such candy from certain dealers and small retailers, chiefly, and that of

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the children from the frequently nearby schools, who purchase said candy by reason of the gambling feature connected therewith, in preference to the so-called "straight goods", and who constitute by far the largest class of purchasers and consumers thereof, and who supply the principal demand therefor, some competitors began the sale and distribution of candy for resale to the public by lot or chance, to meet the constant demand and preference for candy thus sold, trade was diverted to said individual from competitors declining to follow such a practice, to their prejudice and injury and that of the public, freedom of fair and legitimate competition in the industry concerned was restrained and harmed, sales of those dealing in the "straight goods" products exclusively were markedly decreased whenever and wherever the competition of the break-and-take assortments, with their necessarily smaller pieces or inferior quality, was encountered, by reason, principally, of the gambling or lottery feature connected with the latter, gambling among children was taught and encouraged, and the public policy of many of the States, some of which have laws making the operation of lotteries and gambling devices penal offenses, was violated:

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

Mr. Henry C. Lank for the Commission.

Beach, Fathchild & Scofield, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that the Bonita Company, a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said Act of Congress, and in violation of the Act of Congress approved June 16, 1933, known as the National Industrial Recovery Act, and it appearing to said 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:

*Count 1*¹

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Wisconsin, with its principal office and place

¹ Count Two of the complaint, not published, charges respondent with violating Section 3 of the National Industrial Recovery Act and the practice of unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, in that the methods, acts and practices alleged in Count One violate the standard of fair competition for the Candy Manufacturing Industry of the United States, namely, Rule 19, Article VIII, of the code of fair competition for said industry, prohibiting the sale or distribution by any

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of business in the City of Fond du Lac, State of Wisconsin. Respondent, for more than ten years last past, has been engaged in the manufacture of candy and in the sale and distribution thereof to wholesale dealers and jobbers located at points in the various States of the United States, and causes said products when so sold to be transported from its principal place of business in the City of Fond du Lac, Wis., to purchasers thereof in other States of the United States and in the District of Columbia, at their respective places of business, and there is now and has been for more than ten years last past a course of trade and commerce by the said respondent in such candy between and among the States of the United States and in the District of Columbia. In the course and conduct of the said business, respondent is in competition with other corporations, individuals, and partnerships engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States and within the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 herein, respondent sells and has sold to wholesale dealers and jobbers various packages and assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

Certain of said packages are hereafter described for the purpose of showing the methods used by the respondent but this list is not all-inclusive of the various sales plans which the respondent has been or is using to distribute candy by lot or chance.

(a) Several of said assortments of candy are composed of a number of pieces of candy of uniform size, shape, and quality together with a number of larger pieces of candy or small packages of candy, which larger pieces of candy or small packages of candy are to be given as prizes to purchasers of said candy of uniform size, shape, and quality in the following manner:

The majority of said candies of uniform size, shape, and quality in said assortment have centers of the same color but a small number of said candies have centers of different colors. The color of the center of these candies is effectively concealed from the prospective purchasers until a selection or purchase has been made and the piece of candy broken open (other assortments use the same plan but are composed of a number of small pieces of candy, the majority of

member thereof of "break-and-take" merchandise. The averments of said count 2, paragraph 1 of which repeats the averments of paragraph 1 of count 1, are in other respects similar to those in count 2 in the complaint against Curt A. Schwartz, individually, and trading as Akron Candy Co., Docket 2251, in which case findings and order also issued as of the same date. See *supra*, at page 440.

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which are the same color but with a small number of pieces of different colors, all of which pieces are contained within wrappers and the color of the pieces of candy is effectively concealed from the prospective purchaser until a selection has been made and the wrapper removed). The said candies of uniform size, shape, and quality in said assortment retail at the price of 1 cent each, but the purchasers who procure one of the said candies having a center of a different color (or a piece of candy of a different color contained within a wrapper) than the majority of said candies, are entitled to receive and are to be given free of charge one of the said larger pieces of candy heretofore referred to. The purchaser of the last piece of candy in said assortments is entitled to receive and is to be given free of charge a larger piece of candy or a small package of candy. The aforesaid purchasers of said candies who procure a candy having a center colored differently from the majority (or a piece of candy within a wrapper colored differently from the majority) of said pieces of candy thus procure one of the said larger pieces of candy wholly by lot or chance.

Respondent furnishes to said wholesale dealers and jobbers with said assortments of candy, display cards to be used by retail dealers in offering said candies for sale, which display cards bear a legend or statement informing the prospective purchaser that the said assortments of candies are being sold in accordance with the sales plan above described.

(b) Other assortments of candy are composed of a number of bars of candy and a box of candy together with a device commonly known as a push card. The candies contained in said assortment are to be given to purchasers of pushes from said card in the following manner:

Pushes from said card are 5 cents each, and when a push is made a number or legend is disclosed. The card bears a statement or statements informing the prospective customer as to which numbers or legend receive bars of candy and the number of such bars. All purchasers of pushes from said card receive one bar of candy but certain pushes, depending upon the number or legend printed thereon, entitle the purchaser to additional bars of candy. The purchaser of the last push from said card is entitled to receive, in addition to a bar of candy, the box of candy above referred to. The numbers or legends on said card are effectively concealed from the purchasers or prospective purchasers until a push or selection has been made and the particular push separated from the card. The candy contained in said assortments is thus distributed to purchasers of pushes from said cards wholly by lot or chance.

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PAR. 3. The wholesale dealers and jobbers to whom respondent sells its assortments, resell said assortments of candy to retail dealers and said retail dealers expose said assortments for sale in connection with the aforesaid display cards or push cards and sell said candies to the purchasing public in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plans hereinabove set forth, as a means of inducing purchasers thereof to purchase respondent's said product in preference to candies offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public as above alleged, involves a game of chance or the sale of a chance to procure such larger or additional pieces of candy or packages of candy in the manner alleged. Such game of chance and the sale along with the sale of such candy of such chance to procure such larger or additional pieces of candy or packages of candy in the manner alleged are contrary to the established public policy of the several States of the United States and the District of Columbia and of the Government of the United States, and in many States of the United States are contrary to local criminal statutes.

By reason of the said facts, many persons, firms, and corporations who make and sell candy in competition with respondent as above alleged, are unwilling to offer for sale or sell candies so packed and assembled as above alleged, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, or the sale with such candy of a chance to procure larger or additional pieces of candy by chance; and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candies are attracted by respondent's said methods and manner of packing said candy and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said candy so packed and sold by respondent in preference to candies offered for sale and sold by competitors of the respondent who do not use the same or equivalent methods. Many dealers in candies are induced to purchase said candies so offered for sale and sold by respondent in preference to all others because said ultimate purchasers thereof give preference to respondent's said candies on account of said game of chance so involved in the sale thereof.

PAR. 6. The use of said methods by respondent has the tendency and capacity unfairly, and because of said game of chance alone, to divert to respondent trade and custom from its competitors who do not use the same or equivalent methods; to exclude from said candy trade all competitors who are unwilling to and do not use the

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same or equivalent methods; to lessen competition in said candy trade, and to tend to create a monopoly of said candy trade in respondent and such other distributors of candy as use the same or equivalent methods, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said methods by respondent has the tendency and capacity unfairly to eliminate from said candy trade all actual competitors, and to exclude therefrom all potential competitors, who do not adopt and use said methods or equivalent methods that are contrary to public policy and to criminal statutes as above alleged. Many of said competitors of respondent are unwilling to adopt and use said methods, or any method involving a game of chance or the sale of a chance to win something by chance, because such methods are contrary to public policy or to the criminal statutes of certain of the States of the United States, or because they are of the opinion that such methods are detrimental to public morals and to the morals of the purchasers of said candy, or because of any or all of such reasons.

PAR. 7. The aforementioned methods, acts, and practices of the respondent are all to the prejudice of the public and of respondent's competitors as hereinabove alleged. Said methods, acts, and practices constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

• REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served a complaint in two counts upon the respondent, Bonita Company, charging in count 1 of the aforesaid complaint that the said respondent had been and was using unfair methods of competition in commerce as "commerce" is defined in said act of Congress and charging in count 2 of the aforesaid complaint that the said respondent had been and was using unfair methods of competition in commerce in violation of the Act of Congress approved June 16, 1933, known as the National Industrial Recovery Act, and thereafter respondent duly filed answer thereto. Testimony and evidence were received, duly recorded and filed in the office of the Commission and subsequently the proceeding came regularly on for a final hearing before the Commission on said complaint, answer, testimony, and evidence, briefs of counsel for the Commission and counsel for the respondent. Oral argument was

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waived and the Commission having duly considered the matter and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts as to count 1 of the aforesaid complaint and its conclusion drawn therefrom:

FINDING AS TO THE FACTS

PARAGRAPH 1. Respondent, Bonita Company, is a corporation organized under the laws of the State of Wisconsin with its principal office and place of business in the City of Fond du Lac, Wis. Respondent is now and for several years last past has been engaged in the manufacture of candy in Fond du Lac, Wis., and in the sale and distribution of said candy to wholesale dealers and jobbers in the State of Wisconsin and other States of the United States. It causes said candy when sold to be shipped or transported from its principal place of business in the State of Wisconsin to purchasers thereof in Wisconsin and in the States of the United States other than the State of Wisconsin. In so carrying on said business, respondent is and has been engaged in interstate commerce and is and has been in active competition with other corporations and with partnerships and individuals engaged in the manufacture of candy and in the sale and distribution of the same in interstate commerce.

PAR. 2. Among the candies manufactured and sold by respondent were several assortments of candy each composed of a number of pieces of candy of uniform size, shape, and quality, together with a number of larger pieces of candy or small boxes of candy to be given as prizes to purchasers of said candies of uniform size, shape, and quality in the following manner:

The majority of the said pieces of candy of uniform size, shape, and quality in said assortments have centers of the same color, but a small number of said candies have centers of a different color. The color of the centers of these candies is effectively concealed from the prospective purchasers until a purchase or selection has been made and the candy broken open. The said candies of uniform size, shape, and quality in said assortments retail at 1 cent each, but the purchasers who procure one of the said candies having a center of a different color than the majority of said candies, are entitled to receive and are to be given free of charge one of the said larger pieces or small boxes of candy heretofore referred to. The purchaser of the last piece of candy in said assortment is entitled to receive and is to be given free of charge a larger piece of candy or a small box of candy. The aforesaid purchasers of said candy who procure a candy having a center colored differently from the majority of said pieces of candy

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thus procure one of the said larger pieces or small boxes of candy wholly by lot or chance.

Other assortments use the same plan as above described but are composed of a number of small pieces of candy, the majority of which are the same color but with a small number of pieces with different colors all of which pieces are contained within wrappers and the color of said pieces of candies is effectively concealed from the prospective purchasers until a selection has been made and the wrapper removed. The prospective purchasers procuring one of the said pieces of candy of a different color is entitled to receive as a prize one of the larger pieces of candy or small boxes of candy.

Respondent furnishes to said wholesale dealers and jobbers with said assortments of candy, display cards to be used by retail dealers in offering said candies for sale, which display cards bear a legend or statement informing the prospective purchasers that the said assortments of candies are being sold in accordance with the sales plan above described.

PAR. 3. Respondent also manufactures, sells, and distributes several assortments of candy, each of which is composed of a number of small pieces of candy together with a number of larger pieces of candy and a device commonly referred to as a push card or punch board containing a definite number of pushes or punches. The candy contained in said assortments is sold or distributed in the following manner:

The push card or punch board is a piece of paper board having a definite number of partially perforated discs and concealed within each disc is a number. These numbers correspond to the number of discs there are on the board but they are not arranged consecutively. Such numbers are so concealed that they can not be ascertained until a push or selection has been made and the disc separated from the board. The push cards or punch boards bear legends giving prospective customers information as to which numbers concealed on the board receive one of the small pieces of candy and which numbers receive one of the larger pieces of candy. It is usual for the last push on a card to receive a prize in addition to the merchandise called for by the number obtained and the said push card, ordinarily, has a label informing the prospective purchaser as to what additional candy will be received for such last push. Sales are 5 cents each and purchasers procuring a number calling for one of the small pieces of candy receive the same and purchasers receiving a number calling for one of the larger pieces of candy receive the same without payment of additional money. The fact as to whether a purchaser obtains one of the small pieces of candy

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or one of the larger pieces of candy for the purchase price of 5 cents is thus determined wholly by lot or chance.

Respondent distributes numerous assortments which involve the same principle or sales plan in the sale and distribution to the consuming public of said assortments, and these various assortments are composed of different types of candy; some of them contain small pieces of candy with larger bars as prizes and some of them give varying numbers of bars and small boxes of candy as prizes. These assortments are described by respondent by various trade names. One of such assortments is the Times-Square assortment. The push card or punch board in said assortment bears the following legend:

5¢ TIMES-SQUARE ASS'T. 5¢

Nos. 1-5-10-15-20-25 receive a box of fudge

Nos. 30-35-40-45 receive 2 bars of candy

Nos. 50-55-60 receive 3 bars of candy

All other numbers receive 1 bar of candy

Last purchase receives large box of fudge

The fact as to whether a purchaser receives a box of fudge, one, two, or three bars of candy for the purchase price of 5 cents, is thus determined wholly by lot or chance in the same manner as described above.

PAR. 4. Another assortment which respondent manufactures, sells and distributes is contained within two boxes, one box having pieces of candy of uniform size, shape, and quality, the majority of which have centers of the same color but a small number of which have centers of a different color. The other box contains larger pieces or bars of candy and the number of bars is approximately the same as there are pieces of candy with centers colored differently from the majority in the first box above mentioned and the two boxes are so packed that they may be displayed by the retail dealers as a single assortment and the larger pieces or bars of candy are distributed as prizes to purchasers of the smaller pieces of candy in the same manner as where they are packed in the same assortment and as described in paragraph 2 herein. Larger pieces or bars of candy are thus distributed to the purchasing public wholly by lot or chance and the respondent in so packing said assortment knows that the same may and will be used as a lottery or chance assortment when sold by the retail dealer.

PAR. 5. The lottery, prize, or draw packages described in paragraphs 2, 3, and 4 above, are generally referred to in the candy trade or industry as "break-and-take" or "draw" packages. The packages or assortments of candy without the lottery, prize, or draw features

in connection with their resale to the public are generally referred to in the candy trade or industry as "straight goods." These terms will be used hereafter in these findings to describe these respective types of candy.

PAR. 6. Numerous retail dealers purchase the assortments described in paragraphs 2, 3, and 4 above, from wholesale dealers or jobbers who in turn have purchased said packages from respondent and such retail dealers display said assortments for sale to the public as packed by the respondent and the candy contained in said assortment is sold and distributed to the consuming public by lot or chance.

PAR. 7. All sales made by respondent are absolute sales and respondent retains no control over the goods after they are delivered to the wholesale dealer or jobber. The assortments are assembled and packed in such manner that they can be displayed by the retail dealer for sale and distribution to the purchasing public, as above described, without alteration or rearrangement. An examination of the assortments of candy described in paragraphs 2 and 3 herein, as packed, assembled, and sold by respondent, shows that said assortments cannot be resold to the public by the retail dealers except as a lottery or gaming device, unless said retail dealers unwrap, unpack, disassemble, or rearrange the said assortments.

In the sale and distribution to jobbers and wholesale dealers for resale to retail dealers, of assortments of candy, assembled and packed as described in paragraphs 2, 3, and 4 herein, respondent has knowledge that said candy will be resold to the purchasing public by retail dealers, by lot or chance and it packs and assembles such candy in the way and manner described so that it may and shall be resold to the public by lot or chance by said retail dealers.

PAR. 8. The sale and distribution of candy by the retail dealers by the methods described in these findings is the sale and distribution of candy by lot or chance and constitutes a lottery or gaming device.

Competitors of respondent appeared as witnesses in this proceeding and testified, and the Commission finds as a fact that many competitors regard such method of sale and distribution as morally bad and encouraging gambling, especially among children, as injurious to the candy industry, because it results in the merchandising of a chance or lottery instead of candy, and as providing retail merchants with the means of violating the laws of the several States. Because of these reasons some competitors of respondent refuse to sell candy so packed and assembled that it can be resold to the public by lot or chance. These competitors are thereby put to a disadvantage in competing. Certain retailers who find that they can dispose of more candy by the "break-and-take" method, buy respondent's prod-

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ucts and the products of others employing the same methods of sale, and thereby trade is diverted to respondent, and others using similar methods, from said competitors. Said competitors can compete on even terms only by giving the same or similar devices to retailers. This they are unwilling to do, and their sales of "straight goods" candy show a continued decrease.

There is a constant demand for candy which is sold by lot or chance, and in order to meet the competition of manufacturers who sell and distribute candy which is sold by such methods, some competitors of respondent have begun the sale and distribution of candy for resale to the public by lot or chance. The use of such methods by respondent in the sale and distribution of its candy is prejudicial and injurious to the public and its competitors, and has resulted in the diversion of trade to respondent from its said competitors, and is a restraint upon and a detriment to the freedom of fair and legitimate competition in the candy industry.

PAR. 9. The principal demand in the trade for the "break-and-take" or "draw" candy comes from the small retailers. The stores of these small retailers are in many instances located near schools and attract the trade of the school children. The consumers or purchasers of the lottery or prize package candy are principally children, and because of the lottery or gambling feature connected with the "break-and-take" or "draw" package, and the possibility of becoming a winner, it has been observed that the children purchase them in preference to the "straight goods" candy when the two types of packages are displayed side by side.

Witnesses from several branches of the candy industry testified in this proceeding to the effect that children prefer to purchase the lottery or prize package candy because of the gambling feature connected with its sale. The sale and distribution of "break-and-take" or "draw" packages or assortments of candy or of candy which has connected with its sale to the public the means or opportunity of obtaining a prize or becoming a winner by lot or chance, teaches and encourages gambling among children, who comprise by far the largest class of purchasers and consumers of this type of candy.

PAR. 10. The pieces of candy in the "break-and-take" or "draw" packages of all manufacturers of that type of candy are either smaller in size than the corresponding pieces of "straight goods" candy or the quality of the candy in the "break-and-take" or "draw" packages is poorer than that in the "straight goods" assortments. It is necessary to make this difference between either the size of the individual pieces of candy or the quality of the candy in order to compensate for the value of the prizes or premiums which are distributed with the "break-and-take" or "draw" goods.

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PAR. 11. There are in the United States many manufacturers of candy who do not manufacture and sell lottery or prize assortments of candy and who sell their "straight goods" candy in interstate commerce in competition with the "break-and-take" or "draw" candy, and manufacturers of the "straight goods" type of candy have noted a marked decrease in the sales of their products whenever and wherever the lottery or prize candy has appeared in their markets. This decrease in the sales of "straight goods" candy is principally due to the gambling or lottery feature indicated with the "break-and-take" or "draw" candy.

PAR. 12. In addition to the assortments described in paragraphs 2, 3, and 4 herein, the respondent manufactures candy which it sells to wholesalers and jobbers without any lottery or chance features.

PAR. 13. The sale and distribution of candy by lot or chance is against the public policy of many of the States of the United States and some of said States have laws making the operation of lotteries and gambling devices penal offenses.

CONCLUSION

The aforesaid acts and practices of respondent, Bonita Company, under the conditions and circumstances set forth in the foregoing findings of fact are all to the prejudice of the public and respondent's competitors and constitute violations of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST, ETC.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission (in two counts, count 1 thereof charging a violation of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", and count 2 thereof charging a violation of the National Industrial Recovery Act), the answer of the respondent, the testimony taken, and the briefs filed, and the Commission having made its findings as to the facts and conclusion that as to count 1, the respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes"—

It is hereby ordered, That the respondent, Bonita Company; its officers, directors, agents, representatives, and employees, in the

manufacture, sale, and distribution in interstate commerce, of candy and candy products; do cease and desist from:

(1) Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, candy so packed and assembled that sales of such candy to the general public are to be made or may be made by means of a lottery, gaming device, or gift enterprise.

(2) Supplying to or placing in the hands of wholesale dealers and jobbers, packages or assortments of candy which are used or may be used without alteration or rearrangement of the contents of such packages or assortments, to conduct a lottery, gaming device or gift enterprise in the sale or distribution of the candy or candy products contained in said assortment to the public.

(3) Packing or assembling in the same package or assortment of candy for sale to the public at retail, pieces of candy of uniform size, shape, and quality having centers of a different color or being of a different color and contained within wrappers, together with larger pieces of candy which said larger pieces of candy are to be given as prizes to the person procuring a piece of candy with a center of a particular color or a piece of candy of a particular color.

(4) Supplying to or placing in the hands of wholesale dealers and jobbers assortments of candy together with a device commonly called a push card or punch board, for use or which may be used in distributing or selling said candy to the public at retail.

(5) Furnishing to wholesale dealers and jobbers a device commonly called a push card or a punch board either with packages or assortments of candy or candy products or separately, bearing a legend or legends or statements informing the purchaser that the candy or candy products are being sold to the public by lot or chance or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

(6) Furnishing to wholesale dealers and jobbers display cards either with assortments of candy or candy products or separately bearing a legend or legends or statements informing the purchaser that the candy or candy products are being sold to the public by lot or chance or in accordance with a sales plan which constitutes a lottery, gaming device or gift enterprise.

(7) Furnishing to wholesale dealers and jobbers display cards or other printed matter for use in connection with the sale of candy or candy products, which said advertising literature informs the purchasing public that upon the obtaining, by the ultimate purchaser, of a piece of candy of a particular color or with a particular colored center, a larger piece of candy or small box of candy will be given free to said purchaser.

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It is further ordered, That respondent, Bonita Company, within 30 days after the service upon it of this order, shall file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinabove set forth.

And it is hereby further ordered, That by reason of the decision of the Supreme Court of the United States in *A. L. A. Schechter Poultry Corporation v. United States of America*, decided May 27, 1935,¹ count 2 of the complaint in this proceeding be and the same hereby is dismissed.

¹ 295 U. S. 495.

IN THE MATTER OF

A. McLEAN & SON

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933

Docket 2264. Complaint, Dec. 15, 1934—Decision, June 21, 1935

Where a corporation engaged in the manufacture and sale of candy, including break-and-take merchandise composed of (a) assortments of penny candies of uniform size, shape, and quality, together with a number of larger pieces or small boxes of candy to be given as a prize to chance purchaser of one of a relatively few of said small candies, the color of the enclosed, concealed centers of which differed from that of the majority thereof, and other assortments involving similar feature of lottery or chance, though varying somewhat as to number of pieces and prizes, which occasionally included other articles of merchandise, and (b) assortments consisting of two boxes containing, respectively, (1) pieces of uniform size, shape, and quality, the color of the enclosed, concealed centers of a few of which differed from that of the majority, and (2) larger pieces or bars of candy, the number of which corresponded approximately to that of the different colored centers in the other, so packed that they might be displayed as a single assortment in which the larger pieces were to be distributed as prizes to chance purchasers of the smaller candies with the different colored centers—

Sold said assortments, together with explanatory display cards for the retailer's use in offering the same to the ultimate consumers, to wholesalers and jobbers, so packed and assembled that they could be displayed for sale and distribution to the purchasing public, as hereinbefore set forth, without alteration or rearrangement, and could not be resold to the public (except in the case of said last named two-box assortments) except as a lottery or gaming device without unwrapping, unpacking, disassembling, or rearranging the same, with knowledge and intent that said candy would and should thus be resold by the retailer; in competition with concerns who regard such a method of sale and distribution as morally bad and one which encourages gambling, and especially among children, and as injurious to the industry in merchandising a chance or lottery rather than candy, and providing retailers with the means of violating the laws of the several States, and who refuse to sell candy so packed and assembled that it can be resold to the public by lot or chance;

With the result of putting at a disadvantage, by reason of their said refusal to adopt such a practice, said competitors, who can compete on even terms only through following the same to meet the demand and preference for such candy from certain dealers and small retailers, chiefly, and that of the children from the frequently nearby schools, who purchase said candy by reason of the gambling feature connected therewith, in preference to the so-called "straight goods", and who constitute by far the largest class of purchasers and consumers thereof, and who supply the principal demand therefor, some competitors began the sale and distribution of candy for

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resale to the public by lot or chance, to meet the constant demand and preference for candy thus sold, trade was diverted to said individual from competitors declining to follow such a practice, to their prejudice and injury and that of the public, freedom of fair and legitimate competition in the industry concerned was restrained and harmed, sales of those dealing in the "straight goods" products exclusively were markedly decreased whenever and wherever the competition of the break-and-take assortments, with their necessarily smaller pieces or inferior quality, was encountered, by reason, principally, of the gambling or lottery feature connected with the latter, gambling among children was taught and encouraged, and the public policy of many of the States, some of which have laws making the operation of lotteries and gambling devices penal offenses, was violated:

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

Mr. Henry C. Lank for the Commission.

Beach, Fathchild & Scofield, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that A. McLean & Son, a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and in violation of the Act of Congress approved June 16, 1933, known as the National Industrial Recovery Act, and it appearing to said 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:

*Count 1*¹

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Illinois, with its principal office and place of business in the City of Chicago, State of Illinois. Respondent, for more than three years last past, has been engaged in the manufac-

¹ Count 2 of the complaint, not published, charges respondent with violating Section 8 of the National Industrial Recovery Act and the practice of unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, in that the methods, acts, and practices alleged in count 1 violate the standard of fair competition for the Candy Manufacturing Industry of the United States, namely, Rule 19, Article VIII, of the code of fair competition for said industry, prohibiting the sale or distribution by any member thereof of "break-and-take" merchandise. The averments of said count 2, paragraph 1 of which repeats the averments of paragraph 1 of count 1, are in other respects similar to those in count 2 in the complaint against Curt A. Schwartz, individually, and trading as Akron Candy Co., Docket 2251, in which case findings and order also issued as of the same date. See *supra*, at page 440.

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ture of candy and in the sale and distribution thereof to wholesale dealers and jobbers located at points in the various States of the United States, and causes said products when so sold to be transported from its principal place of business in the City of Chicago, Ill., to purchasers thereof in other States of the United States and in the District of Columbia, at their respective places of business, and there is now and has been for more than three years last past a course of trade and commerce by the said respondent in such candy between and among the States of the United States and in the District of Columbia. In the course and conduct of the said business, respondent is in competition with other corporations, individuals, and partnerships engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States and within the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 herein, respondent sells and has sold to wholesale dealers and jobbers certain packages or assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

Several of said assortments of candies are composed of a number of pieces of caramel candy of uniform size, shape, and quality together with a number of larger pieces of candy, packages of candy, or other articles of merchandise which larger pieces of candy, packages of candy, or other articles of merchandise are to be given as prizes to purchasers of said caramel candies of uniform size, shape, and quality in the following manner:

The majority of said caramel candies are of solid color but a few have a white core in the center. These said caramels are each contained within a wrapper and the color of the center of said caramel candies is effectively concealed from the prospective purchaser until a selection or a purchase has been made and the wrapper removed. The said caramels of uniform size, shape, and quality in said assortment retail at the price of 1 cent each but the purchasers who procure one of the said caramels having a white center are entitled to receive and are to be given free of charge one of the said larger pieces of candy or packages of candy or other article of merchandise heretofore referred to. The aforesaid purchasers of said caramels who procure a caramel having a white center are thus to procure one of the said larger pieces of candy or packages of candy or other article of merchandise wholly by lot or chance. Respondent furnishes to said wholesale dealers and jobbers, with said assortments of candy, display cards to be used by retail dealers in offering said candies for sale, which display cards bear a legend or statement informing the pro-

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spective purchaser that said assortments of candies are being sold in accordance with the sales plan above described.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells its assortments, resell said assortments of candy to retail dealers and said retail dealers expose said assortments for sale in connection with the aforesaid display cards and sell said candies to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plan hereinabove set forth, as a means of inducing purchasers thereof to purchase respondent's said product in preference to candies offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public as above alleged involves a game of chance or the sale of a chance to procure such larger pieces of candy or packages of candy in the manner alleged. Such game of chance and the sale along with the sale of such candy of such chance to procure such larger pieces of candy or packages of candy in the manner alleged are contrary to the established public policy of the several States of the United States and the District of Columbia and of the Government of the United States, and in many of the States of the United States are contrary to local criminal statutes.

By reason of the said facts, many persons, firms and corporations who make and sell candy in competition with respondent as above alleged are unwilling to offer for sale or sell candies so packed and assembled as above alleged, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, or the sale with such candy of a chance to procure larger pieces of candy by chance; and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candies are attracted by respondent's said method and manner of packing said candy and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said candy so packed and sold by respondent in preference to candies offered for sale and sold by said competitors of the respondent who do not use the same or an equivalent method. Many dealers in candies are induced to purchase said candies so offered for sale and sold by respondent in preference to all others because said ultimate purchasers thereof give preference to respondent's said candies on account of said game of chance so involved in the sale thereof.

PAR. 6. The use of said method by respondent has the tendency and capacity unfairly, and because of said game of chance alone,

to divert to respondent trade and custom from its said competitors who do not use the same or an equivalent method; to exclude from said candy trade all competitors who are unwilling to and do not use the same or an equivalent method; to lessen competition in said candy trade, and to tend to create a monopoly of said candy trade in respondent and such other distributors of candy as use the same or an equivalent method, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by respondent has the tendency and capacity unfairly to eliminate from said candy trade all actual competitors, and to exclude therefrom all potential competitors, who do not adopt and use said method or an equivalent method that is contrary to public policy and to criminal statutes as above alleged. Many of said competitors of respondent are unwilling to adopt and use said method, or any method involving a game of chance or the sale of a chance to win something by chance, because such method is contrary to public policy or to the criminal statutes of certain of the states of the United States, or because they are of the opinion that such a method is detrimental to public morals and to the morals of the purchasers of said candy, or because of any or all of such reasons.

PAR. 7. The aforementioned method, acts and practices of the respondent are all to the prejudice of the public and of respondent's competitors as hereinabove alleged. Said method, acts and practices constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served a complaint in two counts upon the respondent, A. McLean & Son, charging in count 1 of the aforesaid complaint that the said respondent had been and was using unfair methods of competition in commerce as "commerce" is defined in said act of Congress and charging in count 2 of the aforesaid complaint that the said respondent had been and was using unfair methods of competition in commerce in violation of the act of Congress approved June 16, 1933, known as the National Industrial Recovery Act, and thereafter respondent duly filed answer thereto. Testimony and evidence were received, duly recorded

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and filed in the office of the Commission and subsequently the proceeding came regularly on for a final hearing before the Commission on said complaint, answer, testimony, and evidence, briefs of counsel for the Commission and counsel for the respondent. Oral argument was waived and the Commission having duly considered the matter and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this, its findings as to the facts as to count 1 of the aforesaid complaint and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, A. McLean & Son, is a corporation organized under the laws of the State of Illinois, with its principal office and place of business in the City of Chicago, Ill. Respondent is now and for several years last past, has been engaged in the manufacture of candy in Chicago, Ill., and in the sale and distribution of said candy to wholesale dealers and jobbers in the State of Illinois and other States of the United States. It causes said candy when sold to be shipped or transported from its principal place of business in the State of Illinois to purchasers thereof in Illinois and in the States of the United States other than the State of Illinois. In so carrying on said business, respondent is and has been engaged in interstate commerce and is and has been in active competition with other corporations and with partnerships and individuals engaged in the manufacture of candy and in the sale and distribution of the same in interstate commerce.

PAR. 2. Among the candies manufactured and sold by respondent were several assortments of candy each composed of a number of pieces of candy of uniform size, shape and quality together with a number of larger pieces of candy or small boxes of candy to be given as prizes to purchasers of said candies of uniform size, shape and quality in the following manner:

The majority of the said pieces of candy of uniform size, shape and quality in said assortments have centers of the same color but a small number of said candies have centers of a different color. The color of the centers of these candies is effectively concealed from the prospective purchasers until a purchase or selection has been made and the candy broken open. The said candies of uniform size, shape and quality in said assortments retail at one cent each but the purchasers who procure one of the said candies having a center of a different color than the majority of said candies, are entitled to receive and are to be given free of charge one of the said larger pieces or small boxes of candy heretofore referred to. The purchaser of

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the last piece of candy in said assortment is entitled to receive and is to be given free of charge a larger piece of candy or a small box of candy. The aforesaid purchasers of said candy who procure a candy having a center colored differently from the majority of said pieces of candy thus procure one of the said larger pieces or small boxes of candy wholly by lot or chance.

Respondent manufactures, sells and distributes several assortments involving the above lottery or chance feature. The pieces of candy of uniform size, shape and quality are generally 160 in number but, occasionally, vary a few pieces more or a few pieces less, and the prizes are generally larger prizes of candy or small boxes of candy but occasionally other articles of merchandise are included as prizes, but the principle or sales plan is the same as to each of the said assortments.

Respondent furnishes to said wholesale dealers and jobbers with said assortments of candy, display cards to be used by retail dealers in offering said candies for sale, which display cards bear a legend or statement informing the prospective purchaser that the said assortments of candies are being sold in accordance with the sales plan above described.

PAR. 3. Another assortment which respondent manufactures, sells, and distributes is contained within two boxes, one box having pieces of candy of uniform size, shape and quality, the majority of which have centers of the same color but a small number of which have centers of a different color. The other box contains larger pieces or boxes of candy and the number of bars is approximately the same as there are pieces of candy with centers colored differently from the majority in the first box above mentioned and the two boxes are so packed that they may be displayed by the retail dealers as a single assortment and the larger pieces or bars of candy are distributed as prizes to purchasers of the small pieces of candy in the same manner as where they are packed in the same assortment and as described in paragraph 2 herein. Larger pieces or bars of candy are thus distributed to the purchasing public wholly by lot or chance and the respondent in so packing said assortment knows that the same may and will be used as a lottery or chance assortment when sold by the retail dealer.

PAR. 4. The lottery, prize or draw packages described in paragraphs 2 and 3 above are generally referred to in the candy trade or industry as "break-and-take", or "draw" packages. The packages or assortments of candy without the lottery, prize or draw features in connection with their resale to the public are generally referred to in the candy trade or industry as "straight goods".

Findings

These terms will be used hereafter in these findings to describe these respective types of candy.

PAR. 5. Numerous retail dealers purchase the assortments described in paragraphs 2 and 3 above, from wholesale dealers or jobbers who in turn have purchased said packages from respondent and such retail dealers display said assortments for sale to the public as packed by the respondent and the candy contained in said assortment is sold and distributed to the consuming public by lot or chance.

PAR. 6. All sales made by respondent are absolute sales and respondent retains no control over the goods after they are delivered to the wholesale dealer or jobber. The assortments are assembled and packed in such manner that they can be displayed by the retail dealer for sale and distribution to the purchasing public, as above described, without alteration or rearrangement. An examination of the assortments of candy described in paragraph 2 herein, as packed, assembled and sold by respondent, shows that said assortments can not be resold to the public by the retail dealers except as a lottery or gaming device, unless said retail dealers unwrap, unpack, disassemble or rearrange the said assortments.

In the sale and distribution to jobbers and wholesale dealers for resale to retail dealers, of assortments of candy, assembled and packed as described in paragraphs 2 and 3 herein, respondent has knowledge that said candy will be resold to the purchasing public by retail dealers, by lot or chance and it packs and assembles such candy in the way and manner described so that it may and shall be resold to the public by lot or chance by said retail dealers.

PAR. 7. The sale and distribution of candy by the retail dealers by the methods described in these findings, is the sale and distribution of candy by lot or chance and constitutes a lottery or gaming device.

Competitors of respondent appeared as witnesses in this proceeding and testified, and the Commission finds as a fact that many competitors regard such method of sale and distribution as morally bad and encouraging gambling, especially among children, as injurious to the candy industry, because it results in the merchandising of a chance or lottery instead of candy; and as providing retail merchants with the means of violating the laws of the several States. Because of these reasons some competitors of respondent refuse to sell candy so packed and assembled that it can be resold to the public by lot or chance. These competitors are thereby put to a disadvantage in competing. Certain retailers who find that they can dispose of more candy by the "break-and-take" or "draw" methods, buy respondent's products and the products of others employing the same methods

of sale, and thereby trade is diverted to respondent, and others using similar methods, from said competitors. Said competitors can compete on even terms only by giving the same or similar devices to retailers. This they are unwilling to do, and their sales of "straight goods" candy show a continued decrease.

There is a constant demand for candy which is sold by lot or chance, and in order to meet the competition of manufacturers who sell and distribute candy which is sold by such methods, some competitors of respondent have begun the sale and distribution of candy for resale to the public by lot or chance. The use of such methods by respondent in the sale and distribution of its candy is prejudicial and injurious to the public and its competitors, and has resulted in the diversion of trade to respondent from its said competitors, and is a restraint upon and a detriment to the freedom of fair and legitimate competition in the candy industry.

PAR. 8. The principal demand in the trade for the "break-and-take" or "draw" candy comes from the small retailers. The stores of these small retailers are in many instances located near schools and attract the trade of the school children. The consumers or purchasers of the lottery or prize package candy are principally children, and because of the lottery or gambling feature connected with the "break-and-take" or "draw" package, and the possibility of becoming a winner, it has been observed that the children purchase them in preference to the "straight goods" candy when the two types of packages are displayed side by side.

Witnesses from several branches of the candy industry testified in this proceeding to the effect that children prefer to purchase the lottery or prize package candy because of the gambling feature connected with its sale. The sale and distribution of "break-and-take" or "draw" packages or assortments of candy or of candy which has connected with its sale to the public the means or opportunity of obtaining a prize or becoming a winner by lot or chance, teaches and encourages gambling among children, who comprise by far the largest class of purchasers and consumers of this type of candy.

PAR. 9. The pieces of candy in the "break-and-take" or "draw" packages of all manufacturers of that type of candy are either smaller in size than the corresponding pieces of "straight goods" candy or the quality of the candy in the "break-and-take" or "draw" packages is poorer than that in the "straight goods" assortments. It is necessary to make this difference between either the size of the individual pieces of candy or the quality of the candy in order to compensate for the value of the prizes or premiums which are distributed with the "break-and-take" or "draw" goods.

Order

PAR. 10. There are in the United States many manufacturers of candy who do not manufacture and sell lottery or prize assortments of candy and who sell their "straight goods" candy in interstate commerce in competition with the "break-and-take" or "draw" candy, and manufacturers of the "straight goods" type of candy have noted a marked decrease in the sales of their products whenever and wherever the lottery or prize candy has appeared in their markets. This decrease in the sales of "straight goods" candy is principally due to the gambling or lottery feature indicated with the "break-and-take" or "draw" candy.

PAR. 11. In addition to the assortments described in paragraphs 2 and 3 herein, the respondent manufactures candy which it sells to wholesalers and jobbers without any lottery or chance features.

PAR. 12. The sale and distribution of candy by lot or chance is against the public policy of many of the States of the United States and some of said States have laws making the operation of lotteries and gambling devices penal offenses.

CONCLUSION

The aforesaid acts and practices of respondent, A. McLean & Son, under the conditions and circumstances set forth in the foregoing findings of fact are all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in commerce and constitute violations of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST, ETC.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission (in two counts, count 1 thereof charging a violation of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", and count 2 thereof charging a violation of the National Industrial Recovery Act), the answer of the respondent, the testimony taken and the briefs filed and the Commission having made its findings as to the facts and conclusion that as to count 1, the respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes"—

It is hereby ordered, That the respondent, A McLean & Son, its officers, directors, agents, representatives, and employees, in the man-

Order

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ufacture, sale, and distribution in interstate commerce, of candy and candy products, do cease and desist from:

(1) Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, candy so packed and assembled that sales of such candy to the general public are to be made or may be made by means of a lottery, gaming device or gift enterprise.

(2) Supplying to or placing in the hands of wholesale dealers and jobbers, packages or assortments of candy which are used or may be used without alteration or rearrangement of the contents of such packages or assortments, to conduct a lottery, gaming device or gift enterprise in the sale or distribution of the candy or candy products contained in said assortment to the public.

(3) Packing or assembling in the same package or assortment of candy for sale to the public at retail, pieces of candy of uniform size, shape and quality, having centers of a different color, together with larger pieces of candy, or small boxes of candy or other articles of merchandise, which said larger pieces of candy or small boxes of candy or other articles of merchandise, are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color.

(4) Furnishing to wholesale dealers and jobbers, display cards either with assortments of candy or candy products or separately, bearing a legend or legends or statements informing the purchaser that the candy or candy products are being sold to the public by lot or chance or in accordance with a sales plan which constitutes a lottery, gaming device or gift enterprise.

(5) Furnishing to wholesale dealers and jobbers display cards or other printed matter for use in connection with the sale of candy or candy products, which said advertising literature informs the purchasing public that upon the obtaining by the ultimate purchaser of a piece of candy of a particular colored center, a larger piece of candy or small box of candy or another article of merchandise will be given free to said purchaser.

It is further ordered, That respondent, A. McLean & Son, within 30 days after the service upon it of this order, shall file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinabove set forth.

And it is hereby further ordered, That by reason of the decision of the Supreme Court of the United States in *A. L. A. Schechter Poultry Corporation v. United States of America*, decided May 27, 1935,² count 2 of the complaint in this proceeding be and the same hereby is dismissed.

² 295 U. S. 495.

ORDERS OF DISMISSAL, OR CLOSING CASE

JOSEPH BENN CORPORATION. Complaint, May 11, 1934. Order, January 25, 1935. (Docket 2181.)

Charge: Advertising falsely or misleadingly as to nature of product; in connection with the manufacture and sale of yarn.

Dismissed by the following order:

This matter coming on to be heard by the Commission upon the complaint of the Commission, the answer of respondent, and the testimony taken in support of the allegations of the complaint and in opposition thereto, and the briefs and oral arguments of counsel for the Commission and for the respondent, and the Commission being now fully advised in the premises—

It is ordered, That the complaint herein be, and the same hereby is dismissed.

Appearances: *Mr. Astor Hogg* for the Commission.

BELMONT CANDY Co. Complaint, August 11, 1930. Order, February 11, 1935. (Docket 1861.)

Charge: Using lottery scheme in merchandising; in connection with the manufacture and sale of candies.

Record closed, after answer, by the following order:

This matter coming on for consideration and the Commission being advised that the respondent has been adjudicated a bankrupt, that a receiver has been appointed, that the company has long since ceased operations, that partial distribution to secured and preferred creditors has been made by the receiver—

It is ordered, That the files in the case be and the same hereby are closed without further action at this time.

Appearances: *Mr. Henry C. Lank* for the Commission; *Mr. W. Parker Jones*, of Washington, D. C., for respondent.

MAX KENNER, individually and trading as AMUSEMENT NOVELTY SUPPLY Co. Complaint, December 21, 1934. Order, April 24, 1935. (Docket 2272.)

Charge: Using lottery scheme in merchandising; in connection with the sale of various articles of merchandise with punch boards, etc.

Dismissed by the following order:

This matter coming on for consideration and it appearing to the Commission that the respondent in 1931 discontinued the unfair

methods of competition alleged in the complaint, and the Commission being fully advised in the premises—

It is ordered, That the complaint be, and is hereby dismissed without prejudice.

Appearances: *Mr. Henry C. Lank* for the Commission.

HIBBARD, SPENCER, BARTLETT & Co. Complaint, December 7, 1934. Order, April 30, 1935. (Docket 2257.)

Charge: Using misleading trade name for product and misbranding or mislabeling and advertising falsely or misleadingly as to composition thereof; in connection with the sale of neat's-foot compound.

Dismissed, after answer, without prejudice and without assignment of reasons.

Appearances: *Mr. John W. Hilldrop* for the Commission; *Mr. William J. Claussen*, of Chicago, Ill., for respondent.

LEON FRIEDMAN and BARNEY MILLER, doing business as NEW ENGLAND TEA AND COFFEE Co. Complaint, February 19, 1935. Order, April 30, 1935. (Docket 2299.)

Charge: Misbranding or mislabeling in violation of Section 5, per se, and as a violation of Section 3 of the Code of Fair Competition for the coffee industry; in connection with the sale of coffee, coffee products and substitutes.

Dismissed, after answer and trial, without prejudice and without assignment of reasons.

Appearances: *Mr. John W. Hilldrop* for the Commission; *Mr. Israel Libby* and *Mr. Louis M. Schatz* of Hartford, Conn., for respondents.

HELEN M. COOK and GEORGE A. COOK, trading as POSTAL CORRESPONDENCE SCHOOL. Complaint, March 18, 1935. Order, April 30, 1935. (Docket 2334.)

Charge: Advertising falsely or misleadingly as to nature or value of product and opportunities therein; in connection with the sale of courses of instruction for the Postal Service.

Dismissed, after answer, without prejudice and without assignment of reasons.

Appearances: *Mr. John W. Hilldrop* for the Commission; *Mr. Marvin Farrington*, of Washington, D. C., for respondents.

CROWN ZELLERBACH CORPORATION. Complaint, December 6, 1933. Order, May 15, 1935. (Docket 2135.)

Charge: Acquisition of stock in competitor in violation of Section 7 of the Clayton Act; in connection with the manufacture and sale of paper and paper products, particularly newsprint paper.

Dismissed, after answer and trial, by the following order:

The above entitled proceeding coming on for consideration on the complaint of the Commission, answer of respondent, testimony and evidence, briefs and oral argument by counsel for the Commission and counsel for the respondent, and the Commission being fully advised in the premises—

It is ordered, That the complaint herein be and the same is hereby dismissed.

Appearances: *Mr. Everett F. Haycraft* for the Commission; *Mr. John Francis Neylan* and *Mr. J. Paul Miller*, of San Francisco, Calif., for respondent.

M. H. MEYERS, trading as THE M. H. MEYERS CONCRETE WORKS. Complaint, November 9, 1934. Order, May 15, 1935. (Docket 2246.)

Charge: Advertising falsely or misleadingly as to results of product; in connection with the manufacture and sale of concrete burial vaults.

Dismissed, after answer, by the following order:

The above entitled matter coming on to be heard and the Commission being duly advised in the premises, and it appearing that the respondent does not sell or solicit the sale of his products outside of the State of Wisconsin—

It is ordered, That the complaint herein be, and the same is, hereby dismissed.

Mr. E. J. Hornibrook for the Commission; *Bird, Smith, Okoneski & Puchner*, of Wausau, Wis., for respondent.

PHILIP A. SINGER & BROTHER, INC. and HERMAN GELBERG and BENJAMIN SCHWARTZ, trading as GELBERG & SCHWARTZ. Complaint, May 12, 1926. Order, May 16, 1935. (Docket 1384.)

Charge: Naming product misleadingly and misbranding or mislabeling; in connection with the dressing and dyeing of rabbit skins and sale thereof.

Record closed, after answer and trial, by the following order:

This matter coming on regularly to be heard, and the Commission having considered the record and being fully advised in the premises—

It is now ordered, That the proceeding herein be, and the same hereby is closed as to respondent Philip A. Singer & Brother, Inc. effective upon service of an order to cease and desist on Philip A. Singer & Brother, Inc., issued by the Commission against it on the 16th day of May, 1935, in the matter of Philip A. Singer & Brother, Inc., Docket No. 2128.¹

Appearances: *Mr. James M. Brinson* for the Commission.

¹ Said order was modified June 25, 1935, and is published as of said date. For earlier proceedings in Docket 1384, see 14 F. T. C. 366.

ROBERT Z. DRAKE, trading as STANDARD BRIDGE Co. Complaint March 7, 1932. Order, May 16, 1935. (Docket 2016.)

Charge: Advertising falsely or misleadingly as to nature of manufacture of product; in connection with the manufacture, seasoning and sale of lumber and lumber products including bridge decking, stringers and planks.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard upon the complaint, the answer thereto, testimony and evidence, briefs and oral arguments, and the Commission having duly considered the same and being fully advised in the premises—

Now, therefore, it is hereby ordered, That the complaint in this proceeding be and the same is hereby dismissed.

Appearances: *Mr. Edward L. Smith* for the Commission.

BRICKNER & BERNFELD, INC. Complaint, November 9, 1933. Order, May 16, 1935. (Docket 2122.)

Charge: Misbranding or mislabeling and advertising falsely or misleadingly as to nature of product; in connection with the sale of dyed rabbit skins.

Record closed, after answer, by the following order:

This matter coming on regularly to be heard and it appearing that the order to cease and desist entered by the Commission in the matter of the Great Northern Fur Dyeing and Dressing Company, Brickner & Bernfeld, Inc., and Henry Kutik, Isadore Kutik, Morris Kutik, and George Kutik, trading as Kutik Brothers,² embraces and controls the practices charged herein as unfair methods of competition by the above named respondent, and the Commission having considered the record and now being fully advised in the premises—

It is ordered, That the proceeding be and hereby is closed.

Appearances: *Mr. James M. Brinson* for the Commission; *Burnstine, Geist, Netter & Hirst*, of New York City, for respondent.

KRAEMER HOSIERY Co. Complaint, January 29, 1935. Order, May 17, 1935. (Docket 2289.)

Charge: Misbranding or mislabeling as to quality of product; in connection with the manufacture and sale of hosiery.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard upon the complaint, the answer thereto, testimony and evidence, and the Commission having duly considered the same, and being fully advised in the premises—

Now, therefore, it is hereby ordered, That the complaint in this proceeding be, and the same is hereby dismissed.

Appearances: *Mr. DeWitt T. Puckett* for the Commission.

² Said order was modified June 25, 1935, and is published as of said date.

BATTLE CREEK APPLIANCE CO., LTD., trading as SANBORN LABORATORIES.* Complaint, January 23, 1934. Order, May 18, 1935. (Docket 2156.)

Charge: Advertising falsely or misleadingly as to qualities of product; in connection with the sale of a diabetes treatment.

Dismissed, after answer and trial, by the following order:

The above entitled proceeding coming on to be heard by the Commission upon the record herein, and the Commission having fully considered the same, and being duly advised in the premises—

It is ordered, That the complaint herein be and the same is hereby dismissed.

Appearances: *Mr. E. J. Hornibrook* for the Commission; *Mr. John A. Nash*, of Chicago, Ill., for respondent.

LADY ESTHER. Complaint, May 14, 1935. Order, May 27, 1935. (Docket 2389.)

Charge: Complaint on the relation of the National Recovery Administration charging false and misleading advertising in newspapers, periodicals, radio broadcasts and in other ways, and means misrepresenting the properties and effects of own and competitive products, in connection with the manufacture, sale and distribution of face cream; in violation of the standards of fair competition established and defined in the Code of Fair Competition for the Perfume, Cosmetic and Other Toilet Preparations Industry, and in violation of Section 3 (b) of the National Industrial Recovery Act and Section 5 of the Federal Trade Commission Act.

Dismissed by the following order:

The above-entitled proceeding coming on for consideration by the Commission on the application, dated May 23, 1935, of George McNulty, assistant chief, Enforcement Division, National Recovery Administration, requesting a dismissal of the complaint herein on the ground that the National Recovery Administration and respondent have arrived at an agreement on all compliance questions respecting the Code of Fair Competition for the Perfume, Cosmetic, and Other Toilet Preparations Industry and that said respondent has agreed to comply fully with all provisions of said Code in the future, and the Commission now being advised in the premises—

It is ordered, That the complaint of the Commission herein on the relation of the National Recovery Administration be and the same hereby is dismissed.

Appearances: *Mr. Martin A. Morrison* for the Commission; *Mr. Huston Thompson* and *Sanders, Childs, Bobb & Wescott*, of Washington, D. C., for respondent.

* By order dated June 6, 1934, complaint was dismissed as to respondent W. Thompson Bobo, deceased since the issuance thereof, it being further provided that the case proceed in due course as to respondent Battle Creek Appliance Co., Ltd.

A. J. KRANK, INC. Complaint, April 8, 1935. Order, May 31, 1935. (Docket 2356.)

Charge: Complaint ex rel, National Recovery Administration charged respondent, engaged in sale at wholesale of beauty and barber equipment supplies, with violating Code of Fair Competition for the Wholesaling or Distributing Trade, as amended, in offering free goods as inducements to purchase, failing to file price lists, and misrepresenting price value of products; in violation of Section 3 (b) of National Industrial Recovery Act and Section 5 of the Federal Trade Commission Act.

Dismissed, after answer, by the following order:

The above-entitled proceeding coming on for consideration by the Commission and the Commission now being advised in the premises:

It is ordered, That the complaint of the Commission herein on the relation of the National Recovery Administration be and the same hereby is dismissed.

Appearances: *Mr. John W. Hilldrop* for the Commission; *Mr. Richard Townsend* for National Recovery Administration, intervenor.

PHILLIPS-BAKER RUBBER CO., LA CROSSE RUBBER MILLS CO., and GOODYEAR RUBBER CO. Complaint, June 20, 1934. Order, June 3, 1935. (Docket 2201.)

Charge: Combining or conspiring to violate the open price posting provisions of the code of fair competition for the rubber manufacturing industry; in connection with the manufacture and sale of "waterproof and canvas rubber soled footwear".

Dismissed, after answers and trial, by the following order:

The complaint herein having been issued on the relation of the National Recovery Administration and having charged respondents with having violated Section 1 of Article V of Chapter IV of the Code of Fair Competition for the Rubber Manufacturing Industry, adopted and approved under and by virtue of the National Industrial Recovery Act; and the National Recovery Administration, through and by George McNulty, Esq., assistant chief attorney of the Enforcement Department of said Administration, having requested this Commission, in view of the decision of the Supreme Court on May 27, 1935, in *A. L. A. Schechter Poultry Corporation, et al. v. United States*,* to dismiss the complaint in this proceeding; and the Commission having duly considered the same and being fully advised in the premises—

Now, therefore, it is hereby ordered, That the said request be, and the same is, hereby granted, and that the complaint in this proceeding be, and the same is, hereby dismissed.

Appearances: *Mr. Martin A. Morrison* for the Commission; *Edwards & Angell* of Providence, R. I., and *Mr. Joseph Fairbanks*,

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of Washington, D. C., for respondents; *Mr. Eugene A. Bond* and *Mr. J. Ninian Beall* for National Recovery Administration (intervenor).

EDWARD J. RAMSEY, ET AL.⁵ Complaint, July 13, 1934. Order, June 3, 1935. (Docket 2206.)

Charge: Violating uniform discount provisions of code of fair competition for boot and shoe manufacturing industry; in connection with the manufacture and sale of shoes.

Dismissed, after answers and trial, by the following order:

The complaint herein having been issued on the relation of the National Recovery Administration and having charged respondents with having violated Article VIII, Section 3, of the Code of Fair Competition for the Boot and Shoe Manufacturing Industry, adopted and approved under and by virtue of the National Industrial Recovery Act; and the National Recovery Administration, through and by George McNulty, Esq., assistant chief attorney of the Enforcement Department of said Administration, having requested this Commission, in view of the decision of the Supreme Court on May 27, 1935, in *A. L. A. Schechter Poultry Corporation, et al. v. United States*, to dismiss the complaint in this proceeding; and the Commission having duly considered the same and being fully advised in the premises—

Now, therefore, it is hereby ordered, That the said request be, and the same is, hereby granted, and that the complaint in this proceeding be, and the same is, hereby dismissed.

Appearances: *Mr. Martin A. Morrison* for the Commission; *Mr. Thomas B. Bresnahan*, of New York City, for respondents; *Mr. Eugene A. Bond*, *Mr. J. Ninian Beall* and *Mr. George J. Feldman* for National Recovery Administration (intervenor).

ALEXANDER SMITH & SONS CARPET CO., ET AL. Complaint, August 29, 1934.⁶ Order, June 5, 1935. (Docket 2209).

Charge: Misrepresenting nature of product; in connection with the manufacture and sale of rugs or carpets.

Dismissed by the following order:

This matter coming on to be heard by the Commission on the complaint, the answer, the evidence, and the briefs and oral arguments of the parties hereto; and the Commission having duly considered the same and now being fully advised in the premises—

It is ordered, That the complaint herein be and the same is hereby dismissed.

⁵ Respondents joined include Edward J. Ramsey, individually and as Secretary-Treasurer of each of the corporations hereinafter named and designated as respondents herein; also Ramsey's "They Cannot Rip", Inc., a corporation; also Trooper Shoe Company, Inc., a corporation; also The Bronx Shoe Company, Inc., a corporation; also Edward P. Ramsey and Louise Ramsey, as individuals and as President and Director, respectively, of each of the corporations hereinabove named and designated as respondents herein.

⁶ Amended and supplemental.

Appearances: *Mr. Edw. W. Thomerson* for the Commission; *Wallin, Beckwith & Edie*, of Yonkers, N. Y., for respondents.

THE MARKET GARDENERS' SEED CO. Complaint, February 20, 1935. Order, June 8, 1935. (Docket 2302).

Charge: Misbranding or mislabeling; in connection with the sale of agricultural seeds at wholesale.

Dismissed, after answer, by the following order:

The above entitled matter coming on for consideration upon the application of the Chief Counsel to dismiss the complaint and the Commission being advised—

It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice.

Appearances: *Mr. Edward E. Reardon* for the Commission; *Pogue, Hoffheimer & Pogue*, of Cincinnati, Ohio, for respondent.

W. S. WHARTON, doing business as CONSOLIDATED CRAB CO. Complaint, February 25, 1935 (Docket 2304); E. L. ANDERSON. Complaint, February 27, 1935 (Docket 2306); V. S. LANKFORD. Complaint, February 27, 1935 (Docket 2307); E. L. WATKINS. Complaint, March 1, 1935 (Docket 2309); H. C. HORSEMAN. Complaint, March 5, 1935 (Docket 2312); GEORGE A. PHILPOTTS. Complaint, March 5, 1935 (Docket 2313); S. S. COSTON, doing business as S. S. COSTON Co. Complaint, March 5, 1935 (Docket 2314); P. K. HUNT and H. B. HUNT, doing business as P. K. HUNT & SON. Complaint, March 6, 1935 (Docket 2315); N. R. COULBOURN. Complaint, March 6, 1935 (Docket 2316); F. H. AYERS and G. W. AYERS, doing business as F. H. AYERS & SON. Complaint, March 7, 1935 (Docket 2320); BALLARD BROS. FISH CO. Complaint, March 7, 1935 (Docket 2321); J. H. FLEMMING and EDWARD J. FLEMMING, doing business as J. H. FLEMMING & Co. Complaint, March 19, 1935 (Docket 2335); E. T. HITCHINGS and V. D. HITCHINGS, doing business as E. T. HITCHINGS & Co. Complaint, March 19, 1935 (Docket 2337); GEORGE W. AMORY and EARL J. HOLLOWAY, doing business as AMORY & HOLLOWAY. Complaint, March 19, 1935 (Docket 2338); C. T. MILLS, O. R. MILLS and GEORGE GILLIS, doing business as O. R. MILLS FISHERIES. Complaint, March 21, 1935 (Docket 2339); G. T. ELLIOTT, INC. Complaint, March 19, 1935 (Docket 2340); McMENAMIN & Co., INC. Complaint, March 19, 1935 (Docket 2341); WINSTEAD-BLOXOM-JONES, INC. Complaint, March 21, 1935 (Docket 2342). Orders, June 15, 1935.

Charge: The Commission on relation of National Recovery Administration charged respondents with violating supplementary code of fair competition for the blue crab industry, a division of the fishery industry, in violation of section 3 (b) of the National Industrial Recovery Act, and section 5, in the payment of wages to "pickers" under the specified minimum, the shipment of crab meat

for sale on consignment, and the taking from the water and sale of "sponge" crabs.

Dismissed, after answers, by the following order in each case:

The complaint herein having been issued on the relation of the National Recovery Administration and having charged the respondent with having violated the Code of Fair Competition for the Blue Crab Industry (a division of the Fishery Industry), adopted and approved under and by virtue of the National Industrial Recovery Act, by reason of the decision of the Supreme Court handed down May 27, 1935 in *A. L. A. Schechter Poultry Corporation, et al. v. United States*,⁷

It is hereby ordered, That the complaint in this proceeding be, and the same is, hereby dismissed.

Appearances: *Mr. Martin A. Morrison* for the Commission; *Kearney & Kearney*, of Phoebus, Va., for respondents excepting respondent *F. H. Ayers & Son* and respondent *Ballard Bros. Fish Co.*, for which last-named respondent appeared *Mapp & Mapp*, of Keller, Va. *Mr. Richard Townsend* for National Recovery Administration, intervenor in said various cases.

SPENCER CHICK HATCHERY. Complaint, December 1, 1934.⁸ Order, June 24, 1935. (Docket 2240.)

Charge: Selling below seller's individual cost of production, in competitors' territory and elsewhere, with effect of injuring competition, tending to create monopoly, unreasonably restraining trade, and with tendency and effect of breaking the fair market price for the products involved and demoralizing the commercial and breeder hatchery industry, in violation of Section 3 of Article VI of the Code of Fair Competition for the Commercial and Breeder Hatchery Industry; in connection with the hatching and selling of poultry and more particularly with the hatching and selling of "chicks."

Dismissed, after answer and trial, by the following order:

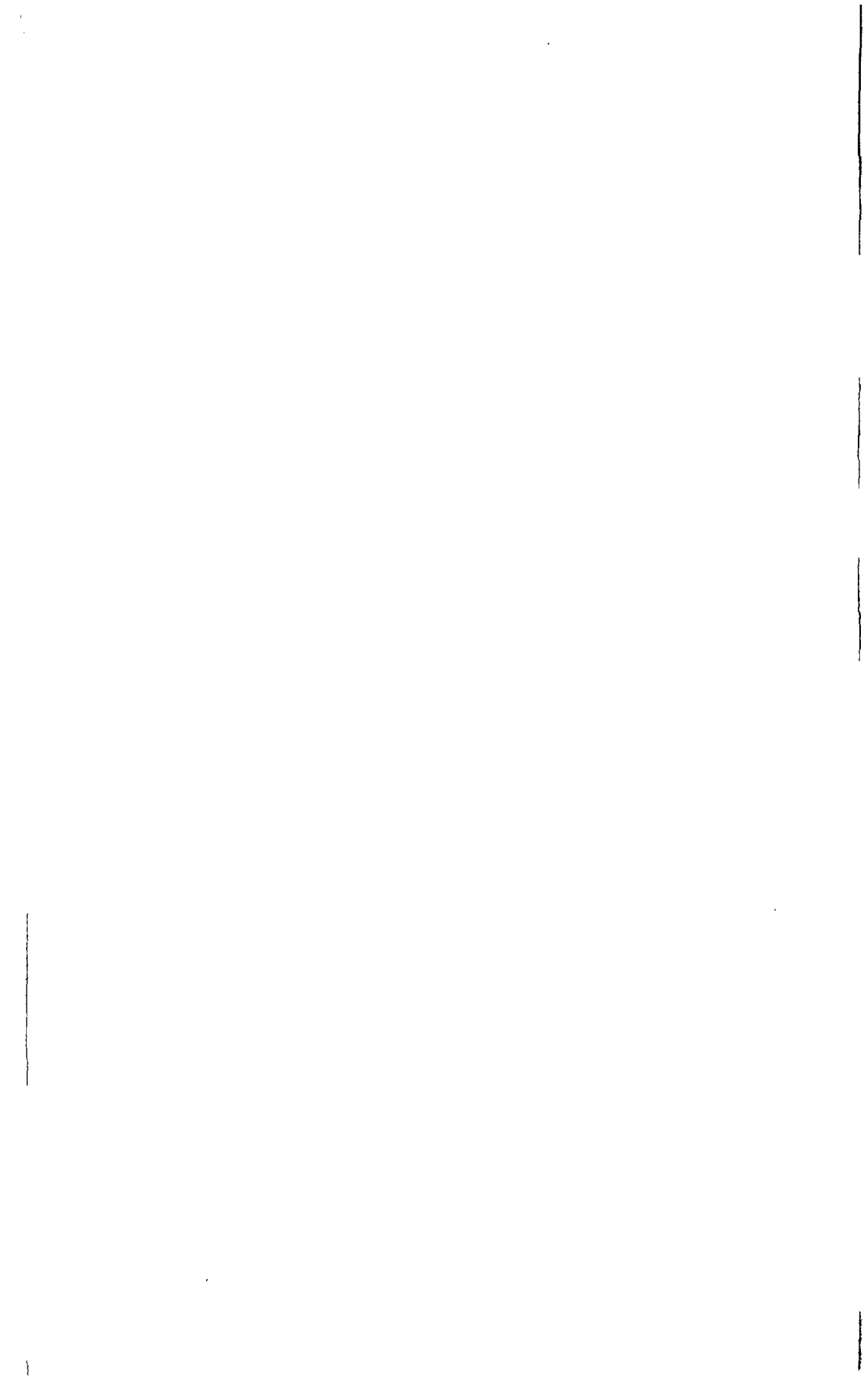
The complaint in this matter charges respondent with a violation of Section 5 of the Federal Trade Commission Act by reason of an alleged violation of the Code of Fair Competition for the Commercial and Breeder Hatchery Industry, adopted under the provisions of the National Industrial Recovery Act, and, in view of the decision of the Supreme Court of the United States in *A. L. A. Schechter Poultry Corporation v. The United States of America*, rendered May 27, 1935,⁷ it is

Ordered, That the complaint herein be, and the same is hereby, dismissed.

Appearances: *Mr. Edw. W. Thomerson* for the Commission; *Mr. George A. Heald, Jr.*, and *Mr. John W. Cory, Jr.*, of Spencer, Iowa, and *Mr. Frederick F. Faville* of Sioux City, Iowa, for respondent.

⁷ 295 U. S. 495.

⁸ Amended.



STIPULATIONS¹

DIGEST OF GENERAL STIPULATIONS OF THE FACTS AND AGREEMENTS TO CEASE AND DESIST²

1266. False and Misleading Brands or Labels and Advertising—Carbon Paper and Typewriter Ribbons.—Clyde B. Robinette, an individual trading under the name and style of Northern Chemical Co., engaged in the sale and distribution in interstate commerce of carbon papers and typewriter ribbons, by mail orders, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Clyde B. Robinette, in soliciting the sale of and selling his typewriter ribbons in interstate commerce hereby agreed to cease and desist from the use of the word "Satinette" to represent or designate said product in advertisements and advertising matter, on labels, or in correspondence circulated in interstate commerce; and from the use of the word "Satinette" either independently or in connection or conjunction with any other word or words or in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said product is composed, in whole or in part, of silk, when such is not the fact. (Dec. 5, 1934.)

1267. False and Misleading Advertising—Silver Sets, China Sets, and Fountain Pen and Pencil Sets.—Walter R. Hassenauer, an individual trading under the names "Standard Products Company" and "Associated Finance Company", engaged in the sale and distribution of alleged silver sets, china sets, and fountain pen and pencil sets in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

¹ For false and misleading advertising stipulations effected through the Commission's special board. See p. 572, *et seq.*

The digests published herewith cover those accepted by the Commission during the period covered by this volume, namely, Dec. 3, 1934, to June 24, 1935, inclusive. Digests of all previous stipulations of this character accepted by the Commission—that is, numbers 1 to 1265, inclusive—may be found in vols. 10 to 19 of the Commission's decisions.

² In the interest of brevity there is omitted from the published digest of the stipulation the agreement under which the stipulating respondent or respondents, as the case may be, agree that should such stipulating respondent or respondents "ever resume or indulge in any of the practices in question, this said stipulation of the facts may be used in evidence" against such respondent or respondents, as the case may be, "in the trial of the complaint which the Commission may issue."

Walter R. Hassenauer, in soliciting the sale of and selling his products in interstate commerce, hereby agreed to cease and desist from the use, in his advertisements and advertising matter distributed in interstate commerce or otherwise, of the words "liquidation", "liquidators", or "liquidating" either alone or in connection or conjunction with any other word or words or in any other way so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said Walter R. Hassenauer is in a state of liquidation or is failing in business and/or offering for sale or selling the stock of an insolvent or closed business under court order or for creditors and/or at an unusually low or "bargain" price made in order to liquidate a stock of goods, when such are not the facts. (Dec. 5, 1934.)

1268. False and Misleading Trade Name and Brands and Labels—Cigars.—Harley W. Crum, an individual, trading as H. W. Crum Cigar Manufacturer, engaged in the manufacture of cigars and in the sale and distribution thereof in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Among manufacturers of and dealers in cigars, as well as among smokers thereof, the words "Throw-outs" and "Factory Throw-outs" have a definite and well-understood meaning, and are applied to cigars which, because of some imperfection, do not pass inspection, and therefore are not offered for sale as the regular brand for which said cigars were manufactured or for the price that would be asked for the same quality of cigars had they passed such inspection.

Harley W. Crum, in soliciting the sale of and selling his products in interstate commerce, hereby agreed to cease and desist from the use of the words "Throw-outs" and/or "Factory Throw-outs" either independently or in connection or conjunction with any other word or words as a trade name on his labels for said products, or otherwise to represent or designate such of his products as are not actually throw-outs; and from stating or representing that any of his products are throw-outs, when such is not the fact. And said Harley W. Crum further agreed to cease and desist from the use on his labels of the words and figures "5, 10, and 15¢ Brands" and/or "Off Colors and Shapes", or of any similar word, or words of equivalent meaning to designate and represent products regularly and usually sold and offered for sale at a lower price, and/or which may have the capacity to confuse, mislead, or deceive purchasers into the belief that the products referred to are five-cent, ten-cent, or fifteen-cent values, and which prices have been reduced, when such is not the fact.

And said Harley W. Crum further agreed to cease and desist from the use of the statement "Now 2 for 5 cents", in any way which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that the price of the products referred to has been recently reduced, when such is not the fact. (Dec. 5, 1934.)

1269. **False and Misleading Advertising—Paints.**—S. Kann Sons Co., a corporation, engaged in conducting a department store, and in soliciting the sale of and selling general merchandise in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

S. Kann Sons Co., in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the use of the words or phrases "prepared with pure linseed oil" and/or "ready mixed with pure linseed oil" in their advertisements or advertising matter circulated within the District of Columbia, or in interstate commerce to describe or designate a product not made or compounded in such substantial part of linseed oil as to constitute it a product "prepared with pure linseed oil" or a product "ready mixed with pure linseed oil" in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the vehicle of the said products so described, designated, and referred to is composed of linseed oil, when such is not the fact. (Dec. 5, 1934.)

1270. **False and Misleading Brands or Labels and Advertising—Refractory and Vitrified Products.**—Laclede-Christy Clay Products Co., a corporation engaged in the manufacture of refractory and vitrified products and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Laclede-Christy Clay Products Co. in soliciting the sale of and selling its products in interstate commerce hereby agreed to cease and desist from representing, designating, or referring to its said products as "Mullite", when such products are not capable of resisting or withstanding for the maximum period of time and without disintegrating or becoming distorted the extreme high temperatures needed in certain of the arts, as for example the fusing of raw material into glass, porcelains for spark plugs, and the like; unless, when said products are composed of mullite in a substantial quantity but in an amount less than that needed to resist or withstand such extreme high temperatures for the maximum period of time and

without disintegrating or becoming distorted, and the word "Mullite" is used as descriptive of said products, then in that case the word "Mullite" shall be accompanied by some other word or words set forth in type equally as conspicuous as that in which the word "Mullite" is set forth, so as to indicate clearly that said product is not composed of mullite in such quantity so as to be capable of resisting or withstanding said extreme high temperatures for the maximum period of time and without disintegrating or becoming distorted. (Dec. 12, 1934.)

1271. Filling Orders Incorrectly as to Type and Pattern without Adjustment Therefor—Hosiery.—Gold-Tex Silk Co., Inc., engaged in the business of selling and distributing hosiery in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Gold-Tex Silk Co., Inc., in soliciting the sale of and selling its product in interstate commerce hereby agreed to cease and desist from failing and/or refusing to make adjustments in accordance with its representations or promises when requested to do so by dissatisfied customers, such adjustments to be made promptly after the return of the products to said corporation by such dissatisfied customers. The said corporation also agreed to fill orders with the particular type and pattern selected and ordered by the customer and, failing so to do, to promptly return to the customer the purchase price which he has paid, unless such customer shall first agree to elect or accept some other type and pattern as a substitute for the type and pattern originally ordered by such customer. (Dec. 18, 1934.)

1272. False and Misleading Advertising—Tires.—Sears, Roebuck and Co., engaged in the sale and distribution in interstate commerce, by means of mail-order catalogues and through branch stores, of general merchandise, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Sears, Roebuck and Co., in soliciting the sale of and selling its merchandise in interstate commerce, hereby agreed to cease and desist from stating and representing in advertisements and advertising matter circulated in interstate commerce, that its Allstate Tires are used by about twelve million families, or any other similar exaggerated statements or representations in reference to the number of such users; that nine out of ten motorists choose its Allstate brand of tires, or any other similar exaggerated statements or representations in reference to the number of such users; that its Allstate Tires have two breaker strips, when such is not the fact; that the

cord fabric from which its Allstate Tires is fabricated is made in New England, when such is not the fact; that the tests made by Prof. Phil. C. Huntly proved that its Allstate Tire was equal to or better than any tire advertised as "six plies under the tread", and/or that it was 26% cheaper, when in fact the said Phil. C. Huntly had not made tests of all tires "six plies under the tread" advertised; and from the use of such statements or representations, alone or in combination each with any other or others; and from the use of any other or similar statements or representations which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that any of the statements or representations are true and correct, when such is not the fact. (Dec. 18, 1934.)

1273. **False and Misleading Brands or Labels—Feather Bedding and Pillows.**—The L. Buchman Co., Inc., a corporation, engaged in the manufacture of kapok and feather bedding and pillows, and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair method of competition as set forth therein.

The L. Buchman Co., Inc., in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the use on labels attached to or accompanying its products any certificate or purported certificate of the United States Testing Co., or of any other similar organization, stating or representing, or so worded as to have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that the feathers with which such pillows are filled have all been tested and their cleanliness and purity certified to by such testing company and/or that the certificate referred to covers the ticking of which the pillow covers are made. The said The L. Buchman Co., Inc., further agreed to cease and desist from the use of the letter "A" as a marking to describe or designate products which are not of the highest grade, or are not such as are properly and usually referred to as "Grade A." (Dec. 20, 1934.)

1274. **False and Misleading Brands or Labels—Olive Oil.**—John D. Staikos and Nicholas D. Staikos, copartners, trading as Staikos Brothers, engaged in the importation, packing, sale, and distribution of olive oil and other food products in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

John D. Staikos and Nicholas D. Staikos, in soliciting the sale of and selling their product in interstate commerce, hereby agreed to

cease and desist from the use of the words "Product of Italy" as a mark or brand for olive oil not produced in and imported from Italy; and from the use of the words "Product of Italy" in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the products referred to were produced in and imported from Italy, when such is not the fact. (Dec. 28, 1934.)

1275. False and Misleading Trade or Corporate Name, Brands or Labels and Advertising—Radio Sets.—Sterling Laboratories, Inc., a corporation, engaged in the assembling and sale in interstate commerce of small radio sets, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

For more than thirty years prior to his death, on October 18, 1931, Thomas A. Edison had been known and recognized throughout the various States of the United States and foreign countries as the inventor, patentee, owner, and manufacturer of numerous electrical devices of various kinds and descriptions and of machines for the reproduction of the human voice which have acquired a wide and favorable reputation and are in great demand by the trade and purchasing public who desire Edison products. Among the machines for the production of the human voice manufactured by companies which the said Thomas A. Edison organized and controlled are phonographs, dictaphones and transcribing machines, radios and combination radios, and many other articles of various kinds and character, such as storage batteries, spark plugs, ignition coils, and household electrical appliances. Many of the articles and machines above referred to bear the name "Edison" as part of their brand name, and such name "Edison" has acquired a valuable good-will as identifying the manufacturer of such machines or articles. Among the companies organized and controlled by the late Thomas A. Edison, deceased, is Thomas A. Edison, Inc., which said company is still engaged in the manufacture of the machines and articles, invented and developed by Thomas A. Edison. Thomas A. Edison, Inc., during the year 1928 to 1930, inclusive, manufactured and sold radio sets valued at many millions of dollars, and during the said period spent several millions of dollars in advertising its said radio products. All of the radio sets manufactured and sold by Thomas A. Edison, Inc., featured the name "Edison" as part of their brand name.

Sterling Laboratories, Inc., in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the use of the word "Edison" on escutcheon plates fixed to its products; or in any other way to represent or designate the same; or in its advertisements or advertising matter, and/or as a trade name

or brand under which to solicit the sale of and sell its products in interstate commerce; and from the use of the word "Edison" either independently or in connection or conjunction with any other word or words, in any way which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that its radio sets are manufactured by, or sold under a license from said Thomas A. Edison, Inc., when such is not the fact. (Dec. 28, 1934.)

1276. **False and Misleading Brands or Labels and Advertising**—Rickey Concentrate.—Mission Dry Corporation, a corporation, engaged in the manufacture of liquor and of so-called "Rickey Concentrate" and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Mission Dry Corporation, in soliciting the sale of and selling its so-called "Rickey Concentrate" in interstate commerce, hereby agreed to cease and desist from the use of the word "Lime" either independently or in connection or conjunction with the words "Rickey Base" or with any other word or words or in any way to designate its said product so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the acid content of said product is composed of the juice of the lime, when such is not the fact. (Jan. 18, 1935.)

1277. **False and Misleading Brands or Labels**—Olive Oil.—Import Oil Corporation, a corporation, engaged in the importation of olive oil and in the blending, packing, and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Import Oil Corporation in soliciting the sale of and selling its products in interstate commerce hereby agreed to cease and desist from the use of the words "Imported from Italy", "Importato dall Italia", "pressed from very most ripe olive fruit in sunny Italy", or words of similar meaning, in either the English or the Italian language, as a mark or brand for its oil products so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are composed wholly of oils produced in or imported from Italy; or unless, in case said products are composed in substantial part of oils produced in and imported from Italy, and such words as "Imported from Italy", "Importato dall Italia", "pressed from very most ripe olive fruit in sunny Italy" are used to describe and designate the same, such words shall be immediately accompanied by some other word or words printed in type equally as conspicuous as that in which

the said quoted words are printed so as to indicate clearly that the said products are not composed wholly of oils produced in and imported from Italy, but contains an oil or oils other than oils produced in and imported from Italy. (Jan. 5, 1935.)

1278. **False and Misleading Trade Name—Uniforms and Army Equipment.**—James M. Kahn, an individual trading under the name and style of "Q. M. Sales Company", engaged in the business of selling and distributing uniforms and Army equipment to enlisted men and to Post Exchanges at various Army Posts located in different states in the United States, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Post Exchanges exist and have existed for many years at the various United States Army Posts throughout the United States. These Post Exchanges are semi-official sales stores in the sense that they are operated by and with the consent of United States Army officials, although they are not owned by the United States Government. Immediately after the World War the Quartermaster's Department United States Army, sold its surplus products, until the same were finally disposed of, to these Post Exchanges which resold such products to the personnel of the said Army Posts with the result that the Quartermaster's Department, United States Army, has been and is frequently referred to in correspondence as the "Q. M. Sales Store" and such name has become commonly known and has been quite generally used by the officers and enlisted men of the United States Army for a long period of time.

James M. Kahn, in soliciting the sale of and selling his products in interstate commerce, hereby agreed to cease and desist from the use of the letters "Q. M." as part of or in connection or conjunction with the trade name under which he conducts his business or in any way so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said James M. Kahn, doing business as "Q. M. Sales Company" is officially or in any way connected or associated with the Quartermaster's Department, United States Army. (Jan. 5, 1935.)

1279. **False and Misleading Advertising—Truck Repair or Replacement Parts.**—Highway Truck Parts Corporation, a corporation, engaged in the business of selling and distributing repair or replacement parts and accessories for trucks in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Highway Truck Parts Corporation, in soliciting the sale of and selling its repair and replacement parts in interstate commerce, hereby agreed to cease and desist from the use in its advertisements and advertising matter distributed in interstate commerce of the word "New" either independently or in connection or conjunction with any other word or words or in any other way so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said repair or replacement parts are of recent manufacture and designed for use on trucks of current models being sold at the present time or at the time such parts were or are advertised; unless when such repair and replacement parts are in fact new in the sense that they have not been used, and the word "New" is used as descriptive thereof, then in that case the word "New" shall be conspicuously accompanied by some other word or words so as to indicate clearly on what particular model or models of trucks they are designed for use. (Jan. 5, 1935.)

1280. False and Misleading Brands or Labels—Olive Oil.—Italian Olive Oil Corporation, a corporation, engaged in the importation of olive oil and in the blending, packing, and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Italian Olive Oil Corporation, in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the quoted words "Product of Italy", "Italian Product", and "Prodotto Italiano", or any of them, either independently or in connection or conjunction with any word or words, or in any way as a mark or brand for its oil products so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are composed wholly of oils produced in and imported from Italy; unless, when said products are composed in substantial part of oils produced in and imported from Italy, and partly of other oils not so produced and imported, and the aforesaid quoted words are used to describe and designate the same, then in which case such quoted groups of words shall be immediately accompanied by some other word or words printed in type equally as conspicuous as that in which said quoted words are printed so as to indicate clearly that said oil products are not composed wholly of oils produced in and imported from Italy, and that will otherwise clearly indicate that said products are composed of an oil or oils other than oils produced in and imported from Italy. (Jan. 9, 1935.)

1281. False and Misleading Brands or Labels—Toilet Preparations.—Hirsch Laboratories, Inc., a corporation, engaged in the manufac-

ture of toilet preparations and in the sale and distribution of said products in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Hirsch Laboratories, Inc., in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the use of the words "Turtle Oil" as a brand or label for its product so as to import or imply that the same is composed of turtle oil, when such is not the fact; unless, when the oil content of said product is composed in substantial part of turtle oil and the words "turtle oil" are used as descriptive thereof, then in which case the words "turtle oil" shall be immediately accompanied by some other word or words printed in type equally as conspicuous as that in which the words "turtle oil" are printed so as to indicate clearly that the oil content of said product is not composed wholly of turtle oil, but that the oil content thereof is composed in part of an oil or oils other than turtle oil; the word "Nourishing", or any other equivalent word or words on labels attached to the containers in which such products are packed, sold, and distributed in interstate commerce; and from the use of the word "Nourishing" in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that, on account of its turtle-oil content, such product will nourish the human skin. (Jan. 9, 1935.)

1282. **False and Misleading Trade or Corporate Name and Advertising—Hard Fibre Board.**—The Gillette Fibre Mills, a corporation, engaged in the sale and distribution in interstate commerce of hard fibre board, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

The Gillette Fibre Mills, in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the use of the word "Mills" either independently or in connection or conjunction with any other word or words, as a part of or in connection with its corporate or trade name, in advertisements or advertising matter circulated in interstate commerce, or in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that it owns, controls, or operates a mill or factory wherein the products which it sells and distributes are made or fabricated, when such is not the fact. (Jan. 10, 1935.)

1283. **False and Misleading Trade or Corporate Name and Advertising—Correspondence Courses.**—The People's College, Inc., a corporation, engaged in the usual work of a correspondence school, giving courses of instruction in return for subscriptions to its courses of study, but

in later years and at the present time was and is engaged along with Milton N. Bunker in the sale and distribution in interstate commerce of text books, and in competition with other corporations, individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

The People's College, Inc., in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the use of the word "College" as part of the corporate or trade name for their school; and from the use of said word "College" in advertisements or advertising matter circulated in interstate commerce, either independently or in connection or conjunction with any other word or words, or in any way which may have the capacity or tendency to confuse, mislead, or deceive customers and prospective customers into the belief that said school is an institution of higher learning organized to give instruction in the liberal arts and sciences and authorized to confer degrees; stating and representing in advertisements or advertising matter, or in correspondence that their scholarships have a value of one hundred dollars; stating and representing to prospective students that they have been recommended as worthy of an award, such as a free scholarship, or that such awards are based upon the merit of their "Grapho-Analyses", when such is not the fact. (Jan. 18, 1935.)

1284. False and Misleading Advertising—Barber and Beauty Shop Supplies.—Leo E. Morris Co., a corporation, engaged in the sale and distribution as a wholesaler of barber and beauty shop supplies in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Leo E. Morris Co. in soliciting the sale of and selling its product, hereby agreed to cease and desist from the use in its advertising matter distributed in interstate commerce, of statements, statistical or other data purporting to comparably represent the price at which its product is offered for sale with the price at which an alleged competitive product is offered for sale, unless the selling price of such competitive product shall be the true, exact price at which such competitive product is sold or offered for sale. (Jan. 18, 1935.)

1285. False and Misleading Brands or Labels—Christmas Tree Lighting Outfits.—New York Merchandise Co., Inc., a corporation, engaged in the business of manufacturing over 6,000 items, among which are included Christmas Tree lighting outfits, and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged,

entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

New York Merchandising Co., Inc., in soliciting the sale of and selling its Christmas Tree lighting outfits in interstate commerce, hereby agreed to cease and desist from the use of the slogan or phrase "Made in U. S. A." or of any other similar slogan or phrase of equivalent meaning as a mark or brand for its said products so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are composed of parts, all of which are made in the United States of America; unless when said products are composed in part of a part or parts which are made in the United States of America and the slogan or phrase "Made in U. S. A." is used to designate the same, then in that case said slogan or phrase shall be accompanied by some other word or words so as to indicate clearly that said products are not composed wholly of American-made parts and that will otherwise clearly indicate that said products are composed in part of parts not made in the United States of America. (Jan. 18, 1935.)

1286. False and Misleading Advertising—Crushed Shells for Poultry.—Universal Crushed Shell Co., a corporation engaged in the manufacture of crushed shells for poultry feeding and in the sale of said product in interstate commerce, and in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Universal Crushed Shell Co., in soliciting the sale of and selling its crushed shell and its shell flour products in interstate commerce, hereby agreed to cease and desist from the use in its advertisements and printed matter distributed in interstate commerce of the words "Crushed Oyster Shell" either independently or in connection or conjunction with any other word or words or in any other way to represent, designate, or refer to said products, or either of them, so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said crushed shell product is composed wholly of crushed oyster shells or that said shell flour product is composed wholly of the powdery substance resulting from the crushing of oyster shells; unless, when said products, respectively, are composed in substantial part of crushed oyster shells or of the powdery substance resulting from the crushing of such oyster shells, and the words "Crushed Oyster Shells" are used to designate the same, then in that case the words "Crushed Oyster Shells" shall be prominently accompanied by some other word or words printed in type equally as conspicuous as that in which said words "Crushed Oyster Shells" are printed so as to indicate clearly that said products, respectively, are composed in part of a product

or products other than crushed oyster shells or of the powdery substance resulting from the crushing of oyster shells, and that will otherwise indicate clearly that said products, respectively, are not composed wholly of crushed oyster shells or of the powdery substance resulting from the crushing of oyster shells. (Jan. 22, 1935.)

1287. **False and Misleading Brands or Labels, Prices and Advertising—Flavoring Products, Toilet Articles, Baking Powder, Spices, etc.**—J. W. Gibson, an individual trading under the name and style of J. W. Gibson Co., engaged in the manufacture or compounding of flavoring products and in the sale and distribution thereof, together with toilet articles or cosmetics and household products, such as baking powder, spices, and the like, in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

J. W. Gibson, in soliciting the sale of and selling his products in interstate commerce, hereby agreed to cease and desist: from advertising or in any way marking his products with fictitious and exaggerated prices and from making any false, fictitious, or misleading statements or representations concerning the value or prices at which said products, or any of them, are sold or are intended to be sold in the usual course of trade; from the use of statements and representations to the effect that the price of products or combinations of products is a "Special" advertising price, when such is not the fact; from the use in his said advertising matter of the word "Vanilla" or "Maple" or "Black Walnut" or "Strawberry", as descriptive of certain of his flavoring products, so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are flavors made, composed, or prepared, respectively, from the bean, pod, or capsule of the vanilla plant, or from maple sugar, syrup, or sap, or from the meat of the black walnut, or from the fruit or juice of the strawberry; unless, when said products simulate in flavor that of Vanilla, or maple, or black walnut, or strawberry, and the word "Vanilla" or "Maple" or "Black Walnut" or "Strawberry" is used to represent or designate such flavor, then, in that case, the word "Vanilla" or "Maple" or "Black Walnut" or "Strawberry" shall be immediately accompanied by the word "Imitation" or some other word or words printed in type equally as conspicuous as that in which the word "Vanilla" or "Maple" or "Black Walnut" or "Strawberry" is printed so as to indicate clearly that the particular flavoring of said product is not genuine "Vanilla" or "Maple" or "Black Walnut" or "Strawberry", but is an imitation thereof; from the use of the word "La France" either independently or in connection or conjunction with

the French word "Adoree" or with any other word or words as descriptive of his cosmetics so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are of French origin or are made or compounded in France, when such is not the fact; from the use of the word "Free" either independently or in connection or conjunction with any other word or words or in any other way as descriptive of merchandise accompanying his products so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said merchandise is given as a gratuity in consideration of the purchase of other products, when such is not the fact; from the use of the word "Factory" or "Manufactured" or of any other word or words of equivalent meaning so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said J. W. Gibson owns, operates, and controls the plant or factory in which are made, manufactured, or compounded all of the products sold by him in interstate commerce; from stating or representing that his products, or any of them, have been endorsed by leading authorities, when such is not the fact. (Jan. 22, 1935.)

1288. **False and Misleading Advertising—Beer.**—Red Top Brewing Co., a corporation, engaged in the manufacture and brewing of beer and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Red Top Brewing Co., in soliciting the sale of and selling its product in interstate commerce, hereby agreed to cease and desist from stating and representing in its advertisements and advertising matter, that its product is "Kraeusened" when in fact the product so represented is not "Kraeusened." The aforesaid Red Top Brewing Co. also agreed to cease and desist use of the word "Kraeusened" either independently or in connection or conjunction with any other word or words, and especially in connection or conjunction with a pictorial representation of a bottle of beer, so as to mislead, confuse, or deceive purchasers into the belief that all of its products, including that part thereof which is sold in bottles, is kraeusened, when such is not the fact. If the word "Kraeusened" is used in its advertisements or advertising matter with a pictorial representation of a bottle of beer, it shall be definitely and plainly set forth in such advertising matter in clear and conspicuous type, that the kraeusening process is used only in the manufacture of such of its product as is sold in barrels or kegs and not that part of its product which is sold in bottles. (Jan. 22, 1935.)

1289. False and Misleading Brands or Labels and Advertising—Christmas Tree Lighting Outfits and Electrical Specialties.—J. Morris and Co., Inc., a corporation, engaged in the manufacture, importation, assembling, sale, and distribution in interstate commerce of Christmas tree lighting outfits and electrical specialties, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

J. Morris and Co., Inc., in soliciting the sale of and selling its product in interstate commerce, hereby agreed to cease and desist from the use of the words "Made in U. S. A." or any other similar phrase, or phrase of similar meaning, to describe or designate outfits sold and distributed by it in interstate commerce, unless said products, and every part thereof, are actually manufactured or made in the United States; or unless, when said product is composed in part of a part or parts which are made in the United States and the words "Made in U. S. A." are used to designate the same, then in that case said words shall be accompanied by some other word or words so as to indicate clearly that said product is not composed wholly of American made parts, and that will otherwise clearly indicate that said product is composed in part or parts not made in the United States of America. (Jan. 22, 1935.)

1290. False and Misleading Brands or Labels and Advertising—Vermin Exterminator.—C. W. Hunter, an individual trading under the name and style of Hunter Chemical Laboratory, engaged in the manufacture of a vermin exterminator and in the sale and distribution of same in interstate commerce under the trade designation of "Hunter's Exterminator", and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

C. W. Hunter, in soliciting the sale of and selling his products in interstate commerce, hereby agreed to cease and desist from the use of the words "Hunter Chemical Laboratory" in advertisements and advertising matter, or on labels or other reading matter accompanying his products sold and distributed in interstate commerce; and from the use of the words "Hunter Chemical Laboratory" in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that he is a chemist or that he owns, controls, or operates a chemical laboratory, when such is not the fact; and the use in advertisements and advertising matter, or on labels or other reading matter accompanying his products sold and distributed in interstate commerce, of statements and representations that said product will petrify the bodies

or carcasses of rats and mice which eat it and thereby prevent the possibility of disagreeable odors therefrom; and from the circulation in interstate commerce of any other similar statements or representations which do not truthfully and accurately represent his product or the results obtained from its use. (Jan. 22, 1935.)

1291. **False and Misleading Brands or Labels, Trade Name, Prices and Advertising—Soaps.**—Benjamin Cisenfeld, an individual trading under the names of Earle Soap Manufacturing Co., The Nursery Institute, Ben's Cut Rate Store, and Virginia Lee Cosmetics, engaged in the manufacture of soaps, and in the sale and distribution of same in interstate commerce, and in competition with other individuals, firms, and partnerships and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Benjamin Cisenfeld, in soliciting the sale of and selling his products in interstate commerce, hereby agreed to cease and desist from the use of the word "Castile" in advertisements or advertising matter, or on wrappers or as a brand for any of his said products, the oil or fatty composition of which is not derived wholly from olives; the use in advertisements or advertising matter, or on wrappers of any of his products distributed in interstate commerce, of any false, fictitious or exaggerated prices in excess of the prices at which the same are sold or intended to be sold; the use of the word "Doctor", or the abbreviation "Dr." in connection or conjunction with a name or with any other word or words, or in any way as a trade name, brand, or designation for his products, or in advertising said products in any way which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that the products so labeled, branded, described, or represented are compounded in accordance with the prescription or under the direction of a doctor or doctors and contain special or scientific features which are the results of medical advice or services, when such is not the fact. (Jan. 25, 1935.)

1292. **Using Lottery Scheme in Merchandising—Confectionery.**—The D. Bacon Co., a corporation, engaged in the manufacture of confectionery and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

The D. Bacon Co., in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the use of any scheme, plan, or method of sale or of promoting the sale of its candy products which involves the use of any gift enterprise,

lottery, or any scheme of chance whereby an article is given as a prize or premium for or in consideration of the purchase of any other article. (Jan. 25, 1935.)

1293. False and Misleading Brands or Labels, Trade Name and Advertising—Children's Shoes.—Herman Malkin and Samuel Malkin, co-partners trading as H. Malkin's Sons, engaged as jobbers in the sale and distribution in interstate commerce of children's shoes, and in competition with other partnerships, firms, individuals, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Herman Malkin and Samuel Malkin, in soliciting the sale of and selling their products in interstate commerce, hereby agreed to cease and desist from the use of the word "Doctor" or the abbreviation "Dr." in connection or conjunction with a name or with any other word or words, or in any way as a trade name, brand, or designation, or in advertising their said products, in any way which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that the products so labeled, branded, designated, described, or represented, are made in accordance with the design and/or under the supervision of a doctor or doctors and contain special, scientific, or orthopedic features which are the result of medical advice or services, when such is not the fact. (Jan. 28, 1935.)

1294. False and Misleading Brands or Labels and Advertising—Bath Preparations, Including Pine Needle Extract.—Pine Products International, Inc., a corporation, engaged in the production, manufacture, and distribution in interstate commerce of bath preparations, including pine needle extract; and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Pine Products International, Inc., in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the use of the word "Swiss" and/or "Direct from Switzerland" in advertisements or advertising matter, or on labels affixed to its products sold and distributed in interstate commerce, unless the pine essence from which said product is manufactured or compounded is a product of Switzerland or of pine needles grown in and imported from Switzerland; and from the use of the words "Swiss" and/or "Direct from Switzerland" in any way which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that the products so advertised, labeled, designated, described, and referred to are manufactured or compounded

from pine essence which is a product of Switzerland or of pine needles grown in and imported from Switzerland, when such is not the fact. (Jan. 28, 1935.)

1295. **False and Misleading Brands or Labels and Advertising—Knitted Outerwear.**—The Worcester Knitting Co., a corporation, engaged in the manufacture of knitted outerwear and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

The Worcester Knitting Co., in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the use of the words and figures "100% All Wool", "100% Pure Wool", and/or "100% Virgin Wool", and/or either or any of them, to designate or represent products not composed wholly of wool; and from the use of the words "Wool", "All Wool", "Pure Wool", and/or "Virgin Wool", or any or either of them, in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers in any way in respect of the wool content of its products. (Jan. 26, 1935.)

1296. **False and Misleading Brands or Labels and Advertising—Pens.**—The Esterbrook Steel Pen Manufacturing Co., a corporation, engaged in the manufacture of steel pens and in the sale and distribution of same in interstate commerce, and in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

The Esterbrook Steel Pen Manufacturing Co., in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from: the use of the word "Duragold" as a brand, or in its advertisements or advertising matter circulated in interstate commerce, to describe and designate a product not composed of gold; and from the use of the word "Duragold", either independently or in connection or conjunction with any other word or words, or of any coined word of which the word "Gold" forms a part, in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the product so branded, designated, or described is composed in whole or in part of gold when such is not the fact; the use of the word "Platigold" as a brand, or in its advertisements or advertising matter circulated in interstate commerce to describe and designate a product not composed of gold or platinum or of an amalgam of gold and platinum; and from the use of the word "Platigold" either independently or in connection or conjunction with any other word or words, or of any

coined word of which the words "Gold" or "Platinum" or either of them forms a part, in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the product so branded, designated, or described is composed in whole or in part of gold, or of platinum, or of an amalgam of gold and platinum, when such is not the fact. (Jan. 29, 1935.)

1297. **Simulating Competitor's Products and Trade Name—Filing Systems and Sales Books.**—P. J. Morton, an individual trading as Professional Systems Co., engaged in the sale and distribution in interstate commerce of filing systems and sales books for the use of professional men, and in competition with other individuals, firms, partnerships and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

The McCaskey Register Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal place of business located at Alliance in said State. It is now and, for several years past, has been engaged in the manufacture of filing systems including books and records for use by professional men, and in the sale and distribution of said products in interstate commerce. P. J. Morton was formerly in the employ of The McCaskey Register Co., and since quitting its employment has been and is in competition with said company.

P. J. Morton, in soliciting the sale of and selling his products in interstate commerce, hereby agreed to cease and desist from the use in advertisements and advertising matter of the word "McCaskey" in any way which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that the products so described and represented are the products of The McCaskey Register Co., of Alliance, Ohio, when such is not the fact; and from the use on his said blank forms, and/or in advertisements or advertising matter of form numbers identical with those used by The McCaskey Register Co., of Alliance, Ohio, in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that such forms are forms manufactured and sold by The McCaskey Register Co., of Alliance, Ohio, when such is not the fact. (Jan. 29, 1935.)

1298. **False and Misleading Brands or Labels, Trade Names, and Advertising—Shoes.**—Charles Spiegel Co., Inc., a corporation engaged in the sale of shoes, at wholesale, in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Charles Spiegel Co., Inc., in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the use of the word "Doctor" or the abbreviation "Dr." in connection or conjunction with the name or with any other word or words, or in any way as a trade name, brand, or designation for its products, or in advertising said products, or in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are made in accordance with the design and/or under the supervision of a doctor, or contain special, scientific, or orthopedic features which are the result of medical advice or services, when such is not the fact. (Jan. 30, 1935.)

1299. False and Misleading Brands or Labels, Trade or Corporate Name and Advertising—Safety Razor Blades.—Barbasol Razor Corporation, a corporation, engaged in the sale and distribution, in interstate commerce, of safety razor blades, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Barbasol Razor Corporation, in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the use of the words "Made By Barbasol Razor Corporation" and/or the words "Made only by Barbasol Razor Corporation" as a brand or mark on its said products, or on the wrappers, containers, or other advertisements or advertising matter circulated in interstate commerce; and from the use of the words "Made by" or "Made only by" in connection with its corporate or trade name or in any other way so as to confuse, mislead, or deceive purchasers into the belief that the products so marked, branded, advertised, referred to, and represented are made by said Barbasol Razor Corporation, when such is not the fact. (Jan. 30, 1935.)

1300. False and Misleading Brands or Labels and Advertising—Toothpicks.—Harry Greenberg and Leo Josefsberg, copartners, trading as American Merchandise Co., engaged in the business of manufacturing and importing a line of merchandise, including toothpicks, and in the sale and distribution of same in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Harry Greenberg and Leo Josefsberg, in soliciting the sale of and selling their products in interstate commerce, hereby agreed to cease and desist from the use on labels and/or in advertisements and advertising matter of such words and phrases as "Hygienic", "Sani-

tarily Manufactured", "Packed by Machine", "Machine Made", "Not touched by hands", "Polished white birch", "Selected white birch", "Cut from choice birch", or any of them, to describe or designate products not made or packed by machinery, not manufactured under hygienic or sanitary conditions, nor untouched by hands, and not made from the wood of the birch tree. (Jan. 31, 1935.)

1301. **False and Misleading Brands or Labels and Advertising—Electrical and Radio Supplies, Including Christmas Tree Lighting Outfits.**—M. Goldman & Co., Inc., a corporation, engaged in the sale and distribution, under the trade name "The Good-Lite Electric Manufacturing Co.", of electrical and radio supplies including Christmas Tree lighting outfits in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

M. Goldman & Co., Inc., in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the use of the phrase "Made in U. S. A." or of any other similar phrase, or phrase of similar meaning to designate or as descriptive of its said outfits sold and distributed in interstate commerce, unless said outfits in their entirety are composed of parts all of which are actually made or manufactured in the United States; unless when said outfits are composed only partially of parts which are made in the United States and the phrase "Made in U. S. A." is used to designate the same, then in that case said phrase shall be accompanied by some other word or words printed in type equally as conspicuous as that in which the said phrase is printed, so as to indicate clearly that said outfits are not composed of American-made parts and that will otherwise indicate clearly that said outfits are composed in part of parts not made in the United States. (Jan. 31, 1935.)

1302. **False and Misleading Brands or Labels, Trade Names, and Advertising—Meat Curing Preparation.**—Griffith Laboratories, a corporation, engaged in the sale and distribution of dry mixtures for the curing of meat in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Griffith Laboratories, in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the use of advertisements and advertising matter or of brands, labels, or other markings on its domestically manufactured products which, by innuendo or otherwise, may have the capacity or tendency to confuse, mislead, or deceive purchasers into an erroneous belief as to the country in which said domestically manufactured products are

made. The said corporation also agreed to cease and desist from the use of the words "Prague Salt" and "Hansa-Pokel Salze" as trade-names for its domestically manufactured products without disclosing, in connection with said words and in type equally as conspicuous as that in which said trade-names are printed, that said products are manufactured in the United States and/or are not manufactured in Germany or imported into the United States. Said corporation further agreed to cease and desist from the use in its advertising matter or otherwise, in soliciting the sale of and selling its product "Prague Salt Powder", of the words "dried aged pickle" and/or "aged acting pickle" as descriptive of said product so as to import or imply that said product is or contains an aged pickle or has an aging effect, when such is not the fact. (Feb. 4, 1935.)

1303. **False and Misleading Trade Name and Advertising**—"Formula 515."—George Moore, Volney James, and Ben Odell, copartners trading under the name and style of Formula 515 Laboratories, engaged in the compounding of the product "Formula 515" and in the sale and distribution of same in interstate commerce, and in competition with other partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

George Moore, Volney James, and Ben Odell, in soliciting the sale of and selling their product in interstate commerce, hereby agreed to cease and desist from the use of the word "Laboratories" as a part of the trade name under which to carry on their said business, or in advertisements or advertising matter distributed in interstate commerce, or in radio broadcasts; and from the use of the word "Laboratories" in any way which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that they own, control, and operate a laboratory, when such is not the fact. (Feb. 4, 1935.)

1304. **False and Misleading Brands or Labels and Advertising**—Shoes.—Julius Goldstein, an individual trading under the name and style of Julius Goldstein and Sons, engaged in the sale and distribution of shoes, as a jobber, in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Julius Goldstein, in soliciting the sale of and selling his products in interstate commerce, hereby agreed to cease and desist from the use of the word "Doctor" and/or the abbreviation "Dr." either independently or in connection or conjunction with any other word or words, or in advertising his said products, in any way which may

have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that his products are made in accordance with the design and/or under the supervision of a doctor having a special knowledge of orthopedics, or that the same contain scientific or orthopedic features which are the result of medical advice or services. (Feb. 5, 1935.)

1305. False and Misleading Brands or Labels and Advertising—Women's Silk Lingerie.—Charles Komar, Inc., a corporation, engaged in the manufacture of women's silk lingerie and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Charles Komar, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from advertising, marking, branding, or representing its products as "All Silk", "Pure Silk", and/or "Silk Crepe." If the said product is weighted to an amount exceeding 15% in black goods or to an amount exceeding 10% in goods other than black, and the word "Silk" or "Crepe" is used to designate said product, then there shall be used in connection therewith the word "Weighted" or some other word or words printed in type equally as conspicuous as that in which the word "Silk" or "Crepe" is printed so as to indicate clearly that the said product is not composed wholly of silk, but is weighted with mineral salts or some other weighting substance. (Feb. 7, 1935.)

1306. False and Misleading Brands or Labels—Olive and Other Edible Oils.—Spiro Rousos, an individual trading under the name and style of Maggioros & Rousos, engaged in the sale and distribution of certain food products including olive and other edible oils in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Spiro Rousos, in soliciting the sale of and selling his product designated "Lacconia Brand" in interstate commerce, agreed to cease and desist from the use of the words "Product of Italy" either independently or in connection or conjunction with the word "Imported" or with any other word or words or with any Italian pictorial representation as a brand or label for his product so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said product is produced in and imported from Italy; unless when said product is composed in substantial part of olive oil produced in and imported

from Italy, and the words "Product of Italy" are used as descriptive thereof, then in that case said quoted words shall be immediately accompanied by some other words or words printed in type equally as conspicuous as that in which said quoted words are printed so as to indicate clearly that said product is not composed wholly of olive oil produced in and imported from Italy, and that will otherwise indicate clearly that said product is composed in substantial part of an oil other than olive produced in and imported from Italy. Said Spiro Rousos also agreed, in soliciting the sale of and selling his product designated "La Vergine Brand" in interstate commerce, to cease and desist from the use of the word "Lucca" either alone or in connection or conjunction with any other word or words or with any Italian pictorial or other representations as a brand or label for his said product so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said product is produced in and imported from the Lucca district of Italy, when such is not the fact. Said Spiro Rousos also agreed to cease and desist from the use of the pictorial representation of an olive tree either independently or in connection or conjunction with the word "Lucca" or with any Italian word or words or in any other way as a brand or label for his product designated "La Vergine Brand" so as to import or imply or which may have the capacity or tendency to mislead or deceive purchasers into the belief that said product is composed of olive oil or of olive oil produced in Italy or in the Lucca district of Italy, when such is not the fact. (Feb. 7, 1935.)

1307. False and Misleading Brands or Labels, Trade Name and Advertising—Bankrupt Stocks, Perfumes, and Handkerchiefs.—William Grennon, an individual trading as The Liquidating Co., engaged in the purchase of bankrupt stocks and in the sale of same in interstate commerce, and in competition with other individuals, firms, corporations, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

William Grennon, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use as a trade name under which to carry on his business of the words "The Liquidating Company"; and from the use of the word "Liquidating", or any other similar word or word of similar import, which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that he is acting or offering goods for sale in the capacity of a receiver or liquidator under order of court in bankruptcy or other court proceedings; the use of the words "Paris" and/or "France", either independently or in connection or conjunc-

tion with each other, or with any other word or words of similar import, or of statements and representations to the effect that said product is made by a secret formula from Paris, or that a Parisian has made this "Parfum" for Hollywood; and from the use of any other word or words of similar import which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said product was compounded in Paris, or in France, when such is not the fact; the use of the words "and it has been endorsed by Hollywood's most discriminating stars", or other words of similar import, which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said product has been endorsed by the actresses commonly known as "Hollywood Stars", when such is not the fact; and the sale and distribution in interstate commerce of handkerchiefs marked and branded with such legends as "Hand Rolled Hem" or "Irish Linen", when in fact the products so marked, branded, or represented do not have a hand-rolled hem or are not composed of linen, a product of the flax or hemp plant, but are composed of a material or materials other than linen. (Feb. 7, 1935.)

1308. **Fale and Misleading Brands or Labels—Olive Oil.**—Agash Refining Corporation, a corporation engaged in the importation of olive oil, and in the blending, packing, and distribution of said product in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Agash Refining Corporation, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word "Lucca" on the cans or labels in which its products are sold, either independently or in connection or conjunction with any other word or words, or with any Italian pictorial or other representations as a brand or label for its products in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief, or import or imply to such purchaser, that said products are produced in and imported from the Lucca District of Italy, when such is not the fact; the use of the words "Imported from Italy" either independently or in connection or conjunction with any other word or words, or with any Italian or other pictorial representation, as a mark or brand for its oil products, in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are composed wholly of oils produced in and imported from Italy; unless, when said products are composed in substantial part of oils produced in and imported from Italy, and partly of other oils, and

the words "Imported from Italy" are used to describe and designate the same, then in that case the words "Imported from Italy" shall be accompanied by some other word or words, printed in type equally as conspicuous as those in which the words "Imported from Italy" are printed, so as to indicate clearly that said products are not composed wholly of oils produced in and imported from Italy, and that will otherwise clearly indicate that such products are composed in part of an oil or oils other than oils produced in and imported from Italy. (Feb. 12, 1935.)

1309. False and Misleading Brands or Labels—Shoe Laces.—Adolph Hauptman, an individual trading under his own name, engaged in business as an importer of various articles of merchandise, including shoe laces, from Japan and other foreign countries and in the sale and distribution of said products in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Adolph Hauptman, in soliciting the sale of and selling his shoe laces in interstate commerce, agreed to cease and desist from the use of the word "Mercerized" either independently or in connection or conjunction with any other word or words on the brands or labels affixed to said products so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products have been treated with a process of mercerization when such is not the fact. (Feb. 12, 1935.)

1310. False and Misleading Brands or Labels, Trade Name and Advertising—Pipes and Drug Products.—Reiss Premier Pipe Co., trading under its corporate name and also under the trade name of Island Products Co., engaged in the manufacture of pipes and drug products, and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Reiss Premier Pipe Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the words "West Indian", either independently or in connection or conjunction with any other word or words, or with a pictorial representation of a tropical island, to describe or designate a product not produced in and manufactured in the West Indian Islands; and from the use of the words "West Indian" in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the product so designated or described is

a product produced in and manufactured in the West Indian Islands, when such is not the fact. (Feb. 14, 1935.)

1311. **False and Misleading Trade or Corporate Name and Advertising—Courses of Instruction or So-Called Educational Programs.**—University Extension Forum and Kappa Gamma Sorority, corporations, cooperatively engaged in the sale and distribution in interstate commerce of courses of instruction or so-called educational programs, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

University Extension Forum and Kappa Gamma Sorority, in soliciting the sale of and selling their products in interstate commerce, jointly and severally agreed to cease and desist from the use of the word "University", either alone or together with the word "Extension" as part of the corporate or trade name used by them, or either of them. Said corporations also jointly and severally agreed to cease and desist from the use of the word "University" and the words "University Extension" in their advertising and printed matter distributed in interstate commerce so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers or prospective purchasers into the belief that said corporations, or either of them, are or is connected with or are or is conducting an educational institution or an extension of such institution organized for teaching and study in the higher branches of learning, and in which the education imparted is universal, embracing many branches such as the arts, sciences, and all manner of learning, and possessing power to confer degrees which indicate proficiency in the branches taught. Said corporations also jointly and severally agreed to cease and desist from the use of the word "University" or the words "University Extension" in any way in soliciting the sale of and selling said courses of instruction or educational programs in interstate commerce, which may have the capacity or tendency to mislead or deceive the public into the belief that said University Extension Forum is an educational institution such as the terms "University" and "University Extension" are commonly understood and generally accepted to mean by the public. (Feb. 14, 1935.)

1312. **False and Misleading Brands or Labels and Advertising—Olive Oil.**—I. Haber, Inc., a corporation, and Isadore Haber, an individual trading under the name and style of Lily Food Products Co., occupy the same offices and are engaged in the importation, blending, and packing of olive oil and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the

following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

I. Haber, Inc., and Isadore Haber, jointly and severally agreed, in soliciting the sale of and selling its or his products in interstate commerce, to cease and desist from the use of the words "Imported Italian Olive Oil Lucca-Toscana" and/or from the use of the words "Imported from Lucca Tuscany Italy", or any thereof, either independently or in connection or conjunction with any other word or words or in any way which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that said products consist wholly of olive oil purchased in and imported from the Lucca District, in Tuscany, Italy, when such is not the fact; or unless, when said products are composed in substantial part of oils produced in and imported from the Lucca District, in Tuscany, Italy, and the words "Imported from Italy" or "Imported from Lucca, Tuscany, Italy" are used to describe and designate such Italian and imported oils, then in that case the words "Imported from Italy" or "Imported from Lucca, Tuscany, Italy" shall be accompanied by some other word or words printed in type equally as conspicuous as that in which the words "Imported in Italy" or "Imported from Lucca, Tuscany, Italy" are printed, so as to indicate clearly that said products are not composed wholly of oils produced in and imported from the Lucca District or other parts of Italy, and that will otherwise clearly indicate that such products are composed in part of an oil or oils other than oils produced in and imported from the Lucca District in Tuscany or other parts of Italy. (Feb. 14, 1935.)

1313. **False and Misleading Brands or Labels—Ladies' Undergarments.**—Moore Undies, Inc., a corporation, engaged in the manufacture of ladies' silk and non-knitted underwear and in the distribution of same in interstate commerce. Tri-Knit Undergarment Co., Inc., a corporation, engaged in the manufacture of ladies' undergarments, chiefly of cotton, and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, said corporations entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Moore Undies, Inc., and Tri-Knit Undergarment Co., Inc., in soliciting the sale of and selling their products in interstate commerce, agreed jointly and severally, to cease and desist from marking, branding, or representing their products, or any thereof, as "100% Pure Silk" and/or "100% Pure Dye." If the said product is weighted to an amount exceeding 15% in black goods or to an amount exceeding 10% in goods other than black, and the word "Silk" or "Dye" is used to designate said product, then there shall be used in

connection therewith the word "Weighted" or some other word or words printed in type equally as conspicuous as that in which the word "Silk" or "Dye" is printed so as to indicate clearly that the said product is not composed wholly of silk, but is weighted with mineral salts or some other weighting substance. (Feb. 15, 1935.)

1314. **False and Misleading Brands or Labels and Advertising—Chamois Skins.**—Albert Bloch and Sons, Inc., a corporation, engaged in the wholesale distribution of chamois skins in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Albert Bloch and Sons, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word "French" or the words "French Process" either alone or in connection or conjunction with any other word or words on its brands affixed to said products or in its advertising or printed matter distributed in interstate commerce so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are of French origin or manufacture and/or are made or manufactured in accordance with a French process, when such is not the fact. (Feb. 18, 1935.)

1315. **False and Misleading Advertising—"Pomagne."**—Dixie Distributing Co., a corporation engaged in the sale and distribution of a product designated "Pomagne", and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Dixie Distributing Co., in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the use in its advertising matter or otherwise of the word "champagne" either independently or in connection or conjunction with any other word or words, or in any way to represent, designate, or refer to said product so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said product is that product known to the trade and purchasing public as champagne, when such is not the fact. Said corporation also agreed to cease and desist from the use in its said advertising matter of the words "vintage" or "vintaged" or of any other word or words of equivalent meaning, which, by implication or otherwise, may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said product is a grape product or a product made or manufactured from the juice or the fruit of the grape, when such is not the fact. Said corporation

further agreed to cease and desist from representing that the alcoholic strength of said product is "15% Proof", when such is not the fact. (Feb. 23, 1935.)

1316. **False and Misleading Advertising—"Pomagne."**—Tower Pharmacy, Inc., a corporation, engaged in the sale and distribution of a product designated "Pomagne" in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Tower Pharmacy, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in its advertising matter or otherwise of the word "champagne", either independently or in connection or conjunction with any other word or words, or in any way, to represent, designate, or refer to said product so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said product is that product known to the trade and consuming public as champagne, when such is not the fact. (Feb. 23, 1935.)

1317. **False and Misleading Advertising—Commercial and Social Announcements.**—Brenner Paper Manufacturing, Inc., a corporation, engaged in the business of manufacturing a general line of commercial and social announcements and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Brenner Paper Manufacturing, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in its advertisements and advertising matter distributed in interstate commerce, of the use of the word "Engraving", either independently or in connection or conjunction with the word "Process", or with any other word or words or as descriptive of its products in any way which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that said products are the result of impressions made from inked engraved plates, commonly known to the trade and the purchasing public as "engraving" and/or "Embossing", when such is not the fact. (Feb. 23, 1935.)

1318. **False and Misleading Advertising—Silverware.**—Arthur Lans, Nathan Lans, and Hattie Lans Spitzer, co-partners, engaged in the sale and distribution in interstate commerce, of silverware and other products both at retail and by mail orders, and in competition with

other partnerships, individuals, firms, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Arthur Lans, Nathan Lans, and Hattie Lans Spitzer, in soliciting the sale of and selling their silverware in interstate commerce, agreed to cease and desist from the use of the word "Sheffield" in advertisements or advertising matter, either independently or in connection or conjunction with any other word or words, to describe, designate, or represent products not made in Sheffield, England, and/or not manufactured in accordance with the process used in the manufacture of "Sheffield Silverware" or "Sheffield Plate"; and the use of the word "Sheffield" in any way which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that the products so described, designated, or referred to are manufactured in Sheffield, England, and/or manufactured in accordance with the process used in the manufacture of "Sheffield Silverware" or "Sheffield Plate"; or that the products so designated, described, and represented are of the quality associated with that grade of silverware known to the trade and the purchasing public as "Sheffield Silverware" or "Sheffield Plate", when such is not the fact. (Feb. 23, 1935.)

1319. False and Misleading Brands or Labels and Advertising—Dog Food.—Loudon Packing Co. and Simpson Products Co., corporations, engaged in packing certain products, including a dog food known as "Doggie Dinner", and in the sale and distribution of said product in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Loudon Packing Co. and Simpson Products Co., in soliciting the sale of and selling their products in interstate commerce, agreed jointly and severally to cease and desist from the use in advertisements or advertising matter, or on labels of the product "Doggie Dinner", the following: the use of statements and representations that the beef or other meat ingredients used in the manufacture of said product is United States Government inspected; the use of the word "beef" to describe or designate the meat ingredient of their said product, unless and until the same consist of beef, properly so called; the use of statements and representations that their said product has the endorsement of leading veterinarians and animal hospitals, when such is not the fact. (Feb. 23, 1935.)

1320. False and Misleading Advertising and Appropriating Another's Advertising Matter—Jewelry.—George H. Silver and Abraham B. Wills, copartners, trading under the firm name and style of Creon

Co., engaged in the sale and distribution of a type of jewelry, including bracelets, rings, necklaces, and the like, in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

George H. Silver and Abraham B. Wills, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from distributing in interstate commerce among customers and prospective customers, advertisements of large and/or favorably known department or jewelry stores featuring products offered for sale or sold by said department or jewelry stores so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive such customers into the belief that said copartners have sold or shipped such jewelry to the department or other store whose advertising matter they had appropriated. Said copartners also agreed in soliciting the sale of and selling their products to cease and desist from the use on their letterheads or other printed matter of the words "Manufacturers" and "factories", or either of them alone or in connection or conjunction with any other word or words or in any way so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said copartners make or manufacture the products which they sell or that they own, operate, and control a factory or the factory wherein their products are made or manufactured, when such is not the fact; said copartners further agreed to cease and desist from the use of the word "importers" on their letterheads or other printed matter or in any other way so as to import or imply that the said copartners obtain their products from abroad and/or that said products are of foreign origin and shipped into the United States, when such is not the fact. (Feb. 23, 1935.)

1321. False and Misleading Advertising—Coupons and Advertising Cards.—Ralph Wade, an individual trading under the name and style of "Merchandise Advertising Service", engaged in the sale and distribution in interstate commerce of coupons and advertising cards for use by retailers in connection with the sale of their merchandise, and in the redemption of such coupons and exchanging therefor cameras and films, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Ralph Wade, in soliciting the sale of and selling his merchandise in interstate commerce, agreed to cease and desist from the use of

representations which import or imply, or which have the capacity to confuse, mislead, or deceive purchasers into the belief, that he is a distributor, agent, or representative of the Eastman Kodak Co., when such is not the fact; stating or representing, directly or indirectly, in contracts, coupons, advertisements, or advertising matter circulated in interstate commerce, that the cameras which he distributes are given free, when such is not the fact. (Feb. 23, 1935.)

1322. **False and Misleading Prices and Advertising—Medicinal Specialties.**—R. E. Leaderbrand, an individual trading as F. B. Products Co., engaged in the sale and distribution, by mail orders, in interstate commerce of drugs and medical specialties, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

R. E. Leaderbrand, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from stating and representing in advertisements or advertising matter circulated in interstate commerce: that the use of his "Favorite Brand Regulator" tablets will relieve bearing-down pains, hot flashes, headaches, unstrung nerves, or feverish conditions; that said "Favorite Brand Regulator" tablets are a safe treatment for self-administration; that said "Favorite Brand Regulator" tablets are of double strength; that the regular and customary price of said "Favorite Brand Regulator" tablets is \$2.00 per box, and/or that the price of \$1.00 per box is a special or reduced price therefor; that his "Favorite Brand Relief Compound" is an emmenagogue, or has any other beneficial effect than that due to the stimulative effect of the alcohol or the laxative effect of the other ingredients therein; that his "Favorite Brand Vagettes" are antiseptic, or are germ-destroyers, or that the same are safe for self-administration, or are products which a reputable physician would prescribe; that his "Favorite Brand Vagi-Tabs" are a safe or proper treatment for leucorrhoea, vaginitis, or vaginal ulcers in women, or that they are safe for self-administration, or are products which a reputable physician would prescribe. (Feb. 23, 1935.)

1323. **False and Misleading Advertising—Chamois, Sponges, Pumice, Industrial Felt Products, Etc.**—James H. Rhodes and Co., a corporation, engaged in the sale and distribution of various products, including chamois, sponges, pumice, industrial felt products, and other articles in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

James H. Rhodes and Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in its catalogs distributed in interstate commerce or in any other way of the statement or representation that the said corporation controls through use and operation or otherwise one or any tannery or place where the work of tanning is carried on, when such is not the fact. Said corporation also agrees, to cease and desist from the use of the words "From fisheries to you" and the pictorial representation of a fleet of boats, or of either the said quoted words or the said fleet picturization, independently or in connection or conjunction each with the other or in any other way so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said corporation owns, operates, and controls the fleet used in fishing the sponges sold by it in interstate commerce, when such is not the fact. (Feb. 23, 1935.)

1324. False and Misleading Brands or Labels—Stogies.—Clyde R. Heed, an individual, engaged in the manufacture of stogies and in the sale and distribution of same in interstate commerce, and in competition with other individuals, firms and partnerships, and corporations likewise engaged entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Clyde R. Heed, in soliciting the sale of and selling his stogies designated "Whoop-ee Crooks" in interstate commerce, agreed to cease and desist from the use of the words "Cured in rum" or of any other words of equivalent meaning on his brands or labels affixed to said products or to the containers of said products so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products, or the tobacco from which the same are made, have been cured in rum or in any way treated with rum, when such is not the fact. Said individual also agreed, in soliciting the sale of and selling the stogies designated "Brokers Special" in interstate commerce, to cease and desist from the use of the words "Wine Dipped" or of any other words of similar meaning on his brands or labels affixed to said products or the containers of said products so as to import or imply or which may have the capacity or tendency to confuse, mislead or deceive purchasers into the belief that said products, or the tobacco from which the same are made, have been dipped in wine or otherwise treated with wine, when such is not the fact. (Feb. 23, 1935.)

1325. False and Misleading Brands or Labels and Advertising—Bay Rum.—Peroxide Chemical Co., a corporation, engaged in the manufacture of certain cosmetics, toilet articles, and other merchandise, including a bay-rum product, and in the sale and distribution of

same under its corporate name, or under the trade names "Vi-Jon Laboratories" or "Veltex Co.", in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Peroxide Chemical Co., in soliciting the sale of and selling its bay rum in interstate commerce, agreed to cease and desist from the use of the words "West Indian Bay Rum", either independently or in connection or conjunction with any other word or words, pictorial representation, or in any other way, in its printed matter or on labels affixed to its said product so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said product is of foreign origin or manufactured in the West Indian Islands, when such is not the fact. (Feb. 23, 1935.)

1326. False and Misleading Brands or Labels and Advertising—Refrigerators.—D. T. Ward, Harry Ward, and Dwight A. Ward, co-partners, trading as The Ward Refrigerator and Manufacturing Co. engaged in the manufacture of a line of refrigerators and in the sale and distribution of said products in interstate commerce, and in competition with other partnerships, firms, individuals, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

D. T. Ward, Harry Ward, and Dwight A. Ward, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from the use of the words "All-Metal" in representing or describing their said products; and from the use of the words "All-Metal" in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that such products are constructed in their entirety of metal, when such is not the fact. (Feb. 23, 1935.)

1327. Using Lottery Scheme in Merchandising—Confectionery.—Deran Confectionery Co., a corporation, engaged in the manufacture of confectionery and in the sale and distribution of said products in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Deran Confectionery Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in interstate commerce of any scheme, plan, or method of sale, or of promoting the sale of its products which involves the use

of any gift enterprise, lottery, of any scheme of chance whereby an article is given as a prize for or in consideration of the purchase of any other article. (Feb. 23, 1935.)

1328. False and Misleading Brands or Labels—Plumbing Equipment.—Simplex Boiler Stand Co., Inc., a corporation, engaged in the manufacture of plumbing equipment, including metal tank stands, and in the sale and distribution of said products in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Simplex Boiler Stand Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from marking, branding, or designating its said products with the words and figures "Pat. No. 1081"; and from marking, branding, or designating said products with any other words or figures which have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said Simplex Boiler Stand Co., Inc., is the owner of a patent on said products, when such is not the fact. (Feb. 23, 1935.)

1329. False and Misleading Trade Name and Advertising—Coal.—Leckie Coal Co., Inc., a corporation, engaged in the business of mining coal from mines located in the States of Virginia, West Virginia, and Kentucky, and in the sale and distribution of said products at wholesale in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Leckie Coal Co., Inc., in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the use of the word "Pocahontas" as a trade name or designation for coal not mined in the district as known to geologists, the trade, and the purchasing public as the Pocahontas Coal District; and from the use of the word "Pocahontas" in advertisements or in any other way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the products so designated and referred to are products produced in the Pocahontas Coal District, when such is not the fact. (Feb. 23, 1935.)

1330. False and Misleading Brands or Labels—Fountain Pens and Pen Points.—C. Howard Hunt Pen Co., a corporation, engaged in the manufacture of fountain pens and pen points and in the distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged,

entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

C. Howard Hunt Pen Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word and figures "Durigold 14", either independently or in connection or conjunction each with the other or with any other word or words as a brand or label for their product so as to import or imply that the said product is gold, or that the said product is 14 carat gold, when such is not the fact; and from the use of the word "Gold" either independently or in connection or conjunction with the word or letters "Duri" or with any other word or letters, figure or figures in any way so as to import or imply that the said product sold by them is manufactured from gold or that the same is 14 carat gold, when such is not the fact. (Feb. 26, 1935.)

1331. False and Misleading Brands or Labels—Shoe Laces.—Abraham Nadel and Morris Shimmel, copartners, trading under the name and style of Nadel & Shimmel, engaged in business as importers of toys and novelties, and during the year 1933, of shoe laces made in Japan, selling and distributing said shoe laces in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Abraham Nadel and Morris Shimmel, in soliciting the sale of and selling their shoe laces in interstate commerce, agreed to cease and desist from the use of the word "Mercerized" either independently or in connection or conjunction with any other word or words on the brands or labels affixed to said products so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products have been treated with a process of mercerization, when such is not the fact. (Mar. 1, 1935.)

1332. False and Misleading Advertising—Hats.—Saks and Co., Inc., a corporation, engaged in the business of operating department stores in which it sells at retail a large number of articles of merchandise, causing a substantial part of such merchandise, when sold, to be shipped in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Saks and Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word "Panama" either independently or in connection or conjunction with any other word or words, in advertisements or advertising

matter circulated in interstate commerce to represent or designate a product not made from the leaves of the Paja Toquilla or Jipi Japa and not manufactured in accordance with the process used in the manufacture of Panama hats; and from the use of the word "Panama" in any way which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that the products so advertised and represented are made from the leaves of the Paja Toquilla or Jipi Japa, or are fabricated in accordance with the process used in the manufacture of Panama hats, when such is not the fact. (Mar. 1, 1935.)

1333. False and Misleading Brands or Labels, Trade or Corporate Name, and Advertising—Dog and Cat Foods.—Vaughan Packing Co., Inc., a corporation, engaged in the manufacture and packing of prepared dog and cat foods and in the sale and distribution of said products in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Vaughan Packing Co., Inc., in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the use of the word "Packing" as part of its corporate or trade name, in soliciting the sale of and selling its dog and cat foods in interstate commerce; and from the use of the word "packing" in any way which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that it is a packer subject to the provisions of the Packers and Stockyards Act, 1921; from the use in its advertisements or advertising matter, or on labels of its said products, of statements and representations that the beef or other meat ingredients used in the manufacture of said products is United States Government inspected; of the word "beef" to describe or designate the meat ingredient of its said products, unless and until the same consist of beef, properly so called. (Mar. 1, 1935.)

1334. False and Misleading Advertising—Correspondence Courses in Jiu-Jitsu.—Donald P. Eby, an individual, trading under the name and style of American School of Jiu-Jitsu, engaged in conducting a correspondence school whose home-study courses consist of instruction in what he represents to be Jiu-Jitsu, causing said courses, when sold, to be shipped in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Donald P. Eby, in soliciting the sale of and selling his correspondence courses in interstate commerce, agreed to cease and desist from overstating, exaggerating, and misrepresenting the opportunities for

employment of his student-graduates, and the salaries which are paid for the services of instructors; stating and representing that only a small number of scholarships remain unsold, or are available for purchase by would-be students, when such is not the fact; stating and representing that Ed. "Strangler" Lewis, Jim Browning, or other well-known wrestlers are in the employ of his school, either independently or in connection or conjunction with portraits of such individuals, when such is not the fact; stating and representing, either independently or in connection or conjunction with any pictorial representation, that he owns, controls, and operates a gymnasium in connection with said course, when such is not the fact. (Mar. 4, 1935.)

1335. **False and Misleading Trade Names, Brands, or Labels—Shoes.**—George Balsam, an individual trading under the name and style of Balsam Shoe Co., engaged in the sale of shoes, at wholesale in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

George Balsam, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use of the word "Doctor" or the abbreviation "Dr." in connection or conjunction with a name, or with any other word or words, as a trade name, brand, or designation for his product, or in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said product is made in accordance with the design and/or under the supervision of a doctor, or contains special, scientific, or orthopedic features which are the result of medical advice or services, when such is not the fact. (Mar. 4, 1935.)

1336. **False and Misleading Brands or Labels and Advertising—Epilepsy Medicines and Laxatives.**—Georgiana B. Whitcomb and Ellaline Chilvers, copartners trading under the names "W. H. Peeke" and "H. G. Root", engaged in the sale and distribution of epilepsy medicines and laxatives in interstate commerce, and in competition with other partnerships, corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Georgiana B. Whitcomb and Ellaline Chilvers, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from the use on the labels affixed to their said products or in their advertising matter distributed in interstate commerce of any and all of the aforesaid statements and representations or of any other statements or representations of equivalent meaning which

may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that either of their products is a cure or remedy for epilepsy and/or has or possesses therapeutic value in the treatment of epilepsy in excess of what is actually the fact. The copartners also agreed to cease and desist from representing in advertisements or otherwise that either of said products is a special remedy for epilepsy; the use of either of said products will drive the malady from the system; epilepsy can be permanently cured or that it is curable through the use of either or both of said products. Said copartners further agreed to cease and desist from the use in their advertisements or printed matter distributed in interstate commerce of the word "Laboratory" either independently or in connection or conjunction with "Prof. W. H. Peeke" and/or "H. G. Root" or with any other word or words which may import or imply or which may have the capacity or tendency to mislead or deceive purchasers into the belief that said copartners own, operate, and control the laboratory wherein are made or compounded the products sold by them in interstate commerce, or that they, the said copartners, have one "Prof. W. H. Peeke" or one "H. G. Root, M. C." associated with them in the conduct of their said business, when such are not the facts. (Mar. 7, 1935.)

1337. **False and Misleading Advertising—Sanitary Napkins.**—Veldown Co., Inc., a corporation, engaged in the manufacture of sanitary napkins and in the sale and distribution of same, in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Veldown Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word "Deodorant" and/or "Deodorization" as descriptive of its said product, in advertisements or advertising matter circulated in interstate commerce; the use in advertisements and advertising matter of any statements or representations suggesting or implying that by the use of its said product offensive odors can be or are prevented. (Mar. 7, 1935.)

1338. **False and Misleading Advertising—Beer.**—The Heidelberg Brewing Co., a corporation, engaged in the brewing of beer and in the sale and distribution of same in interstate commerce under the trade name or brand of "Student Prince" and in competition with other corporations, individuals, firms, and partnerships likewise engaged entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

The Heidelberg Brewing Co., in soliciting the sale of and selling its beer in interstate commerce, agreed to cease and desist from stating and representing in advertisements and advertising matter circulated in interstate commerce, or otherwise, that its beer is the only beer produced within the district of Greater Cincinnati by the process known to the trade and the purchasing public as "lautering." (Mar. 11, 1935.)

1339. **False and Misleading Brands or Labels—Neatsfoot Oil Compound.**—Montgomery Ward and Co., a corporation, engaged in the sale of a general line of merchandise, including neatsfoot oil compound, both by means of mail orders and through its retail stores in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Montgomery Ward and Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word "Neatsfoot" as a brand or label for said products, either independently or in connection or conjunction with any other word or words, or in any way which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that the product so designated and described is composed wholly of neatsfoot oil, when such is not the fact; unless, when the product is composed in substantial part of neatsfoot oil, and the word "Neatsfoot" is used as descriptive thereof, in which case the word "Neatsfoot" shall be immediately accompanied by some other word or words, printed in type equally as conspicuous as that in which the word "Neatsfoot" is printed, and which will clearly indicate that said product is not composed wholly of neatsfoot oil and will otherwise accurately and properly describe said product. (Mar. 11, 1935.)

1340. **False and Misleading Brands or Labels and Advertising—Shirts.**—Cardinal Shirt Co., Inc., a corporation, engaged in the sale and distribution of shirts in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution of similar products, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Cardinal Shirt Co., Inc., in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the use on its brands or labels affixed to said products, or otherwise to describe said products of the words "full count" or of any other words or symbols of equivalent meaning so as to import or imply that the fabric from which said products are made contain such numbers of threads in the warp and in the filling thereof as a "full

count" fabric is generally understood by the trade and purchasing public to contain; of the words "full count" in any other way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the fabric from which said products are made is composed of a warp and filling thread count in excess of what is actually the fact; of the words "fast color" or of the word "fast" either independently or in connection or conjunction with any other word or words or in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the fabric from which said products are made has been dyed with "fast" dyes, as that term is understood by the purchasing public and/or that said products will not fade by exposure to the air or by washing, when such is not the fact; of the hyphenated word "pre-shrunk" or of any other word or words of equivalent meaning as descriptive of or to designate products which have not been pre-shrunk as that term is understood by the trade and the purchasing public; of the words "invisible collar stays" either independently or in connection or conjunction with the words "that prevent the points from curling" or with any other word or words or in any way so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the collars of said products are provided with stays or suitable reinforcements so as to prevent the collars or the points of collars from curling or wrinkling, when such is not the fact. (Mar. 13, 1935.)

1341. **False and Misleading Advertising—Alloys.**—Jacob W. Frankel, an individual trading as The Minimax Co., engaged in the compounding of alloys for use by dentists in making fillings, and in the sale and distribution of same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Jacob W. Frankel, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from stating and representing in his advertisements and advertising matter circulated in interstate commerce, directly or in substance: that Minimax Alloy No. 178 has the quality of resisting physical changes due to variations in manipulation by the operator so that it will produce a good filling regardless of that factor; that the disturbing factors usually found in such alloys have been eliminated in the manufacture of said product; that said product is proof against shrinkage regardless of manipulation; and that no other manufacturer has yet been able to produce an alloy of a quality equal to that of Minimax Alloy No. 178. (Mar. 13, 1935.)

1342. **False and Misleading Brands or Labels and Advertising—Christmas Tree Lighting Outfits.**—Gem Electric Manufacturing Co., Inc., a corporation engaged in the manufacture of electrical specialties, including outfits for the lighting of Christmas trees, and in the sale and distribution of said products in interstate commerce, and in competition with other corporations, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Gem Electric Manufacturing Co., Inc., in soliciting the sale of and selling its Christmas tree lighting outfits in interstate commerce, agreed to cease and desist from the use of the representation or statement, "Made in U. S. A.", or of any similar representation or statement of equivalent meaning as a mark or brand for its said products so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are composed of parts, all of which are made in the United States of America; unless, when said products are composed only in part of a part or parts which are made in the United States of America, and the representation or statement, "Made in U. S. A.", is used to designate the same, then in that case, said representation or statement shall be accompanied by some word or words, printed in type equally as conspicuous as that in which the words "Made in U. S. A." are printed, so as to indicate clearly that said products are not composed wholly of parts made in the U. S. A., and that will otherwise clearly indicate that said products are composed in part of parts which are not made in the U. S. A. (Mar. 13, 1935.)

1343. **False and Misleading Advertising—Christmas Tree Lighting Outfits and Electrical Specialties.**—Thomas Shower, an individual trading as Thomas Import Co., engaged in the manufacture, importation, assembling, sale, and distribution in interstate commerce of Christmas tree lighting outfits and electrical specialties; and in competition with other individuals, firms, partnerships, and corporations likewise engaged entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Thomas Shower, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use of the words "Made in U. S. A." and/or "Manufactured by Thomas Import Company, New York, U. S. A.," unless when said products are composed in part of constituents made in the United States and in part of constituents imported from a foreign country, and the words "Made in U. S. A." are used to designate and describe the same, then

in that case such words "Made in the U. S. A." shall be accompanied by some other word or words indicating clearly that said products are not composed wholly of United States made parts, and which will clearly indicate that said product is composed in part of elements not made or manufactured in the United States of America. (Mar. 13, 1935.)

1344. **False and Misleading Brands or Labels—Coin and Currency Bags and "Porter Safety Seal."**—Porter Safety Seal Co., a corporation, engaged in the manufacture of coin and currency bags, shipping tags, sealing implements, and seals, including the "Porter Safety Seal", and in the sale and distribution of said products in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Porter Safety Seal Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from marking, stamping, branding, or designating said product with the word "Patented" or the words "Patent Nos. 719, 864-5 & 6" and from marking, stamping, branding, or designating said product with said word, or words and figures or with any other words and figures so as to import or imply, or which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that the said Porter Safety Seal Co. owns or controls a present, subsisting valid patent upon said product, when such is not the fact. (Mar. 13, 1935.)

1345. **False and Misleading Advertising—Vermin Exterminator.**—W. R. Murray, an individual trading under the name and style of Universal Pharmaceutical Laboratories, engaged in the manufacture of a vermin exterminator and in the sale and distribution of said product, under the trade name of "The National Pied Piper Rat-Killer", in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

W. R. Murray, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use of the statement or representation that his product has been recommended by the Department of Agriculture; and from the use of any other similar or equivalent statement or combination of words which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said product has been endorsed or recommended by the Department of Agriculture of the United States, when such is not the fact. (Mar. 13, 1935.)

1346. **False and Misleading Advertising—"Magic Lighter" and Fuel.**—William H. Habenstreit and Beatrice L. Miller, copartners, engaged

under different trade names in the sale and distribution in interstate commerce of a variety of products, including a so-called "Magic Lighter" and of fuel for use in the same, and in competition with other partnerships, firms, individuals, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

William H. Habenstreit and Beatrice L. Miller, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from the use in contracts of ambiguous and uncertain language and provisions which have the capacity or tendency to confuse, mislead, or deceive purchasers in any material respect in reference to the meaning thereof; making misleading statements, either directly or through agents or solicitors, respecting the meaning or interpretation of contracts, which have the tendency or capacity to confuse, mislead, or deceive purchasers in any material respect in reference to the meaning thereof; stating and representing, in advertisements or advertising matter, or in any other way, that their "Magic Fluid" is the only fuel that will make their "Magic Lighter" operate, when such is not the fact. (Mar. 13, 1935.)

1347. **False and Misleading Advertising—China Bathroom Accessories.**—Ashfield-Johnson Corporation, a corporation, engaged in the sale and distribution in interstate commerce of china bathroom accessories, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Ashfield-Johnson Corporation, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from stating and representing in its advertisements or advertising matter distributed in interstate commerce, that it is a manufacturer of china bathroom accessories, when such is not the fact, or making any representation or statement that may import or imply it manufactures said products, when such is not the fact. (Mar. 14, 1935.)

1348. **False and Misleading Brands or Labels and Advertising—Christmas Tree Lighting Outfits.**—Adco Electric Manufacturing Co., Inc., a corporation, engaged in the manufacture of electrical novelties and electrical decorative specialties, including electric lighting outfits for Christmas trees, and in the sale and distribution of said products, under the trade name of "Adcolite Products", in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Adco Electric Manufacturing Co., Inc., in soliciting the sale of and selling its Christmas tree lighting outfits in interstate commerce, agreed to cease and desist from the use of the representation or statement "Made in U. S. A." or of any similar representation or statement of equivalent meaning as a mark or brand for its said products so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are composed of parts, all of which are made in the United States of America; unless, when said products are composed only in part of a part or parts which are made in the United States of America, and the representation or statement "Made in U. S. A." is used to designate the same, then in that case, said representation or statement shall be accompanied by some word or words, printed in type equally as conspicuous as that in which the words "Made in U. S. A." are printed, so as to indicate clearly that said products are not composed wholly of parts made in the U. S. A. and that will otherwise clearly indicate that said products are composed in part of parts which are not made in the U. S. A. (Mar. 14, 1935.)

1349. False and Misleading Trade or Corporate Name and Advertising—Men's Clothing.—Dickson Raincoat Co., Inc., a corporation, engaged in the sale of men's clothing in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Dickson Raincoat Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from stating and representing, through salesmen or agents, or by means of advertisements or advertising matter distributed in interstate commerce, or by any other means, that suits offered for sale and/or sold and distributed by it are tailored or made to the measure of individual customers, when such is not the fact; using any means or methods of soliciting or accepting orders for men's suits which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the suits ordered will be tailored and made to their individual measurement or order, when such is not the fact; the use of the words "Tailored" or "Tailoring" as a part of any corporate or trade name under which to carry on its said business, either independently or in connection or conjunction with any other word or words, or in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that its products are tailored to the individual measurement of the customer, when such is not the fact; the use in advertisements and advertising matter, in correspondence, or in any other way, of

exaggerated and misleading statements and representations respecting the profits to be realized by agents and solicitors in soliciting the sale of and selling its product; and/or of statements and representations that the suits furnished to its salesmen are free, when such is not the fact. (Mar. 18, 1935.)

1350. **False and Misleading Advertising—Books.**—Charles Scribner's Sons, a corporation, engaged in the publishing business and in the sale and distribution of its publications in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Charles Scribner's Sons, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from selling or distributing any book, whether imported or not, under a substantially different name or title from that under which the said book shall have theretofore been previously published in any periodical, newspaper, serial, or other form whatsoever irrespective of where previously published, unless a notice of the previously used name, title, or titles shall be conspicuously set forth and printed, in no case smaller than twelve-point type, on the front flap of the jacket and on one or more of the pages in said book between the front cover and the title page thereof, or on the title page thereof. The aforesaid Charles Scribner's Sons further agreed that in all advertisements and other printed matter used in soliciting the sale of and selling such publication in interstate commerce shall clearly set forth in connection with the new name or title of such book, the name, names, or titles under which the aforesaid book had been theretofore published. (Mar. 18, 1935.)

1351. **False and Misleading Brands or Labels—Silver Plated Hollow-Ware.**—Keystone Co., Inc., a corporation engaged in the manufacture of silver plated hollow-ware and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Keystone Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use on its brands or labels affixed to its said products or in its printed matter distributed in interstate commerce of the words "Sheffield Reproduction" so as to import or imply that the said products are made or manufactured in accordance with the process used in the manufacture of "Sheffield Silverware" or Sheffield Plate", when such is not the fact. The said corporation also agreed to cease and desist

from the use of the word "Sheffield" either independently or in connection or conjunction with any other word or words or in any other way so as to import or imply that said products are made or manufactured at Sheffield, England, and in accordance with the process used in the manufacture of "Sheffield Silverware" and "Sheffield Plate", when such is not the fact. (Mar. 18, 1935.)

1352. **False and Misleading Trade or Corporate Name and Advertising—Men's Suits.**—Atlantic and Pacific Tailoring Co., Inc., a corporation, engaged in the sale and distribution in interstate commerce of men's ready-made suits purchased by it from the makers or manufacturers thereof located in New York, N. Y., and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Atlantic and Pacific Tailoring Co., Inc., in soliciting the sale of and selling its suits in interstate commerce, agreed to cease and desist from the use of the word "Tailoring" or "Tailors" as part of its corporate or trade name, or in any other way, so as to import or imply that said corporation is engaged in the business of making men's suits to the measure or order of each individual customer, when such is not the fact; representing through its salesmen or by means of printed or advertising matter distributed in interstate commerce or by any other means that suits offered for sale and/or sold by said corporation are tailored and made to the measure or order of the individual customer, when such is not the fact; the use of any and all means or methods of soliciting and accepting orders for suits which may have the capacity or tendency to confuse, mislead, or deceive customers into the belief that the suits ordered by said customers will be tailored and made to their individual measurements or order, when such is not the fact; representing that the suit ordered by the customer will be made of cloth corresponding in material, color, style, and pattern to the sample displayed by the salesman and selected by the customer, when such is not the fact; the use of the word "factory" either alone or in connection or conjunction with any other word or words so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said corporation owns, operates, and controls the factory wherein are made or manufactured the suits sold by it. (Mar. 20, 1935.)

1353. **False and Misleading Advertising—Wrist Watch Straps.**—Samuel Friedman, an individual, trading under the name and style of Brite Specialty Co., engaged in the importation and sale of watch parts, tools, optical goods, and wrist watch straps, and also in the sale of watch straps of domestic material and manufacture, in interstate

commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Samuel Friedman, in soliciting the sale of and selling his leather wrist watch straps in interstate commerce, agreed to cease and desist from the use of the words "Genuine English Leather Watch Strap" in advertisements or advertising matter, or on display cards sold and circulated in interstate commerce, to describe or designate products not made in England; and from the use of the words "Genuine English Leather Watch Strap", either alone or in connection or conjunction with any representation of the English Royal Coat of Arms, or of any other characteristically English words, such as "Buckingham", to describe or designate products of domestic manufacture. (Mar. 20, 1935.)

1354. False and Misleading Brands or Labels—Olive Oil.—A. Hondroulis & Co., Inc., a corporation, engaged in the sale and distribution of olive oil in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

A. Hondroulis & Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the words, "Italian Product", "Imported from Italy", and "Prodotto Italiano", or of any of the quoted groups of words, either independently or in connection or conjunction with any other word or words or in any other way as a mark or brand for its said products so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are composed wholly of oils produced in and imported from Italy, unless, when said products are composed in substantial part of oils produced in and imported from Italy; and the aforesaid words or groups of words are used to describe and designate the same, then in that case said words or groups of words shall be immediately accompanied by some other word or words printed in type equally as conspicuous as that in which said words or groups of words are printed so as to indicate clearly that said products are not composed wholly of oils produced in and imported from Italy and that will otherwise clearly indicate that said products are composed of an oil or oils other than oils produced in and imported from Italy. The said corporation also agreed to cease and desist from the use of the word "Importers" either independently or in connection or conjunction with any other word or words on its

brands or labels affixed to its products or in any other way so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said corporation imports or brings the products which it sells into the United States of America from abroad, when such is not the fact. (Mar. 20, 1935.)

1355. **False and Misleading Advertising—Waterproof Preparation.**—George R. Jenkins and Charles K. Hague, copartners, trading under the firm name and style of The Kotol Co., engaged in the sale and distribution of a product designated “Kotol” for use as a waterproof coating for wooden aeroplane propellers, and in competition with other partnerships, firms, individuals, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

George R. Jenkins and Charles K. Hague, in soliciting the sale of and selling said product, agreed to cease and desist from the use in their circular or other advertising matter distributed in interstate commerce of the statements or representations, “Kotol—A chemical Achievement Which Amazed the United States Government” and “Developed for the United States Government in 1918 as a waterproof coating for wooden aeroplane propellers”, or of either of them or of any other statements or representations of equivalent meaning so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said product has or at any time has had the approval or sanction of the United States Government and/or that the said product has been used to any substantial extent by the United States Government for the purpose specified, when such is not the fact. (Mar. 20, 1935.)

1356. **False and Misleading Brands or Labels — Cigars.**—Jno. H. Swisher & Son, Inc., a corporation, engaged in the manufacture of cigars and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Jno. H. Swisher & Son, Inc., in soliciting the sale of and selling and/or placing its products in the hands of others for sale in interstate commerce, agreed to cease and desist from the use of the words “Hand Made” either independently or in connection or conjunction with any other word or words, or in any other way, on its brands or labels affixed to said products or to the containers of said products, so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said

products are made wholly by hand, when such is not the fact. (Mar. 23, 1935.)

1357. **False and Misleading Brands or Labels and Advertising—Cigars.**—Hamilton, Harris and Co., a corporation, engaged for a number of years in the wholesale business in interstate commerce, selling and distributing cigars, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Hamilton, Harris and Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use, in its printed or advertising matter or on its brands or labels affixed to its products or otherwise, of the words "Hand Made", either independently or in connection or conjunction with any other word or words, or in any other way, so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are made wholly by hand, when such is not the fact. (Mar. 23, 1935.)

1358. **False and Misleading Advertising—Iron and Steel Products.**—Central Iron and Steel Co., a corporation, engaged in the manufacture of various iron and steel products, including perforated or slotted floor plates, and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Central Iron and Steel Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in advertisements and advertising matter of the word "Grating" to describe and designate products now known to the trade and the purchasing public as "Open Steel Flooring", or "Grating", and from the use of the word "Grating" either independently or in connection or conjunction with any other word or words, or in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the products so designated and referred to are the products known to the trade or the purchasing public as "Open Steel Flooring" or "Grating", when such is not the fact. (Mar. 25, 1935.)

1359. **False and Misleading Advertising—Canned Vegetables and Soups.**—Phillips Packing Co., Inc., a corporation, engaged in the putting up of a general line of canned vegetables and soups and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, partnerships, and firms likewise engaged, entered into the following agreement to cease

and desist forever from the alleged unfair methods of competition as set forth therein.

Phillips Packing Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in advertisements and advertising matter of statements or representations to the effect that its crops are inspected by aeroplane; and from the use of any statements or representations which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that such an inspection is practicable or would result in improving the quality of the canned output of the Company. (Mar. 25, 1935.)

1360. False and Misleading Brands or Labels—Cigars.—Park M. Holtzinger and Samuel A. Miller, copartners, trading under the firm name and style of Jacobs, Holtzinger & Co., engaged in the manufacture of cigars and in the sale and distribution of same in interstate commerce, and in competition with other partnerships, firms, individuals, and corporations likewise engaged entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Park M. Holtzinger and Samuel A. Miller, in soliciting the sale of and selling their cigars in interstate commerce, agreed to cease and desist from the use of the word "Havana" either independently or in connection or conjunction with the word "Smokers" or with any other word or words as a brand or label for their said products so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are composed of or made or manufactured from Havana tobacco or tobacco grown on the Island of Cuba, when such is not the fact. (Mar. 26, 1935.)

1361. False and Misleading Advertising—Rug Cleaner.—James B. McComb, an individual, engaged in the compounding, packing, and distribution in interstate commerce of a rug cleaner or shampoo, under the trade names of "Hotelo" and "DeNovo", and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

James B. McComb, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use of statements and representations in advertisements or advertising matter, or on cartons, to the effect that, because his products are made by a patented formula they therefore have a background of authority; have standing before government chemists; that said product is "OK'd by Uncle Sam"; that the formula is protected by

regular inspection by U. S. Chemists; that said product is all he claims for it; that because the application for patent was pending for three years, it was all that time under scrutiny; and/or that said product has the seal of approval of the United States Government. (Mar. 26, 1935.)

1362. **False and Misleading Brands or Labels and Advertising—Cigars and Stogies.**—Shulick-Taylor Co., a corporation, engaged as a wholesaler in the sale and distribution of cigars and stogies in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Shulick-Taylor Co., in soliciting the sale of and selling said products in interstate commerce, agreed to cease and desist from the use of the word "Wheeling" either alone or in connection or conjunction with the word "Twins" or with any other word or words or in any other way to represent, designate, or refer to said products so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are made or manufactured at Wheeling, when such is not the fact. The said corporation also agreed to cease and desist from the use on labels affixed to the containers of said products or in any other way of the words "Hand Made" so as to import or imply that said products are made wholly by hand, when such is not the fact. Said corporation further agreed to cease and desist from the use of the word "Habana" either independently or in connection or conjunction with the word "Perfectos" or with any other word or words on the brands or labels affixed to said products so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are composed of or made or manufactured from Havana tobacco or tobacco grown on the Island of Cuba, when such is not the fact. (Mar. 27, 1935.)

1363. **False and Misleading Trade Name and Advertising—Type.**—National Type Foundry, Inc., a corporation, engaged in business as a typesetter and in the sale and distribution of said products in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

The Bauerische Giesserei is a partnership with its principal place of business at Frankfort-on-the-Main, in Germany, and is engaged in the business of creating printing type designs and in the casting of type. The Bauer Type Foundry, Inc., is a corporation organized under the laws of the State of New York, with its principal place of

business at New York, in the State of New York. Said Bauer Type Foundry, Inc., is owned by the Bauerische Giesserei and is engaged in the sale and distribution, in the United States, of the type designed and cast by its parent company, said Bauerische Giesserei.

In or about the year 1931 the Bauerische Giesserei began to export to the United States and to sell and distribute through its subsidiary, the Bauer Type Foundry, Inc., type of a new design which it advertised, described, and designated as "Bauer Beton", in both bold and open face designs. The type became popular and was and is widely advertised, distributed, and used in the United States; and said Bauerische Giesserei acquired and is now the owner of a valuable good will in the word "Beton" as applied to printing type.

National Type Foundry, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from: the use of the word "Briton" as a trade name under which to advertise, sell, and distribute a line of type substantially identical in face design with the "Beton" type manufactured, sold, and distributed by the Bauerische Giesserei of Frankfort-on-the-Main, in Germany, but which is not the genuine "Beton" type made by said Bauerische Giesserei; and from the use of such trade name of "Briton", or of any other similar word or words, simulating the word "Beton", or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that its said products are the products manufactured and sold by said Bauerische Giesserei, when such is not the fact; from the use in advertisements or advertising matter of statements and representations to the effect that its type, or any thereof, is already installed and in active daily use in printing shops, generally, when such is not the fact. (Apr. 1, 1935.)

1364. **False and Misleading Advertising—Animal Remedies.**—Gabriel S. Dusch, Senior, and Gabriel S. Dusch, Junior, copartners, engaged in the compounding of animal remedies, including a product for use in treating the ailments of dogs, and in the sale and distribution of same in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Gabriel S. Dusch, Senior, and Gabriel S. Dusch, Junior, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from the use in advertisements and advertising matter circulated in interstate commerce of: (a) the words "Kills Mange Overnight", and/or of any other words or phrase of similar meaning; (b) statements and representations implying that all forms of dog mange can be cured by the use of said product,

and in no case shall represent that it is a remedy for follicular mange. (Apr. 1, 1935.)

1365. **False and Misleading Advertising—Hosiery.**—The Par-Tex Hosiery Co., a corporation, engaged in the sale of hosiery for men and women, through salesmen or agents, by means of house to house canvass, and in the distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

The Par-Tex Hosiery Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of statements and representations either directly or through its salesmen and agents, that its products are guaranteed against wear, or for a stated period of time, and that any thereof in which a hole or "run" is found within a year will be replaced, free of charge, when such is not the fact; and from statements and representations having the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said company gives any guarantee of the length of wear of its products, when such is not the fact. (Apr. 5, 1935.)

1366. **False and Misleading Brands or Labels and Advertising—Hair Preparation.**—Nellie C. O'Brien, an individual, engaged in the manufacture of a preparation represented to be useful as a hair stain and in the sale and distribution of same under the trade designation "O. B. Hair Stain" in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Nellie C. O'Brien, in soliciting the sale of and selling said product in interstate commerce, agreed to cease and desist forever from the use on the brands or labels affixed to said product of the words "Is Not a Dye" or of any other words of equivalent meaning so as to import or imply that said product is other than a dye or that the effects derived from the use of said product are other than those produced by a dye. Said individual also agreed to cease and desist from stating or representing that the use of said product on the hair will return such hair to its natural color, when such is not the fact. Said individual further agreed to cease and desist from the use of any and all statements or representations which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said product is other than a dye and/or that its use on the hair will return, restore, reproduce, or bring back the natural color of such hair, regardless of its original shade or color. (Apr. 5, 1935.)

1367. **False and Misleading Advertising—Cedar Lined Furniture.**—Tate Furniture Co., a corporation, engaged in the business of manufacturing cedar lined furniture and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Tate Furniture Co., in soliciting the sale of and selling its said products in interstate commerce, agreed to cease and desist from the use in its circular or other advertising matter distributed in interstate commerce of the words "Cedar Lined", either alone or in connection or conjunction with any other word or words as descriptive of its said products so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing or consuming public into the belief that such products are lined with or composed of cedar wood of such thickness or in such substantial quantity or per cent by weight of such wood so as to afford that protection against moths as is now and for many years last past has been generally understood and recognized by the public to be characteristic of "cedar" products and "Cedar Lined" products; unless, when said products are lined with a veneer of cedar of a thickness or quantity which does not afford protection from moths, and the words "cedar lined" are used as descriptive thereof, then in that case said words "cedar lined" shall be immediately accompanied by some other word or words printed in type equally as conspicuous as that in which said quoted words are printed so as to indicate clearly that said products are not moth proof and/or that will otherwise clearly indicate that said products do not afford protection from moths due to such cedar lining or veneer. (Apr. 10, 1935.)

1368. **False and Misleading Advertising and Failing to Supply Goods as Ordered—Ladies' Hosiery.**—Louis H. Tabach, an individual trading under the name and style of Longwear Hosiery Co. and also as Certified Hosiery Co., engaged in the sale and distribution in interstate commerce of ladies' hosiery, on orders taken by salesmen or solicitors through house-to-house canvass, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Louis H. Tabach, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from: filling orders with hosiery of colors and/or quality different from the size, color, and/or quality ordered; demanding or collecting an additional payment of ten per cent (10%) or of any other sum, as the alleged cost

of postage and insurance fees on shipments of hosiery made for the purpose of correcting mistakes made by the said shipper; unduly or unreasonably delaying the correction of mistakes in filling orders and/or failing or neglecting to make such adjustments; retaining stockings sent in for exchange or adjustment of mistakes, and/or neglecting or failing to refund the money paid by the purchaser as a deposit in such cases; and refusing to make adjustments unless and until purchasers send in the original receipts given them by the salesmen, and/or keeping such receipts while at the same time failing and neglecting to make such adjustments. The said Louis H. Tabach also agreed to cease and desist from stating and representing, directly or through his salesmen or solicitors: that the hosiery is woven with a special lockstitch which prevents them from snagging, running, or getting holes; and that the hosiery is guaranteed to be hole-proof or run-proof for three to six months, or for any other period of time, when such is not the fact; that if such hosiery develops runs or holes, a new pair will be given in exchange therefor without charge, when such extra pair is not actually given; that an extra pair of hosiery will be, or is, given to purchasers of not less than six pairs at one order, when such extra pair is not actually given; understating and under-estimating the amount of postage charges which customers are called upon to pay when goods are shipped c. o. d.; that the hosiery dealt in and sold are manufactured by Vanity Fair, when such is not the fact; and that the stock in trade is turned over every ten days and/or is always new and fresh, when such is not the fact. (Apr. 10, 1935.)

1369. False and Misleading Brands or Labels and Advertising—Plated Hollow-Ware.—Lehman Brothers Silverware Corporation, engaged in the business of manufacturing plated hollow-ware and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Lehman Brothers Silverware Corporation, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in its printed or advertising matter or as a brand for its said products of the words "Sheffield Reproduction", so as to import or imply that said products are made or manufactured in accordance with the process used in the manufacture of Sheffield silverware or Sheffield Plate, when such is not the fact. Said corporation also agreed to cease and desist from the use of the word "Sheffield" either alone or in connection or conjunction with any other word or words so as to import or imply or which may have

the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are made or manufactured at Sheffield, England, and in accordance with the process used in the manufacture of Sheffield silverware or Sheffield plate. (Apr. 11, 1935.)

1370. **False and Misleading Advertising—Strained Honey.**—W. F. Straub and Co., Inc., a corporation, engaged in the packing of food products, including strained honey, under the trade name or brand of "Lake Shore Pure Strained Honey", and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

W. F. Straub and Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the words "Non-Fattening" in advertisements or advertising matter circulated in interstate commerce; and from the use of any other words or phrase of similar meaning, in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that its said product is not a fattening food. (Apr. 11, 1935.)

1371. **False and Misleading Brands or Labels and Advertising—Flavoring Extracts.**—David Moss and Meyer Firstenberg, copartners trading under the firm name and style of Atlas Products Co., and since November 1, 1934, as Moss Products Co., Inc., engaged in the manufacture of flavoring extracts and in the sale and distribution of same in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

David Moss and Meyer Firstenberg, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from: the use of the word "Importers" on stationery and other advertisements and advertising matter circulated in interstate commerce; and from the use of the word "Importers" in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that they, or any of them, import from a foreign country the products which they sell and distribute in interstate commerce or the ingredients of which the same are composed; the use on billheads or other advertisements or advertising matter of statements and representations implying or suggesting that they buy, sell, or deal in essential oils, food colors, or fruit juices, when such is not the fact; the use on labels or in other advertisements or advertising matter of statements or representations to the effect that they are, or either of them is, the American representative of any Italian or other foreign concern, when such is not

the fact; and from the use, alone or in connection with such statements and representations, of any portrait of an Italian national hero, such as General Balbo, and with a setting or border simulating the colors of the Italian National Arms. (Apr. 18, 1935.)

1372. **False and Misleading Trade or Corporate Name and Brands or Labels—Accessories for Shoe Repairing.**—Shoe Accessories Manufacturing Co., a corporation, engaged in the business of manufacturing metal heel plates for use on shoes, but more particularly, its business consisted of jobbing a line of accessories used by shoe repair shops, commonly known as shoe findings, which products it has sold and distributed in interstate commerce, and in competition with other partnerships, corporations, individuals, and firms likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Shoe Accessories Manufacturing Co., in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the use, on the labels affixed to the containers of said product, of the word "Neatsfoot" either alone or in connection or conjunction with any other word or words, so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said product is composed wholly of neatsfoot oil, when such is not the fact; unless, when said product is composed in substantial part of neatsfoot oil and the word "neatsfoot" is used as descriptive thereof, in which case the said word "neatsfoot", wherever it appears on the label, shall be immediately accompanied by some other word or words printed in type equally as conspicuous as that in which the word "neatsfoot" is printed so as to indicate clearly that said product is not composed wholly of neatsfoot oil and that will otherwise accurately and properly describe the product. Shoe Accessories Manufacturing Co. also agreed to cease and desist from the use of the words "Manufacturing" and "Manufactured By" or of any other words of equivalent meaning so as to import or imply that the said corporation owns, operates and controls the plant or factory wherein are made or manufactured the said product sold by it in interstate commerce, when such is not the fact. If, in the event the aforesaid neatsfoot oil product is sold by the Shoe Accessories Manufacturing Co. under its corporate or trade name containing the word "Manufacturing" on its labels, brands, and other printed matter a conspicuous statement to the effect that the said product is not manufactured by it, or some other representation or statement, so as to clearly indicate that the product is manufactured by some other individual, firm, or corporation. (Apr. 18, 1935.)

1373. **False and Misleading Advertising—Drugs.**—I. C. Carmel, an individual, doing business under the name and style of Lemrac Pharmaceutical Co., engaged in business as a pharmaceutical chemist and in the sale and distribution of drugs, both those of his own manufacture

and those purchased from others, in interstate commerce, and in competition with other individuals, firms, corporations, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

I. C. Carmel, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from: stating and representing in advertisements and advertising matter that his said product "L. P. Prescription Tablets" is of double strength, or that it possesses any greater degree of certainty or quickness of results in delayed menstrual periods, than any other similar preparation; stating and representing directly or indirectly in advertisements and advertising matter that said product is safe for self-administration; the use in advertisements and advertising matter of any words, statements, or representations that said product is an abortifacient, or of any words, statements, or representations which may confuse, mislead, or deceive purchasers into the belief that said product is anything more than an ordinary emmenagogue. (Apr. 19, 1935.)

1374. **False and Misleading Brands or Labels and Advertising—Christmas Tree Lighting Outfits.**—Royal Electric Co., a corporation, engaged in the manufacture and assembling of Christmas tree lighting outfits and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Royal Electric Co., in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the use of the words "Manufactured by Royal Electric Company, Avon, Mass." so as to import or imply that said products are manufactured by the Royal Electric Co. at Avon, Massachusetts and/or that said products are composed of parts, all of which are manufactured in the United States of America; unless when said products are composed in part of constituents made in a foreign country, and the words "Manufactured by Royal Electric Company, Avon, Mass." are used to designate such of the parts as manufactured by the Royal Electric Co. (Apr. 19, 1935.)

1375. **Secret Refunds or Rebates—Potatoes.**—Phillips and Co., Inc., a corporation, engaged in business as a commission merchant or broker and in the financing of agricultural crops. In its capacity as such commission merchant or broker, it causes and has caused potatoes, grown by farmers or producers whom it has financed, to be shipped in interstate commerce, particularly to purchasers engaged as commission merchants or brokers in terminal markets.

Atlantic Commission Co., a corporation, is a subsidiary of The Great Atlantic & Pacific Tea Co. and engaged in the business of pur-

chasing food products in interstate commerce, a substantial portion of which food products it causes and has caused to be shipped in interstate commerce to and for distribution among the various operating units or concerns of its said parent corporation. It acts as a commission merchant or broker in the sale of said food products, a substantial portion of which it sells to the various units of its said parent corporation and some of which it sells to interests other than those connected or affiliated with its said parent corporation.

Phillips and Co., Inc., and Atlantic Commission Co. are in competition with other corporations, individuals, firms, and partnerships likewise engaged; entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Phillips and Co., Inc., and Atlantic Commission Co., in the conduct of their respective businesses, agreed to cease and desist from cooperatively engaging in and/or putting into effect any agreement or understanding wherein or whereby the said Phillips and Co., Inc., is to and does receive from said Atlantic Commission Co. a refund or rebate in sums of money or other valuable considerations in connection with the marketing and/or sale of potatoes delivered to the said Atlantic Commission Co. by the said Phillips and Co., Inc., and which said refund or rebate is not accounted for in accordance with the terms and conditions of contracts existing between the said Phillips and Co., Inc., and the growers or producers of said potatoes, and which said refunds or rebates are made without the knowledge and consent of said potato growers or producers. (Apr. 22, 1935.)

1377.¹ **False and Misleading Brands or Labels and Advertising—Moth Preventative.**—Reefer-Galler, Inc., a corporation, engaged in the sale and distribution in interstate commerce of a fluid preparation alleged by the said Reefer-Galler, Inc., to have been made formerly of cedar and pine oils and later of cedar oil, designated "Reefer's No-Moth" and placed in liquid containers intended to be suspended on the baseboards of clothes closets with which homes are ordinarily provided, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Reefer-Galler, Inc., in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the use, on its labels and cartons accompanying said product sold in interstate commerce and in its advertisting matter distributed in interstate

¹ Stipulation 1376 not released.

commerce or furnished by it to its customers for their use, of any and all statements and representations to the effect that said product, when used as directed in the ordinary home clothes closet, will kill or prevent moths or moth life or larvae therein, or will afford effective protection from moths to clothes within such closets for 12 months or other period of time, and/or that said product is effective in a space as large as 75 cubic feet, or of any other statements or representations of equivalent meaning, when such statements and representations are not justified by the facts. Said corporation also agreed to cease and desist from the use, on said labels or cartons or in said advertising matter, of the hyphenated words "No-Moth" either alone or in connection or conjunction with any other word or words or in any other way to designate said product so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasing consumers into the belief that said product, when used in clothes closets, will repel, drive away, or repulse moths from such closets, when such is not the fact. (May 2, 1935.)

1378. **False and Misleading Brands or Labels—Clothes Line Wire.**—Indiana Steel & Wire Co., a corporation, engaged in the manufacture of wire products including clothes line wire and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Indiana Steel & Wire Co., in soliciting the sale of and selling its clothes line wire in interstate commerce, agreed to cease and desist from the use of the word and figures "75 ft." on tags or brands affixed to its said products which do not contain 75 running feet of such product; and from the use of the word and figures "75 ft." or of any other word or words and figures so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the products so marked, branded, or tagged are of that linear measurement such as is imported and indicated by said marks, brands, or tags, when such is not the fact. (May 7, 1935.)

1379. **False and Misleading Brands or Labels—Bags or Luggage.**—Central Leather Co., a corporation, engaged in the manufacture of bags or luggage of the Gladstone type and in the sale and distribution of same in interstate commerce, and in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

As a rule, all cattlehides intended for leathers other than sole, belting, and harness, and some specialties, are split or skived. The

outer or top "cut" or layer of a split cattlehide may be, and generally is, distinguished as a grain, but any piece of leather ordinarily made from split hide and not described as a split, is accepted and understood by the trade and purchasing public to be the top or grain cut.

Central Leather Co., in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the use of the words "Genuine Cowhide" or of the word "Cowhide" either independently or in connection or conjunction with the word "Genuine" or with any other word or words as a brand or label for said products so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are made or composed of leather made from the top or grain cut or layer of cowhide; unless when said products are composed of leather made from the inner or flesh cut of the hide, the word "Cowhide" is used as descriptive thereof, then in that case the word "Cowhide" shall be immediately accompanied by some other word or words printed in type equally as conspicuous as that in which said word "Cowhide" is printed so as to indicate clearly that said products are not composed of leather made from the top or grain cut or layer of the said hide. (May 7, 1935.)

1380. **False and Misleading Brands or Labels—Worsted Yarns.**—Thomas Hodgson and Sons, Inc., a corporation, engaged in the manufacture of worsted yarns and in the sale and distribution of same under the name and style of Concord Worsted Mills, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Thomas Hodgson and Sons, Inc., in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from the use of the word "Silk" as a mark, brand, or label to designate or describe products not composed in whole or in substantial part of the silk, the product of the cocoon of the silk worm; and from the use of the word "Silk" in any way which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that the product referred to is composed in whole or in part of silk, the product of the cocoon of the silk worm, when such is not the fact. (May 7, 1935.)

1381. **False and Misleading Brands or Labels and Advertising—Animal Worm Product.**—William A. Friend, an individual trading under the name and style of Little & Co., engaged in the sale and distribution in interstate commerce of dehydrated vegetable products, prepared in tablet and powder form and intended for use in connection with the feeding of dogs, and in competition with other individuals,

firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

William A. Friend, in soliciting the sale of and selling his said product in interstate commerce, agreed to cease and desist from the use of any and all statements and representations in his advertisements or on his labels circulated in interstate commerce to the effect that said product will de-worm or remove worms or that it is a killer or preventive of worms in dogs. The said individual also agreed to cease and desist from the publication, circulation, and distribution in interstate commerce of any advertising matter which does not truthfully represent and describe the product offered for sale or the results likely to be obtained from its use. (May 9, 1935.)

1382. False and Misleading Trade Name or Brand—Shoes.—Arnold G. Behn, an individual, trading under the name of A. G. Behn, engaged as a jobber in the sale and distribution of shoes in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Arnold G. Behn, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use of the word "Doctor" or the abbreviation "Dr." in connection or conjunction with a name or with any other word or words as a trade name, brand, or designation for his products, or in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are made in accordance with the design and/or under the supervision of a doctor, and contain special, scientific, or orthopedic features which are the result of medical advice and services, when such is not the fact. (May 9, 1935.)

1383. False and Misleading Trade Name or Brand—Disposable Tissues.—The Reiser Co., Inc., a corporation, engaged in the manufacture of disposable tissues and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

The Reiser Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word "Rayon", as a brand or trade name for use in marking, describing, or representing any of its said products not composed of rayon; and from the use of the word "Rayon", either independently or in connection or conjunction with any other word or

words, in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the product so designated and referred to is made of rayon, when such is not the fact. (May 14, 1935.)

1384. **False and Misleading Advertising—Radio Receiving Sets.**—Gus Stokley, an individual trading as Eilen Radio Laboratories, engaged in the manufacture of radio receiving sets and in the sale and distribution of same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

For domestic radio transmission, the so-called "long-wave" or "broadcast" band is used, while foreign transmission is based almost entirely on the use of the so-called "Short-wave" band. The object to be achieved in an "all-wave" receiving set is to make it possible for the operator to receive through a single instrument either the domestic or broadcast bands, or the foreign short-wave bands, at his pleasure. In the present state of the art, the reception of foreign short-wave bands is difficult and uncertain. Operators in certain localities obtain foreign stations at certain times of the year and during certain parts of the day, without difficulty and in satisfactory volume; while in other localities, such stations are sometimes obtained and sometimes not, for no apparent reason. The "tuning in" or "logging" of a short-wave foreign station is always slow and difficult. The loud-speaker volume varies from nothing to occasional satisfactory reception, and much attempted short-wave reception is rendered more difficult by noise interference or "static." These conditions are known to experts, but not the purchasing public who are not aware that there are no receiving instruments which will give easily tuned, continuous and satisfactory reception of short-waves from foreign countries under all conditions.

Gus Stokley, in soliciting the sale of and selling his radio receiving sets in interstate commerce, agreed to cease and desist from the use of the words "All Wave" as descriptive of his said products, when said products are not capable of reception over the entire meter range covering all broadcast and commercial transmission. The said individual also agreed to cease and desist from advertising, stating, and representing or implying that users of his said receiving sets could have foreign or world-wide reception at will and with satisfactory volume, and/or from stating, representing, or presenting the merits and advantages of his products in such way as to cover up or conceal the difficulties and deficiencies of the same, inherent

in the present state of the art, but unknown to the purchasing public. (May 14, 1935.)

1385. Disparaging Competitors and False and Misleading Advertising—Home Work Courses.—Nellie M. Holt, an individual trading as Holt Advertising Service, engaged in the sale and distribution of a home work course consisting of making up mailing lists of various kinds for sale to business concerns in interstate commerce, and in competition with other individuals, partnerships, firms, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Nellie M. Holt, in soliciting the sale of and selling her home work courses in interstate commerce, agreed to cease and desist from the use in her advertisements and advertising matter distributed in interstate commerce of any and all false, misleading, disparaging, or derogatory statements or representations concerning competitors or the business of competitors of the said Nellie M. Holt with the effect of disparaging, restraining, or embarrassing, or which may have the capacity or tendency to disparage, restrain, or embarrass said competitors, or any of them, in the conduct of their lawful business or businesses or with the effect of hindering or dissuading customers or prospective customers from purchasing merchandise from, or dealing with said competitors, or any of them. The said individual also agreed to cease and desist from stating or representing in her said advertising matter that she has been engaged in conducting the business of selling home work courses for twenty-six years and/or at the same present place of business or address, when such is not the fact. (May 16, 1935.)

1386. Selling Unmarked Imported Goods—Christmas Tree Lighting Outfits.—Novo Electrical Novelty Co., Inc., engaged in the manufacture of Christmas tree lighting outfits and other electrical specialties, and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Novo Electrical Novelty Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the sale and distribution in interstate commerce of Christmas tree lighting outfits equipped with imported lamps, without marking the containers in which the same are packed with appropriate words clearly stating that the lamps with which such outfits are equipped are imported lamps. (May 16, 1935.)

1387. **False and Misleading Brands or Labels and Advertising—Wines and Spirituous Liquors.**—Nathan N. Wallack and M. V. Montague, copartners trading under the name and style of Star Liquor Co., engaged in the sale and distribution, in interstate commerce of wines and spirituous liquors, and in competition with other partnerships, individuals, firms and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Nathan N. Wallack and M. V. Montague, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from the use in advertisements or advertising matter of the words "Scotland Yard Scotch" to describe or designate a product which is not Scotch whiskey, or the words "Scotland Yard Scotch (type)" unless the product is in fact Scotland Yard Type of whiskey and then only unless the word "type" is printed in type which is equally as conspicuous as those in which the words "Scotland Yard Scotch" are printed; (b) from the use in advertisements or advertising matter of the words "Bottled in Bond"; (c) from the use in advertisements or advertising matter of the word and figures "42 Proof" in connection with or as part of the description or designation of any wines; (d) from the use in advertisements or advertising matter of any statements or representations that their wines have been bottled in bond, or that by reason of such alleged fact customers are assured of getting wines which have been aged in a Government warehouse over four years or any other similar statements or representations of equivalent meaning. (May 16, 1935.)

1388. **False and Misleading Trade Name or Brand and Advertising—Shoes.**—Louis E. Arenberg and Joseph G. Plotkin, copartners trading under the firm name and style of Arenberg-Plotkin Shoe Co., engaged, as wholesalers in the sale and distribution of shoes in interstate commerce, and in competition with other partnerships, firms, corporations and individuals likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Louis E. Arenberg and Joseph G. Plotkin, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from the use of the words "Approved by Dr. Aren" when said products have not been approved, sanctioned, or commended by a doctor of that name. Said copartners also agreed to cease and desist from the use of the word "Doctor" or of the abbreviation "Dr." either alone or in connection or conjunction with a name, or with any other word or words, as a trade name, brand or designation for their products, or in any way which may have the capacity or

tendency to confuse, mislead or deceive purchasers into the belief that said products are made in accordance with the design and/or under the supervision of a doctor and contain special, scientific, or orthopedic features which are the result of medical advice and services. (May 17, 1935.)

1389. **False and Misleading Advertising—Radios and a "Short Wave Converter."**—Irving S. Manheimer, an individual trading as Grenpark Co., engaged in the sale of radios and equipment thereof, but more particularly in the sale and distribution of a so-called "short wave converter" under the trade designation "Python" in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

For domestic radio transmission the so-called "long wave" band is used, while foreign transmission is based almost entirely on the use of the so-called "short wave" band. In the present state of the art the reception of foreign short wave bands is difficult and uncertain. Operators in certain localities obtain foreign stations at certain times of the year and during certain parts of the day without difficulty and in satisfactory volume, while in other localities, such stations are sometimes obtained and sometimes not, for no apparent reason. The "tuning in" or "logging" of a short wave foreign station is always slow and difficult. The loud speaker volume varies from nothing to occasional satisfactory reception and much attempted short wave reception is rendered more difficult by noise interference or "static." These conditions are known to experts but not to the purchasing public who are not aware that there are no receiving instruments or devices which give easily tuned continuous and satisfactory reception of short waves from foreign countries under all conditions.

Irving S. Manheimer, in soliciting the sale of and selling his so-called "short wave converter" in interstate commerce, agreed to cease and desist from statements or representations to the effect that, by the use of said product in conjunction with a radio-receiving set, such set would be able to intercept foreign transmissions over short waves "from all the far corners of the world" or that "foreign stations can be obtained regularly or whenever they are on the air" by radio receiving sets with which said product is used, or of any other statements or representations of equivalent meaning which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the use of a radio receiving set equipped with said product can obtain easily tuned continuous and satisfactory reception of short waves from foreign countries under

all conditions, when such is not the fact. The said individual further agrees to cease and desist from stating, representing, or presenting the merits and advantages of his said product in such way as to cover up or conceal the difficulties and deficiencies of the same, inherent in the present state of the art, but unknown to the purchasing public. (May 17, 1935.)

1390. **Appropriating Trade Name of Competitor—Floor Polish.**—L. M. Glover Co., Inc., a corporation, engaged as a wholesaler in the sale and distribution of janitors' supplies, including brooms, mops, floor polishes, and similar articles in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Continental Car-Na-Var Corporation is a corporation engaged in the sale and distribution under the trade name and brand or label "Rubber-Var" of a product manufactured by it for use in the polishing of floors. It has caused said product, during such period of time, to be extensively advertised in magazines having interstate circulation and has caused said product, so advertised and designated, to be shipped in interstate commerce. In the course and conduct of its business, Continental Car-Na-Var Corporation has been in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products. During the past three years, its said competitors have included the aforesaid L. M. Glover Co., Inc. Said Continental Car-Na-Var, by means of the use of the coined phrase "Rubber-Var" as a trade name for its product for more than fifteen years last past, has acquired a valuable good will in said phrase as applied to its product.

L. M. Glover Co., Inc., in soliciting the sale of and selling its said product in interstate commerce, agreed to cease and desist from the use of the words or phrase "Rubber-Var" either alone or in connection with any other word or words or in any way to designate its said product which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that the product so designated or referred to is that product known to a substantial portion of the consuming public as "Rubber-Var" that product manufactured by Continental Car-Na-Var Corporation, when such is not the fact. (May 17, 1935.)

1391. **False and Misleading Advertising and Selling Unmarked Imported Goods—Dog Food.**—Hans Schumattermaier, an individual trading under the name and style of Phera Products Sales, engaged in the sale of a dog food, under the trade name or brand of "Phera-

Kalvit", and in the distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Hans Schumattermaier, in soliciting the sale of and selling his said product "Phera-Kalvit" in interstate commerce, agreed to cease and desist from: (a) stating and representing in advertisements or advertising matter that said product is excellent for skin diseases or distemper in dogs; and from the use of any statements or representations that said product is a remedy for parasitic skin diseases or for distemper in dogs; (b) from selling or offering for sale in interstate commerce the product known as "Phera-Kalvit" without causing the containers in which the same is packed to be plainly, distinctly, and prominently marked or branded with the words "Made in Germany." (May 23, 1935.)

1392. False and Misleading Advertising—Camp and Outing Equipment.—Outdoor Supply Co., Inc., a corporation, engaged in the sale and distribution of camp and outing equipment in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Outdoor Supply Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in its advertisements or advertising matter distributed in interstate commerce of the word "Scout" either independently or in connection or conjunction with the word "Boy" or with any word or words, pictorial representation or in any other way so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products, or any of them, are or is the official equipment of the well-known and recognized Boy Scouts of America organization to advertise, sell, or distribute in interstate commerce its said products, or any of them as official equipment of the said organization, when such is not the fact. The said corporation also agreed to cease and desist from the use on its letterheads or other printed matter distributed in interstate commerce of the word "Manufacturers" either alone or in connection or conjunction with any other word or words so as to import or imply that the said corporation makes or manufactures the products offered for sale and sold by it; and from the use of the word "Manufacturers" in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said corporation owns and operates or directly and

absolutely controls a factory or plant wherein are made any and all of the products which it sells or offers for sale. (May 24, 1935.)

1393. **False and Misleading Brands or Labels and Advertising—Camp and Outing Equipment.**—J. J. Enright, an individual, engaged in his individual capacity for more than one year prior to March 1932, in the sale and distribution of camp and outing equipment in interstate commerce. Early in 1932, incorporated as J. J. Enright, Inc., until about September 1933, when the said J. J. Enright undertook as an individual to carry on the said business, and in competition with other individuals, firms, and partnerships and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

J. J. Enright and J. J. Enright, Inc., agreed individually and collectively in soliciting the sale of and selling said products, to cease and desist from the use of labels affixed to the containers of products sold and distributed by the said J. J. Enright and/or the said J. J. Enright, Inc., in interstate commerce, or in advertisements or other printed matter distributed in interstate commerce, of the word "Scout" either alone or in connection or conjunction with the word "Boy" or with any other word or words or in any other way to designate said product so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products, or any of them, are or is "official" equipment of the well known and recognized Boy Scouts of America organization or that the said J. J. Enright or the said J. J. Enright, Inc., is authorized by the said Boy Scouts of America organization to advertise, sell, or distribute his or its said products, or any of them, as official equipment of the said organization, when such is not the fact. (May 24, 1935.)

1394. **False and Misleading Brands or Labels and Advertising—Lumber and Lumber Products.**—Pease Woodwork Co., Inc., a corporation, engaged in the sale and distribution of lumber and lumber products, including roofing, frames, sashes, doors, cabinet work, and the like, in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Pease Woodwork Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in its advertisements and advertising matter or in any other way, of the words "White Pine" either alone or in connection or conjunction with the word "California" or with any other word or words to designate or refer to said products so as to import or imply

or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are made or manufactured of White Pine lumber or of that lumber botanically designated "Pinus Strobus." Said corporation also agreed to cease and desist from the use of the words "Very Best Quality" or of any other word or words of equivalent meaning as descriptive of its products so as to import or imply or which may tend to mislead or deceive purchasers into the belief that said products are made or manufactured of first quality or first grade lumber, when such is not the fact. Said corporation further agreed to cease and desist from the use in its said advertising matter or otherwise of the statement "Direct from Our Southern Mill to You", so as to import or imply that the said corporation actually owns and operates or directly and absolutely controls a southern or other mill in which are produced, made, or manufactured, the products sold by it. (May 24, 1935.)

1395. **False and Misleading Trade Name and Advertising—Maple Flavoring Product.**—Salvatore Torregrossa, an individual trading under the name and style of Eversafe Laboratories, engaged in the manufacture of a synthetic maple flavoring product, and in the sale and distribution of same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Salvatore Torregrossa, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from: the use of the word "Laboratory" in advertisements and advertising matter circulated in interstate commerce, as a part of the trade name under which to carry on his said business; and from the use of the word "Laboratories" in any way which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that he owns, controls, and operates a laboratory, when such is not the fact; the use in advertisements and advertising matter circulated in interstate commerce of the word "Maple" either independently or in connection or conjunction with any other word or words, in any way which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that said product is made from the sap of the maple tree; the use of the words "Imitation Maple Flavor Artificially Colored and Flavored with Vegetable Substances", unless such statement is in accordance with the facts and such words are printed in type equally as conspicuous as the body of the advertisement in which the same appear. (May 27, 1935.)

1396. **False and Misleading Advertising—"Champagne."**—Hertzberg Bros., Inc., a corporation, engaged in the sale and distribution of a

product designated "Dry Monopole" in commerce within the District of Columbia, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Hertzberg Bros., Inc., in soliciting the sale of and selling its product in commerce as defined by the Act, agreed to cease and desist from the use in its advertisements and advertising matter or otherwise of the word "Champagne" either alone or in connection or conjunction with any other word or words or in any way to represent, designate, or refer to said product so as to import, or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said product is that product made effervescent by natural fermentation and known to the trade and purchasing public as "Champagne", when such is not the fact. (May 28, 1935.)

1398.¹ False and Misleading Brands or Labels—"Champagne."—American Gold Vintages, Inc., a corporation, engaged in the blending, bottling, sale, and distribution in interstate commerce of domestic wines, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

American Gold Vintages, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use on the labels attached to its products sold and distributed in interstate commerce of: the word "Champagne" to describe or designate a product not produced by natural fermentation in the bottle; and the words "Sparkling Burgundy" to describe or designate a product charged by artificial means with carbon dioxide, unless such words are accompanied by some other words or phrases, such as "Carbonated", "Artificially Carbonated" or "Carbon Dioxide Added", in plain and distinct type, and which will correctly inform purchasers of the facts respecting the process of manufacture. (May 29, 1935.)

1399. False and Misleading Advertising—Correspondence Courses of Instruction.—John L. Keenan, an individual trading under the name and style of Franklin Institute, engaged in the sale and distribution in interstate commerce of correspondence courses of instruction alleged to prepare applicants to pass the examinations leading to employment under the United States Civil-Service, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and

¹ Stipulation 1397 not released.

desist forever from the alleged unfair methods of competition as set forth therein.

John L. Keenan, in soliciting the sale of and selling his correspondence courses of instruction in interstate commerce, agreed to cease and desist, either personally or through his agents and solicitors, from the use of any and all statements or representations which may have the capacity or tendency to mislead students or prospective students into the belief that examinations in the various branches, or in any specific branch of the United States Civil Service will be given at an early date, or that such examinations are being held frequently or a stated number of times in a year; or that it is easy to obtain a position under the United States Civil Service after completing the course of study prescribed by the Franklin Institute; over-stating, exaggerating, and misrepresenting the opportunities for employment of his students and the salaries which they may expect to receive; inaccurately stating and representing the range of the ages within which men and women are eligible for civil service positions; stating and representing that government employment is steady and not affected by bad business conditions, that there are no lay-offs or hard times, that refunds of tuition fees will be made to any who are dissatisfied, that the Franklin Institute guarantees its students employment within a stated period of time, failing which their fees will be refunded, that the Franklin Institute is a part of or connected with the United States Civil Service Commission or with the United States Government, or that an examination would be held within a reasonable time, or a fixed time; and from unduly delaying the making of refunds in cases where the conditions have been met. And from the use of any statements or representations in advertisements or advertising matter circulated in interstate commerce having the capacity or tendency to confuse, mislead, or deceive purchasers in respect to the terms, conditions, and prospect of obtaining employment under the United States Civil Service. (May 31, 1935.)

1400. False and Misleading Advertising—Radio Sets.—William E. Harrison, an individual trading under the name and style of Harrison Radio Co., engaged in the sale and distribution of short-wave-length radio sets and of radio equipment in interstate commerce, and in competition with other individuals, firms, corporations, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

William E. Harrison, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from stating and representing in his advertisements and advertising matter that

he will refund the money paid by purchasers of his products who may be dissatisfied therewith, without at the same time disclosing the fact that a deduction will be made for the cost of reconditioning the same. (May 31, 1935.)

1401. **False and Misleading Advertising—Dog Remedy.**—Gus Stephens, an individual trading under the name and style of Tested Specialties Co., engaged in the sale of a remedy for dogs and other animals, under the trade name or brand of "On-The-Nose", and in the distribution of same in interstate commerce, and in competition with other individuals, firms, corporations, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Gus Stephens, in soliciting the sale of and selling his product, "On-The-Nose" in interstate commerce, agreed to cease and desist from stating and representing in advertisements and advertising matter circulated in interstate commerce, of the words "Effective against distemper" or "Positive remedy for distemper", or of any other similar words or forms of expression having a similar meaning, or which have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that said product is a remedy for dog distemper; the publication and distribution in interstate commerce of the above-described or any other similar advertising matter which does not truthfully represent and describe the said product or the results likely to be obtained from its use; stating and representing on letterheads or other forms of advertisements or advertising matter circulated in interstate commerce that he has laboratories and/or factories in the United States or Canada. (May 31, 1935.)

1402. **False and Misleading Prices and Advertising—General Merchandise.**—Reliable Merchandise Co., Inc., a corporation, engaged in the sale of general merchandise, by mail orders, and in the distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Reliable Merchandise Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of fictitious and exaggerated statements in reference to the selling value of the merchandise offered for sale in its catalogs and price lists and sold by mail orders or through solicitors in interstate commerce; stating or representing, by words and/or pictorial representations, that they own or occupy a large office building or owned a factory, when such is not the fact. (May 31, 1935.)

1403. **False and Misleading Advertising—Rugs.**—Spiegel, May, Stern & Co., a corporation, engaged in the sale and distribution in inter-

state commerce of numerous articles of merchandise, including rugs, by the mail-order method, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Spiegel, May, Stern & Co., in soliciting the sale of and selling its rugs in interstate commerce, agreed to cease and desist from the use in its catalogs or otherwise of the words "Wool Face" either alone or in connection or conjunction with any other word or words or in any way as descriptive of its said products so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive the purchasers into the belief that said product or that the face of said product is composed of wool, unless when said product, or the face of said product is composed in substantial part of wool and the words "Wool Face" are used to describe the same, then in that case the said words "Wool Face" shall be immediately accompanied by some other word or words printed in type equally as conspicuous as that in which the words "Wool Face" are printed so as to indicate clearly that said product or the face of said product is not composed wholly of wool and that will otherwise indicate clearly that said product or the face of said product is composed in part of a material or materials other than wool. Said corporation also agreed to cease and desist from the use in its advertisements and advertising matter of the statement or representation that its said product has "Greater wearing qualities than similar rugs that have always sold for as much as ten times the price" or of any other similar statements or representations of like import, when such is not the fact. Said corporation further agreed to cease and desist from the use in its advertising matter of the statement or representation that the shipping weight of its said product is "43 lbs." or of any other designated shipping weight which is in excess of the actual shipping weight thereof. (June 3, 1935.)

1040. (Amended). **False and Misleading Brands or Labels—Facial Cream.**—Maynard, Inc., a corporation, engaged in the manufacture of cosmetics and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Maynard, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the words "Containing Turtle Oil" as a part of or in connection with the labels affixed to the container in which its facial cream is packed; and from the use of any other similar or equivalent words or expres-

sions which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that the oil content of such facial cream is composed in substantial part of turtle oil, when such is not the fact;

Provided, that if the words "Containing Turtle Oil" are used, and the oil content of the product in connection with which the same are used contains a substantial amount of turtle oil, then in that case the words "Turtle Oil" shall be accompanied by some other word or words, printed in type equally as conspicuous as the type in which the words "Turtle Oil" is printed, conveying the information that the oil content of said product contains other oil besides turtle oil. (June 6, 1935.)

1404. False and Misleading Advertising—Advertising Coupons and Cards.—Lewis Cooper, an individual formerly trading under the name and style of Berkshire China Co., Publicity Department, but now trading under the name and style of Lancaster China Co., Publicity Department, engaged in the sale and distribution in interstate commerce of coupons and advertising cards for use by merchants in connection with the sale of their merchandise, and in the redemption of such coupons and exchanging therefor the merchandise consisting of chinaware, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Lewis Cooper, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use on coupons or otherwise of ambiguous and misleading statements or representations respecting the terms and conditions upon which such coupons are redeemed, and especially in reference to the payment by customers for premiums; the use on coupons or otherwise of exaggerated statements and representations respecting the selling value of the premiums to which retailers' customers may become entitled. (June 6, 1935.)

1405. False and Misleading Advertising—Used Automobile Tires.—Reliable Tire Co., a corporation engaged under the trade names of York Tire and Rubber Co. and Globe Tire and Rubber Co., in the purchase, repair, and resale of used automobile tires and in the distribution of said products in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Reliable Tire Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word "reconstructed" or any other word or words of similar im-

port to designate or describe its process of reconditioning tires; and from the use of the word "reconstructed" or other similar words or forms of expression in any way which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that the tires which it sells and distributes are reconditioned or rebuilt when such is not the fact; the use of advertisements and advertising matter circulated in interstate commerce of deceptive and misleading guarantees improbable of accomplishment under the conditions of its work; requiring dissatisfied customers to ship their tires to its office for inspection and to pay the transportation cost for such shipment as well as the transportation cost of tires sent for replacement, unless the fact that such conditions are imposed and such charges made is clearly set out and stated in its advertisements. (June 6, 1935.)

1406. **False and Misleading Advertising — Radio Receiving Sets.**— Miodrag Jelisjevich, an individual trading under the name and style of Pioneer Sound Laboratory, engaged in the manufacture of radio receiving sets and radio equipment and in the sale and distribution of same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered in into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

For domestic radio transmission the so-called "long-wave" or "broadcast" band is used, while foreign transmission is based almost entirely on the use of the so-called "short-wave" band. The object to be achieved in an "all-wave" receiving set is to make it possible for the operator to receive through a single instrument either the domestic or broadcast bands, or the foreign short-wave bands, at his pleasure. In the present state of the art, the reception of foreign short-wave bands is difficult and uncertain. Operators in certain localities obtain foreign stations at certain times of the year and during certain parts of the day, without difficulty and in satisfactory volume; while in other localities, such stations are sometimes obtained and sometimes not, for no apparent reason. The "tuning in" or "logging" of a short-wave foreign station is always slow and difficult. The loud-speaker volume varies from nothing to occasional satisfactory reception, and much attempted short-wave reception is rendered more difficult by noise interference or "static." These conditions are known to experts, but not to the purchasing public who are not aware that there are no receiving instruments which will give easily tuned, continuous and satisfactory reception of short-waves from foreign countries under all conditions.

Miodrag Jelisjevich agreed, in soliciting the sale of and selling his products in interstate commerce, to cease and desist from the use of the words: "all wave" as descriptive of his said products when said

products are not capable of reception over the entire meter range covering all broadcasts and commercial transmissions; stating, representing, or implying in advertisements or advertising matter circulated in interstate commerce that users of his said radio receiving set can have world wide or foreign reception at will and with satisfactory volume; stating, representing, or presenting the merits and advantages of his said products in such a way as to cover up or conceal the defects and deficiencies of wave reception inherent in the state of the art but unknown to the purchasing public; stating and representing that the selector switch on his radios have positive non-wearing silver contacts, when such is not the fact; stating and representing that his radios are "individually built by experienced engineers instead of so many different assemblers", when such is not the fact; and stating, representing, or implying that he has had ten years' experience in serving his patrons here and in other parts of the world. (June 6, 1935.)

1409.¹ **False and Misleading Brands or Labels—Christmas Tree Lighting Outfits.**—Raylite Trading Co., Inc., a corporation, engaged in the manufacture and assembly of Christmas tree lighting outfits, and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Raylite Trading Co., Inc., in soliciting the sale of and selling its Christmas tree lighting outfits in interstate commerce, agreed to cease and desist from the use of the words and letters "Made in U. S. A." or of any similar words and letters of equivalent meaning as a mark or brand for said products so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are composed of parts, all of which are made in the United States of America; unless when said products are composed only in part of a part or parts which are made in the United States of America and the words and letters "Made in U. S. A." are used to designate the same, then in that case, said words and letters shall be accompanied by some other word or words printed in type equally as conspicuous as that in which the words "Made in U. S. A." are printed so as to indicate clearly that said products are not composed wholly of parts made in the United States of America and that will otherwise clearly indicate that said products are composed in part of parts which are not made in the United States of America. (June 11, 1935.)

¹ Stipulations 1407 and 1408 not released.

1410. **False and Misleading Brands or Labels and Advertising—Flavoring Compounds and Spices.**—C. R. Brady and his wife, L. A. Brady, trustees operating under a declaration of trust and trading under the names of Brady Products Co., B & B Chemical Co., and Western Brokers, engaged in the manufacture of flavoring compounds and in the sale of said products and of a line of spices, soaps, etc., in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

C. R. Brady and L. A. Brady, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from the use of labels or other advertisements or advertising matter for their products in which said products are designated and referred to by means of exaggerated and misleading statements or representations concerning the value of or the price at which said products or any of them are sold or intended to be sold in the usual course of trade; the use of the words "Made from pure oil of banana" (raspberry, strawberry, or whatever the flavor may be) and/or "Made from oil of banana" (or other flavor) on labels attached to the containers in which their products are sold and distributed in interstate commerce, to describe and represent synthetic products; the use of the words "Raspberry (or other flavor) Flavoring Cream" on labels attached to the containers in which "Brady's Famous" line of products are sold and distributed in interstate commerce, which products are not composed respectively of the fruit or juices of the orange, apricot, raspberry, etc.; provided that when said products simulate the flavor of maple, black walnut, strawberry, or other fruit and the name of such fruit is used represent or designate such flavor, in which case the name of the flavor shall be immediately accompanied by the word "imitation" or some other word or words printed in type equally as conspicuous as that in which the name of the fruit is printed and which will indicate clearly that the indicated fruit flavor of said product is not a genuine fruit but is an imitation thereof; the use of the word "imitation" on labels attached to their products sold and distributed in interstate commerce, in type which by comparison with the surrounding printed matter is small and inconspicuous; the use of the letterheads or other advertisements or advertising matter circulated in interstate commerce, of the words "flavoring extracts" and/or "pure extracts" either independently or in connection or conjunction with the name of any fruit or flavor as descriptive of their said products in any way which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that said company's products or extracts and/or products in concentrated form are composed or made of the ingredients named when such is not the fact. (June 14, 1935.)

1411. **False and Misleading Advertisements—Advertising Signs.**—Edwin A. Shank, an individual trading under the name and style of E. A. Shank Sign Co., engaged in originating, designing, selling, and distributing advertising signs of various kinds and descriptions in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Edwin A. Shank, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use of the word "Manufacturers" and/or the abbreviation "Mfrs." in his advertisements or advertising matter distributed in interstate commerce; and from the use of the word "Manufacturers" and/or the abbreviation "Mfrs." in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that he owns, operates, and controls a factory where the products which he sells and distributes in interstate commerce are made or fabricated, when such is not the fact. (June 18, 1935.)

1412. **False and Misleading Advertising—"Champagne."**—E. M. Rosensweig, an individual trading as Sun Liquor Co., engaged in the sale and distribution in the District of Columbia of a product designated "La Boheme", and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

E. M. Rosensweig, in soliciting the sale of and selling his product in commerce as defined by the Act to cease and desist from the use in his advertisements and advertising matter or otherwise of the word "Champagne", either independently or in connection or conjunction with any other word or words, or in any way to represent, designate, or refer to said product so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said product is that product made effervescent by natural fermentation and known to the trade and purchasing public as "Champagne", when such is not the fact. (June 19, 1935.)

1413. **False and Misleading Brands or Labels—Wrist Watch Straps.**—Michael Miller, an individual trading under the name and style of Miller Brothers, engaged in the importation and sale of watch parts, tools, optical goods, and wrist watch straps, and also in the sale of watch straps of domestic material and manufacture in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agree-

ment to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Michael Miller, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use of the words "Morocco leather made in England" as a brand for wrist watch straps not actually made or manufactured in England. (June 19, 1935.)

1414. **False and Misleading Trade or Corporate Name and Brands or Labels—Syrup.**—Vermont Farmers Co., Inc., a corporation, engaged in the manufacture of syrups and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Vermont Farmers Co., Inc., in soliciting the sale of and selling its product in interstate commerce agreed to cease and desist from the use on the brands or labels affixed to said product the words "Absolutely Pure" so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said product is an all-maple or absolutely pure maple product; unless, when said product is a blend of maple and other ingredients, each of which is pure, and the words "Absolutely Pure" are used as descriptive of all of said ingredients, then in that case the words "Absolutely Pure" shall be immediately accompanied by some other word or words printed in type equally as conspicuous as that in which the words "Absolutely Pure" are printed so as to indicate clearly that the words "Absolutely Pure" are used to qualify the various ingredients of which said product is composed, and that will otherwise indicate clearly that said product is not composed wholly of maple and is not a pure maple product. The said corporation also agreed to cease and desist from the use on said labels of the Great Seal or coat of arms of the State of Vermont, together with the corporate or trade name "Vermont Farmers Company" or in any way so as to import or imply that said product is a Vermont product or made in Vermont, when such is not the fact. (June 21, 1935.)

1415. **Appropriating Trade Name of Competitor and False and Misleading Advertising—"Condenser."**—Harry R. Rhode, an individual doing business as Mallory Ignition Co., engaged in the assembly of parts into a unit or product intended for use in connection with complete combustion of gasoline, and which product is sold and distributed under the trade designation "The Mallory Master Condenser", and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following

agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Mallory Electric Corporation is engaged in the manufacture of electrical equipment for automobiles, and in the sale of same in interstate commerce under its aforesaid corporate and trade name featuring the word "Mallory", and by means of such sales under its said corporate and trade name it has become well and favorably known to the trade and purchasing public and has acquired a valuable good will and reputation as a manufacturer of automotive equipment.

Harry R. Rhode, in soliciting the sale of and selling his product in interstate commerce, agreed to cease and desist from the use of the word "Mallory" as part of or in connection or conjunction with his trade name, or as a trade designation, mark, brand, or label for said product, so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief, that said product is a product manufactured and/or sold by Mallory Electric Corporation, referred to herein. The said Harry R. Rhode also agreed to cease and desist from the use of the statement or representation to the effect that said product has been endorsed or approved by American Automotive Association of Engineers, or by any other Association or Society, when such is not the fact. (June 21, 1935.)

1416. False and Misleading Advertising—Animal Treatment.—M. M. Levy, an individual, engaged in the preparation or manufacture of a certain product designated "Rx. 999", and in the sale and distribution of same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

M. M. Levy, in soliciting the sale of and selling his product in interstate commerce, agreed to cease and desist from the use in his advertisements and advertising matter, or in any other way, of any and all statements and representations which directly assert, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief, that the said product will cure animals of distemper in all cases or that it is effective as a cure or treatment for distemper in dogs and other animals. Said individual also agreed to cease and desist from the use of any and all statements and representations which do not truthfully represent and describe the product offered by him for sale in interstate commerce, or the results to be obtained from the use of said product. (June 21, 1935.)

DIGEST OF FALSE, MISLEADING, AND FRAUDULENT ADVERTISING STIPULATIONS¹

0797. Vendor-Advertiser—Adhesive Compound.—The Sew-No-More Co., Cincinnati, Ohio, vendor-advertiser, is engaged in selling an adhesive compound designated as Sew-No-More, and in advertising represented:

AGENTS UP TO \$5.40 AN HOUR

Is \$5 for about two hours' work too much for you in these times?

Our leading distributors are making \$1 an hour—\$2 an hour—up to \$4 or \$6 an hour.

Millions of housewives waiting to pay you up to \$2 an hour.

The opportunity of a lifetime and a real chance to earn up to \$5,000 a year.

In a stipulation filed and approved by the Federal Trade Commission, this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated, any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) That respondent will not make unmodified representations or claims of earnings of salespersons in excess of the average earnings of the active full-time salespersons of respondent achieved under normal conditions in the due course of respondent's business;

(b) That respondent will not represent or hold out as a chance or an opportunity any amount in excess of what has actually been accomplished by one or more of respondent's salespersons under normal conditions in the due course of respondent's business;

(c) That respondent will not represent or hold out as maximum earnings by the use of such expressions as "up to", "as high as", or any equivalent expression, any amount in excess of what has actually been accomplished by one or more of respondent's salespersons under normal conditions in the due course of respondent's business; and

(d) That in future advertising where a modifying word or phrase is used in direct connection with a specific claim or representation of

¹Of the special board of investigation, with publishers, advertising agencies, broadcasters, and vendor-advertisers. Period covered is that of this volume, namely, Dec. 3, 1934, to June 24, 1935, inclusive. For digests of previous stipulations, see vols. 14 to 19 of Commission's Decisions.

For description of the creation and work of the special board, see vol. 14, p. 602, et seq.

earnings, such word or phrase shall be printed in type equally conspicuous with, as to form, and at least one-fourth the size of the type used in printing such statement, claim, or representation of earnings. (Dec. 5, 1934.)

0798. **Publisher—Hair Treatment.**—The New York Times Co., New York, N. Y., the publisher of the New York Times, a daily newspaper of wide interstate circulation, printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a hair treatment.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Dec. 5, 1934.)

0799. **Vendor-Advertiser—Feminine Hygiene Preparation.**—The B-X Laboratories, Chicago, Ill., vendor-advertiser, is engaged in selling a medicinal preparation designated as B-X Monthly Relief Compound and in advertising represented:

FEMININE HYGIENE

Delayed? Use famous time-tested B-X Monthly Relief Compound when nature fails! Starts working instantly! Brings soothing, satisfying relief in some of longest, most stubborn, unnatural delays very quickly—in only a few hours in some cases! Very powerful, yet absolutely safe! Guaranteed—Pure—Harmless. No pain, inconvenience, or interference with duties! Constituents strongly recommended by famous doctors! Used and praised by thousands of grateful women! Amazingly prompt shipment! Rushed 1st class mail, plain sealed wrapper, within 1 hour of receipt of order. B-X Laboratories.

FEMININE HYGIENE

For unnatural delay or irregularity use harmless B-X monthly tablets. Quick, painless relief even in many worst cases! Absolutely safe! No inconvenience or interference with duties! Used by thousands! Enthusiastic women report unbelievably prompt, soothing, seemingly magical relief! Used by doctors! Guaranteed! Double strength \$2.00. Rushed 1st class mail, in plain wrapper, within 1 hour of receipt of order. B-X Laboratories.

A HEALTH AND LIFE PRESERVER FOR WOMEN

* * * B-X Monthly Relief Compound is a gentle, harmless, reliable, and convenient remedy for quickly relieving unnaturally sluggish, suppressed, ir-

regular, delayed periods, including painful, fetid, scanty, absent monthly flow, and other similar troublesome conditions of the menstrual function, when due to unnatural causes. * * * is considered one of the finest and most dependable preparations of its kind known to modern medical science. * * * This excellent remedy quickly yet safely reduces congestion of the generative organs. * * *

PERFECT SAFETY

B-X Monthly Relief Compound may be used with perfect safety at all times indicated and yet is a remarkably reliable and efficient remedy in many of the most stubborn, longstanding cases of unnatural suppression, painful menstruation and other menstrual disorders. * * *

If you suffer from a morbid, unnatural menstrual condition, you may now treat your ailment in the comfortable surroundings of your own home with absolute privacy, provided, of course, that surgical measures are not necessary, and it is not due to systemic disease. You don't need to ask anyone for information, nor mention the matter to anyone, for we furnish complete directions which have enabled thousands of grateful women to relieve their own suffering without anyone's help or advice. B-X products work quietly and safely. * * * They have utility solely in morbid unnatural conditions of the menstrual function, and the woman who has never had occasion to use them for the purposes indicated probably has a delightful surprise in store for her at the seemingly magical manner in which they usually operate.

* * * * *
We, the B-X Laboratories of Chicago, Illinois, do hereby guarantee the B-X products for women * * * to be harmless if taken where indicated according to directions. * * *

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) Either directly or by reasonable implication that said medicinal preparation is an abortifacient.

(b) That said medicinal preparation will afford relief in stubborn cases of delayed menstruation.

(c) That said preparation is famous or that it or any of its constituents is recommended by famous doctors.

(d) That said medicinal preparation is multi-strength, double strength, or very powerful.

(e) That said medicinal preparation is either a health or life preserver.

(f) That said medicinal preparation produces seemingly magical relief,

and from making any other claims or assertions of like import.
(Dec. 12, 1934.)

0800. Vendor-Advertiser—Burglar Alarms.—Detect-O-Cell Corporation, Chicago, Ill., vendor-advertiser, is engaged in selling burglar alarms, and in advertising represented:

We are going to show you how you can make \$15.00 a day—not by peddling some cheap jimcrack from door to door—not by taking a half million two-bit orders—but by simply making five easy sales per day * * * Even if you don't go to work until ten o'clock in the morning and if you quit at five p. m., taking an hour out for lunch, you can make \$67.50 to \$90.00 per week * * * clean up \$10.00 or \$15.00 per day * * * Men! You are worth \$100 a week from now on * * * Start at once—make \$10 to \$30 a day!

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated, any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) That respondent will not make unmodified representations of claims of earnings of salespersons in excess of the average earnings of the active full-time salespersons of respondent achieved under normal conditions in the due course of respondent's business;

(b) That respondent will not represent or hold out as a chance or an opportunity any amount in excess of what has actually been accomplished by one or more of respondent's salespersons under normal conditions in the due course of respondent's business;

(c) That respondent will not represent or hold out as maximum earnings by the use of such expressions as "up to", "as high as", or any equivalent expression, any amount in excess of what has actually been accomplished by one or more of respondent's salespersons under normal conditions in the due course of respondent's business; and

(d) That in future advertising where a modifying word or phrase is used in direct connection with a specific claim or representation of earnings, such word or phrase shall be printed in type equally conspicuous with, as to form, and at least one-fourth the size of the type used in printing such statement, claim, or representation of earnings. (Dec. 12, 1934.)

0801. Vendor-Advertiser—Needles and Needle Cases.—The Campbell Co., Millwood, Ky., vendor-advertiser, is engaged in selling needles, needle cases, and a booklet entitled "Sewing Ways That Pay", and in advertising represented:

FEMALE HELP WANTED

Ladies make \$18 weekly sewing. Send 10 cents for instructions. Sewing Ways That Pay. 25¢ Needle book included free. Campbell Co., Millwood, Ky.
* * * Imported needle case. Price \$1.

* * * Sewing Ways That Pay * * *

1. Tells you where to go two afternoons a week and do ordinary sewing and earn from 4 to 6 dollars each afternoon.

2. Tells how to earn \$3.00 every Saturday and never leave home. * * *
You should earn \$2 to \$25 each week, doing plain simple sewing at home by following the suggestions, plans, and new ideas contained in Sewing Ways That Pay. * * *

Special offer. Send 50 cents for the booklet within 10 days, and we will send you a regular \$1 lifetime needle case free. * * *

* * * Could you make use of this fine assortment of needles if we send them to you free of charge?

Could you use \$2 to \$25 extra money every week if we told you how to earn it by sewing? * * *

If you can use this fine assortment of needles we are going to send them to you free! * * *

* * * a lifetime needle book, regular price \$1. * * *

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated, any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise—

(a) That the booklet of instructions Sewing Ways That Pay will be sent for a price less than that actually required before the booklet is sent to the prospective purchaser;

(b) That purchasers of respondent's booklet of instructions can earn an amount in excess of the average amount earned by former purchasers of said booklet;

(c) That any article is free unless it is sent without requiring the payment of any money for it or any other article;

(d) That the regular price of any article is an amount in excess of that at which it is regularly sold by respondent; and from making any other claims or assertions of like import.

Respondent further stipulates and agrees in soliciting the sale of and selling said products in interstate commerce to cease and desist from publishing advertisements under the classification "Help Wanted", or in any other manner representing that he has employment to offer. (Dec. 18, 1934.)

0802. Vendor-Advertiser—Cold Treatment.—Lederle Laboratories, Inc., New York, N. Y., vendor-advertiser, is engaged in selling a product for the prevention and treatment of common colds of men, and colds, roup, and infectious bronchitis of fowls, designated "Terpal" and in advertising represented:

You will see that this product has proven effective in cases of infectious bronchitis, for which there seems to be no specific in the shape of an inoculation at the present time.

Terpal is a new product with Lederle. Its sale will be to the druggist, and therefore every druggist who may be in a position to sell anything for the "common cold" is in a position to sell Terpal.

Terpal has been found of benefit in colds, roup, and infectious bronchitis of fowls.

We are right in the season when infectious bronchitis is at its height. The cause is evidently a virus. At present it is doubtful whether a practical vaccine can be prepared. This Terpal fits into the picture.

TERPAL

Suggested for Prevention and Early Treatment of the Common Cold

Terpal is suggested for the prevention and treatment of the common cold solely on the basis of clinical experience. Cold virus is probably susceptible to many disinfectants that are useless in the treatment of colds. Therefore, we have made no attempt to establish experimentally the value of Terpal from the standpoint of germicidal activity.

Clinical results with Terpal have been highly satisfactory. In one series of over one hundred cases the treatment with Terpal has been successful in about 90 per cent and in another series of fifty-five cases a second observer reports 85 per cent of favorable results.

TERPAL

Reg. U. S. Pat. Office

Another Lederle Product

Recommended for the treatment of colds, roup, and infectious bronchitis of fowls.

Write for full information.

Lederle Laboratories, Inc., 511 Fifth Avenue, New York

TERPAL

Recommended for the treatment of common colds, roup, and infectious bronchitis of domestic fowls.

During the fall and winter months very few poultry flocks escape the ravages of the common cold or simple catarrh, roup, and infectious bronchitis. These diseases are communicable in nature and spread rapidly throughout the laying houses, causing serious loss in flesh and egg production, invariably when this latter commodity is selling at premium prices.

Treatment with Terpal

Colds and roup are age-old diseases of the domestic fowl, for which there has never been developed a completely satisfactory preventive and curative treatment. Infectious bronchitis is a relatively new disease and apparently is spreading rapidly throughout the country. Accordingly, a treatment that alleviates the symptoms and hastens recovery of the diseased birds is most welcome to the poultrymen.

The active agent in Terpal is an essential oil obtained from *Melaleuca alternifolia*, a tea tree growing in Australia. It is nonpoisonous and can be applied to the membranes of the eye, nasal passages, and trachea (windpipe) of the fowl without injury.

Terpal is an emulsion of this essential oil in a nonirritating medium. When administered in this form, by means of an atomizer, there is assured an even distribution of the active ingredient over the surfaces of the inflamed membranes, thus permitting direct and prolonged contact with the bacteria or viruses which cause colds, roup, and infectious bronchitis.

The respondent has definitely discontinued the advertising of said commodity and does not intend to resume such advertising in the future; and the sale of such commodity has also been definitely discontinued without intent to resume the same. Respondent stipulates and agrees that in the event it decides to resume again the sale and advertising of this commodity, such future advertising will be in accordance with law. (Dec. 18, 1934.)

0803. Vendor-Advertiser—Weight-Reducing Treatment.—The Sodinal Co., Cleveland, Ohio, vendor-advertiser, is engaged in selling a weight-reducing treatment designated "Sodinal", and in advertising represented:

You will be interested to know that hundreds of physicians are now prescribing a marvelous new way to reduce, without dieting or exercising, without taking laxatives, salts, physics, purgatives, sweat baths, or thyroid treatments.

This new treatment is based on the principle of increasing body energy. Everyone knows that exercise burns up or consumes surplus fat. This new treatment is designed to consume fat chemically 10 times faster than the normal resting rate. Physicians call it "metabolic oxidization." We call it chemical exercise.

In hundreds of tests of this new treatment made by physicians in their clinical and private practice, it was found that the average reduction was 2 to 3 pounds per week, although reductions of 4 to 6 pounds per week have been reported.

It was also found that the loss in weight was not accompanied by the unfavorable reactions attributed to laxatives, physics, salts, purgatives, or thyroid preparations. There was no appreciable effect upon the heart, kidneys, liver, stomach, intestines, glands, tissues, or normal processes of the body.

Nutrition was not disturbed even under the most severe tests, nor was there any evidence of acidity, nervousness, anxiety, trembling, hunger, or palpitations. A more complete report on this new way to reduce is enclosed. We invite you to submit it to your own physician for his approval.

Our trade name for this epoch-making treatment is Sodinal. It is the product of an ethical laboratory which for 23 years has faithfully served physicians, druggists, and the public. Its reputation for integrity and accuracy is your assurance of the purity and uniformity of Sodinal.

Sodinal comes in odorless, tasteless, air-tight capsules which are convenient to take and carry with you. It may reasonably be expected that 35 days treatment will result in a reduction of 8 to 15 pounds, depending on individual conditions. Should reduction be at a more rapid rate the treatment may be omitted for a few days, or the dosage reduced.

The 35-day supply, 100 capsules, is intended to sell regularly at \$4, but we shall fill your order at the special price of \$2 for your courtesy in bringing Sodinal to the attention of your physician. Should you not be more than satisfied with results, in accordance with the above reasonable expectations, we shall willingly refund the purchase price at the end of the 35-day period.

A new way to reduce without laxatives, physics, salts, thyroid extracts, teas, herbs, hot baths, creams, dieting, or exercising.

A STARTLING SCIENTIFIC DISCOVERY

Now a new way to reduce is being prescribed by hundreds of physicians. Its merits have been demonstrated clinically and in private practice on thousands of overweight people, with almost unbelievable success.

It is not a physic, laxative, salt, or purgative. Neither is it a thyroid or other glandular extract. Taken as directed, it apparently acted only on the fat cells, and did not affect the normal process of nutrition.

It did not cause acidity, and did not affect the heart, liver, kidneys, stomach, or any other vital organ or process in the body.

If Sodinal were not such an effective remedy it would not be necessary for us to tell you as much about it as we do. We would simply ask you to go on a diet and take vigorous exercise, and if you did those two things faithfully you would surely reduce your weight.

But Sodinal is effective in reducing excess weight without exercise or dieting, and therefore we want you to understand its action.

Sodinal, unlike many other methods suggested as reducing agents, is not a laxative—in fact it has no laxative effect whatever. It does not reduce by robbing the system of nourishment which it needs.

Neither is Sodinal a thyroid preparation. It does not affect the glands.

Sodinal reduces excess fat by consuming it, just as exercise burns up excess fat. This oxidating process causes a feeling or glow of warmth, and perspiration. You should perspire after taking Sodinal. This will indicate that fat is being consumed.

The respondent represents to the Federal Trade Commission that she has definitely discontinued advertising and selling such commodity, and does not intend to resume such advertising. (Dec. 20, 1934.)

0804. Vendor-Advertiser—Cough Treatment.—International Laboratories, Rochester, N. Y., vendor-advertiser, is engaged in selling "Bronchuline", for treatment of coughs and in advertising represented:

DO YOU REALLY WANT TO STOP THAT COUGH?

You can do it with a couple of doses of Bronchuline Emulsion * * *.

RELIEVES WORST COUGH IN JUST 30 SECONDS

One dose of Bronchuline Emulsion will fix that cough of yours. * * *
Another dose or two an hour apart will probably end it for good and all. * * *

* * * One swallow of Bronchuline Emulsion and you get relief—instantly. * * *

Certainly you won't need more than half a bottle of this grand old cough killer to knock that cough for good.

HERE'S QUICK BELIEF FROM BAD COUGHS

* * * One dose of Bronchuline Emulsion gives unmistakable relief—no matter how your cough has hung on. * * *

* * * I don't care what else you've tried, nor how long your cough has hung on, I am willing to bet that Bronchuline will stop it.

* * * One dose will give you immediate, unmistakable relief. Two doses may stop your cough entirely. * * *

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) That said medicinal preparation will stop a cough instantly;

(b) That any definite quantity of said medicinal preparation will stop a cough;

(c) That said medicinal preparation will stop a cough within thirty seconds, or within any definite period of time;

(d) That said medicinal preparation will end a cough for good, meaning thereby that it will prevent recurrences from the same or other causes;

(e) That said medicinal preparation will afford relief for coughs regardless of their duration, severity, or their failure to respond to other treatments unless limited to coughs not due to systemic diseases;

and from making any other claims or assertions of like import. (Dec. 28, 1934.)

0805. Vendor-Advertiser—Magnetic Healing Course.—Dr. E. L. Swick, Tacoma, Wash., vendor-advertiser, is engaged in selling a course of printed texts and lessons on the art of magnetic healing as applied to physical illnesses and ailments, and in advertising represented:

MAGNETIC HEALING

Female troubles, stomach troubles, bronchitis, rheumatism, blindness, and even cataracts

ARE YOU INTERESTED IN HEALING THE SICK?

Would you like to know how to stop nearly all pain, cure headache, fever, boils, blood poison, abscesses, appendicitis, piles, gall-bladder troubles, and all kinds of female troubles, etc.?

If so, why not investigate the mysterious power, for convenience called magnetism—that ancient and mysterious law that has been used in all ages for healing?

Twenty-five years of constant office practice as a physician has enabled me to affirm the wonderful power of magnetism to heal disease when all other methods have failed.

You must realize that I cannot tell you much about this great law in so small a space; but in urging you to investigate magnetism we are not asking you to study something that is unscientific nor unindorsed by science.

CANCER REMOVED

I am at this time treating a sore, of 12 years standing, on the face of a man 75 years old. He has tried all remedies ever offered, including X-ray for six months and 100 Ra-Dio Ray treatments. It was the size of a 25-cent piece and very deep, and was of late rapidly spreading, the eye being seriously affected. Two weeks' treatment with magnetism and it is well, not leaving even a scar.

HOME TREATMENT

We are not urging you to study something insignificant, but one of the greatest laws ever given to man for his personal use. Mothers can treat their children—parents can treat each other—friends can treat each other—acute illness can be overcome and chronic ailments prevented.

There is no other law known to man that will do as much to restore health and aid in maintaining it. Why not learn the scientific principles of this great law and become independent of sickness and poverty? It cures where others fail.

AMAZING POWER OF MAGNETISM

The amazing power and effectiveness of magnetism is seen best in the treatments of cases of infection, inflammation of any part of the body. Its quickness and effectiveness is almost unbelievable in cases of tonsillitis, sore throats, inflamed eyes, abscessed teeth or ears, gall-bladder trouble, asthma, inflammation of the female organs, prostate gland, all children's ailments, bowel troubles, fevers of all kinds, blood poisoning, ptomaine poisoning, bruises and wounds of all kinds.

It is the quickness of magnetism to produce relief that has won its place in the hearts of its users.

A Connecticut pastor writes, describing his success with our system in his church work in treating many ailments such as toothache, earache, stomach troubles, and many other ailments. Among them he tells of overcoming a case of paralysis, liver troubles, and concluded by saying that he had always found the results to be as taught in our course.

An insurance agent writes, stating that his wife was suffering from high blood pressure, stroke of paralysis, and sleeping sickness. The M. D.'s declared there was no hope. I said nothing and applied your treatments and now she is well on the road to complete recovery.

Mr. C. E. A., Penn., writes: "Since receiving your book on magnetism I have had great success in treating several cases of infections of the eyes—two of blood poisoning—one of pains around the heart—one of grip, relieving the chills and a severe headache in 45 minutes—and one case of infection in both hands."

Dr. H. F. B. writes: "I received your book and decided to try your magnetic healing system on a woman suffering with neuralgia and an abscess in the head and ear. For over two weeks an M. D. had tried and failed to bring any relief. I was then invited to take the case and applied magnetism. You can't imagine my surprise when all pain stopped within ten minutes, and thirty minutes later she was sleeping soundly the first time in ten days."

INFECTIONS

Possibly no one phase of my lessons is more important and valuable than treating infections. You know the seriousness of blood poisoning, and no doubt

you also know there is no medicinal remedy for it; yet, during 25 years of practice with my system, I have never seen one case but what one to three treatments have placed the patient entirely out of danger.

In cases of infections, such as blood poisoning, you need have no fear, as I have never found but what one or two treatments of thirty minutes have not only removed all pain and suffering, but put the patient out of all danger. The same is true of cuts and bruises; inflammation of the eyes; inflammation of the female organs; congested, abscessed, or inflamed liver, and abscessed gall bladder, are all easily corrected when treated according to the instructions in my course of study.

INFANTILE PARALYSIS

* * * after two weeks' treatment practically all symptoms had disappeared and he was well on the road to complete recovery * * *. It is now several years later and the child has grown to be a strong, healthy man.

CURVATURE OF THE SPINE

During one month's treatments practically all the above symptoms had disappeared. She soon completely recovered and is strong and healthy.

GALLSTONES

* * * attending physician diagnosed case as one of gallstones. To relieve the pain the physician had resorted to something like 30 Hypodermics over a period of several weeks. Some days it was necessary to give as high as 3 hypodermics. This case was pronounced as one of a very serious nature. Another operation was advised. Mrs. H. was unconscious and they expected her to die at any moment. * * * I treated according to your instructions for a period of 30 minutes. The next day a large lump about the size of an English walnut raised at the base of her skull. This lump disappeared in about 48 hours. The large lump on her thigh also disappeared. She has now taken 12 treatments, to date has lost 17 pounds in weight, and is better in health than she has been for a period of several years.

INFLAMMATORY RHEUMATISM

One treatment, and the trouble in her wrists disappeared as if by magic. Ten days later the trouble reappeared in the right hip. After one treatment, as above described, this trouble disappeared and she is now entirely free from this ailment.

STOPPED MENSTRUATION

* * * suffering for a number of days with a violent headache, brought on by stopped menstruation. I applied the treatment to your advice for such cases and am glad to report that one treatment reestablished them.

FEMALE TROUBLE

* * * suffering with ovarian pains. Her condition was so serious that three doctors ordered an operation as the only hope of her recovery. She was suffering from a fallen and inflamed uterus, abscessed ovary, and a severe case of catarrh of the head over ten years' standing. From the advice in your lessons, all these conditions entirely disappeared after four weeks of treatment.

ACNE AND FAINTING SPELLS

* * * suffered for several years with acne and attacks of fainting. The results were that after sixteen treatments from March 9th to April 5th, he reduced to 160 pounds, his face became clear, and his attacks of fainting and headaches were gone and his general feeling was perfect.

BLOOD POISONING

She had her arm all bandaged up and in a sling. This was Wednesday; she had been stung Sunday morning and by this time she was suffering great pain and wasn't able to use her arm, so she went to the doctor. He put some kind of salve on it, bandaged it up, and told her to go home and go to bed as she was in a serious condition and told her to come back the next day * * * We unwrapped the arm which was red as a beet, hot as fire, and heavy as lead. She couldn't use her hand at all. Her whole hand was ice cold, but the arm from the wrist to the shoulder was full of fever.

I proceeded to treat it according to the principles taught in your lessons. * * * Then before she went home, I treated another half hour, and when I finished, she started to punch her husband to show him how well her arm was. By this time it was almost natural color again. She went home and slept well and again the next day her arm was practically well and of course she did not go back to the doctor.

FRACTURED SKULL AND CONCUSSION OF THE BRAIN

He fell about 14 feet and landed on a concrete walk, striking on the back of the head. The pain in the head is very severe and heart beats very irregular * * * I applied the treatment as you advised and relief was experienced immediately.

* * * suffering for years from a case chronic prostatitis, a hangover of an old case of gonorrhea of ten years' standing.

The prostate gland had become exceedingly enlarged and sore, causing extreme pains most of the time and an extreme burning sensation when urinating. To add to this trouble, he suffered constantly from stomach trouble and constipation * * * Recently I met the man on the street and he informed me that he was entirely well, having proceeded to treat his prostate gland as is taught in your course of study. He informed me that he was entirely free from every ailment and had never felt better in his life.

I also have a lady with a bulging eye which had been declared hopeless by specialists. It is gradually going back into the eye socket.

SERIOUS THROAT TROUBLE, LOSS OF SPEECH, AND HEMORRHOIDS

She had for many years had a throat trouble that kept steadily growing worse, causing increased discomfort and necessitating repeated clearing, hacking, and exertion to be able to talk, even threatening loss of speech. She used your treatments and thanks to them she has practically, if not fully, regained normal use of her vocal chords * * * but her chief trouble was a severe hemorrhoidal condition which, it seems to me, there are few diseases requiring surgery, more difficult to treat by nonsurgical methods. The walls of rectum and varicose veins had lost tone until they were almost in a state of paralysis and they were so inactive. The treatments have helped. Whereas, she used to have hemorrhages every few months, she has not had any for several years.

FEMALE TROUBLE

He has discovered that various parts of the body throw off a powerful ultra-violet ray, and stated that yeast germs were killed in five minutes merely by the radiations from the finger tips of one person. This radiation was also found to be equally as powerful from some other parts of the body.

* * * arthritis, * * * had been a sufferer from it for over twelve (12) years * * * began to give her treatments * * * both knees which were swollen as large as one-half gallon pails, were not entirely free—her hands were entirely free from pain, and her general condition was greatly improved.

* * * kicked in the leg by a horse 2 months ago, causing a very large gash which laid wide open. She applied Magnetism according to instructions and the recovery was almost unbelievable.

ASTHMA

She reports that her husband had suffered for over 15 years with asthma, but through the knowledge of Magnetic Healing as I teach he is now entirely well.

The doctor told me that I was suffering from cataracts and there was nothing to be done for them. I studied your chapter on Eyes and decided to try Magnetism on myself. I have been giving myself treatments for one-half hour daily for the past 3 months. My sight has improved so I can see to read the newspaper now without glasses, something I have not been able to do for over forty (40) years.

SAINT VITUS DANCE

* * * a severe case of Saint Vitus Dance. This condition rapidly grew worse until he was unable to walk alone or feed himself. This extreme condition had existed for several months when he took him to his home and proceeded to treat him according to our instructions.

Two weeks' treatment made such an improvement that he could walk alone with but very little difficulty. A continuation of these treatments for a few weeks longer and he was able to feed himself, run and play as well as other children.

EPILEPTIC CASES

* * * treated a young man, 22 years of age, who had suffered for many years with epilepsy, and he has never had an attack since his treatments.

* * * a case of epilepsy of 15 years' standing of a young lady, 30 years of age, who had been suffering from these attacks since she was 15 years of age. During this period she had been treated by twenty-six (26) different doctors. All efforts produced but little or no relief. Mr. S. followed the method of treatment as prescribed in my course of study, and reports the girl in excellent health and has never had an attack since the first treatment, which was over 2½ years ago.

FRACTURED ARM

* * * the joints of her fingers and wrist had become swollen and set, and the doctor attempted to loosen the wrist and fingers by force. The pain was so extremely great that she became very sick and returned home in a serious

condition * * *. After eight treatments, I restored the circulation, and the fingers and wrist were perfectly normal. When she returned to the doctor, he could not understand the marvelous change, but she simply kept quiet and let him continue to guess.

RHEUMATISM—NEURITIS

I am now free from rheumatism and neuritis, and also have reduced a milk leg that has troubled me for 36 years, so that I can now walk without limping and sleep without pain.

PARALYSIS

* * * suffered from a paralytic stroke the last day of March * * * I immediately treated him according to your advice and within a day and a half he was practically normal.

INJURED FOOT—BLOOD POISONING

* * * stepped on a piece of glass, cutting a long, deep gash in the ball of his bare foot. This had occurred several days before I arrived. The foot was badly swollen and extremely painful, showing many signs of a serious infection. I followed the directions received in your course of lessons. The results were nothing more than incredible. The following Monday morning all swelling and soreness had disappeared, and he was able to start to school on time. All of this was brought about in three treatments given according to your instructions.

APPENDICITIS

Four medical doctors called it appendicitis and advised me to have the operation before it was too late. I want you to know that with the knowledge I gained in just one lesson, my side is completely healed.

HEART TROUBLE

Another patient had suffered for years with severe heart trouble, until all doctors had advised her against even attempting to walk across the room. While in this condition she became pregnant, and all hopes for a safe delivery had been abandoned unless she would consent to an operation. She became our patient, and after a course of treatments all symptoms of her heart trouble disappeared. The baby was born in due time and in perfect condition.

* * * paralyzed for 13 years and unable to help himself in any manner whatever * * * is able to walk 5 or 6 miles without fatigue, besides splitting and carrying all his firewood.

* * * swinging a sledge hammer, missed the drill and his foot received the force of the blow, badly crushing and injuring it. This one treatment entirely removed all soreness and swelling, and he returned to work and never suffered any soreness nor inconvenience from the accident.

HEART TROUBLE AND MORPHINE HABIT

* * * Her recovery was exceedingly rapid and satisfactory. She never took another dose of morphine or digitalis and in 3 weeks was sleeping and eating normally and remaining out of bed the larger part of the time. This cure was all made possible because of our theory of diagnosis as we teach in our course.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making the foregoing and many other representations of like import set forth in the stipulation and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) That by the purchase and study of respondent's course one enables himself to cure or stop or adequately treat any of the following illnesses and afflictions:

Female troubles, stomach troubles, bronchitis, rheumatism, blindness, cataracts, headaches, fevers, boils, blood poisoning, abscesses, appendicitis, piles, gall-bladder troubles, cancer, flu—intestinal or otherwise—birthmark blemishes, typhoid, pneumonia, infected eyes, tonsils, teeth, abscessed gall bladders, inflamed ovaries, prostate gland, asthma, paralysis, liver troubles, diarrhea, ptomaine poisoning, bowel troubles, infections, cuts and bruises, inflammation of the female organs, pyorrhea, stomach ulcers, duodenal ulcers, misplaced uterus, cystitis, inflammation of bladder, sinus trouble, colic, anemia, neuritis, adhesions, rheumatism, tuberculosis, ovarian abscesses, inflammation of the bowels, chilblains, misshapen limb, sciatica, lumbago, infantile paralysis, curvature of the spine, acute indigestion, kidney stones, gall stones, inflammatory rheumatism, deafness, catarrh, acne, fractured skull, concussion of the brain, bulging eye, film over eye, varicose ulcers, pleurisy, phlebitis, broken toe, milk leg, defective vision, varicose veins, hemorrhoids, loss of speech, arthritis, open gash, cramps, disordered spleen, high blood pressure, St. Vitus dance, epilepsy, fractured arm, injured knee or foot, carbuncle, heart trouble, rupture, growth on breast, lump in abdomen, sprained ankle, hay fever, or morphine habit;

(b) That radiations from the human body commonly called magnetism kill germs within another body in a short time, or at all, unless and until proof of such assertion be produced satisfactory to the Commission;

(c) That magnetism is the only law that belongs to the common people for healing; or

That it can be applied by anyone; or

That it can do something no other system can do;

(d) That respondent has "never seen a case of blood poisoning where one treatment has not removed all suffering and put the patient out of danger";

(e) That "there is no other law known to man that will do as much to restore health and aid in maintaining it" as magnetism;

(f) That respondent's pamphlet, "Magnetism, Its History, Origin and Use", "will make you master of pain";

and from making any other claims or assertions of like import. (Dec. 28, 1934.)

0806. Vendor-Advertiser—*Stomach Treatment*.—Losana Products, Ltd., Los Angeles, Calif., vendor-advertiser, is engaged in selling a stomach treatment designated as Losana Trokies and in advertising represented:

FREE TO STOMACH SUFFERERS

I want to send all stomach sufferers a free package of a new California product that quickly healed me after many years of suffering from acid stomach, gastritis, constipation, gas, bloating, dizziness, nausea, headache, nervous indigestion, heartburn, loss of appetite, and finally the terrific agony of duodenal ulcer. Today I enjoy life, have a splendid appetite, and eat what I want without distress. This new product from the land of sunshine and health contains no harmful drugs, is safe and pleasant to take. Now I want other stomach sufferers to know about this California product. Write today for free trial package. Cheerfully sent without cost or obligation. Losana Products, Ltd., Dept. AX, 126 South La Brea Ave., Los Angeles, Calif. Don't Delay! Losana Trokies: For stomach troubles.

Losana Trokies are carrying on a continuous attack upon the cause of your disorder * * *

They are causing the elimination of the poisons, toxins, and gas from the digestive tract, and they are assisting the raw and inflamed tissues to heal.

They contain no harmful or habit-forming drugs and are a complete, harmless, and satisfying treatment which fills a long-felt need of stomach sufferers everywhere.

Losana Trokies are intended to give permanent relief.

Losana Trokies are the ideal treatment for indigestion, dyspepsia, gastritis, heartburn, acidosis, and kindred ailments due to hyperacidity or faulty diet because they attack the cause of the trouble.

IMPORTANT NOTICE

Some stomach sufferers who use Losana Trokies may notice that their feces or stool will change in color to a dark brown or even black.

This dark feces or stool indicates that the dangerous and harmful sulphur gases are present in the intestinal canal.

Losana Trokies cause these gases to be absorbed into the feces or stool and to be passed from the body. When these dangerous gases have been eliminated, the feces will return to its normal color again. The use of Losana Trokies should therefore be continued until this has been accomplished, as a satisfactory correction cannot be expected as long as these dangerous and harmful sulphur gases remain in the body.

You would be wise not to delay ridding yourself of these dangerous sulphur gases if your feces or stool indicates that they are present in your intestinal tract.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations

and agrees to cease and desist from publishing or circulating, or causing to be published or circulated, any statement which is false or misleading, and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) That said trokies are a competent treatment or an effective remedy generally for either acid stomach or gastritis or constipation or gas or bloating or dizziness or nausea or headache or nervous indigestion or heartburn or loss of appetite or duodenal ulcer or "stomach troubles";

(b) That they constitute more than a relief from such conditions due to hyperacidity in the stomach;

(c) That they attack the "cause" of one's disorder;

(d) That they cause the elimination of the poisons, toxins, and gas from the digestive tract, unless limited to such conditions as may be the result of hyperacidity;

(e) That they are a "complete" treatment for "stomach sufferers everywhere";

(f) That they are intended to give "permanent relief";

(g) That a dark feces or stool after the use of trokies "indicates that dangerous and harmful sulphur gases are present in the intestinal canal", or that said trokies "cause these gases to be absorbed into the feces or stool and to be passed from the body"; and from making any other claims or assertions of like import. (Dec. 28, 1934.)

0807. Vendor-Advertiser—Revolvers and Sporting Goods.—The Hudson Sporting Goods Co., New York, N. Y., vendor-advertiser, is engaged in selling revolvers and sporting goods and in advertising represented:

BIG BERTHA

(Picture of revolver in this space)

Brand new: Just a small quantity of these fine "He-Man" guns. Dropped forged steel, case hardened hammer and trigger with three sure locks, heavy reinforcing under the barrel, checkered walnut grips, blue finish, 5- or 6-inch barrel, shoots the regular 44 S. & W. American or 44 S. & W. Russian cartridge.

IMPORTED—44 S. & W. SPECIAL CAL.

Side ejector with rare triple lock for heavy duty. While they last, as no more of these fine guns will ever be brought into this country again. Cartridges for above gun—\$1.00 box, special price \$15.95, regular price \$39.75.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or

misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) That any revolver portrayed, advertised, or sold by him is a Smith & Wesson revolver unless such be the fact.

(b) That the revolver advertised as the "Big Bertha" is an S. & W. or Smith and Wesson revolver.

(c) That the regular price of the "Big Bertha" revolver advertised and sold by him is \$39.75 or any other sum in excess of the price at which such revolver is generally sold in the American market.

(d) That by reasonable inference any revolver is manufactured by any other than the real manufacturer of such revolver.

and from making any other claims or assertions of like import.

The respondent assumes all responsibility for any and all representations appearing in testimonials published by him and stipulates and agrees that he will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 5, 1935.)

0808. Vendor-Advertiser—Feminine Hygiene Product.—Peck and Sterba, Inc., New York, N. Y., vendor-advertiser, is engaged in selling "Lucorol" a feminine hygiene product, and in advertising represented:

Lucorol * * * The Original Formula for Feminine Hygiene.

* * * (By thus spreading jelly, you form a plug or film over the mouth of the uterus—a film of antiseptic jelly which no germ can penetrate),

* * * For treatment of Leucorrhœa.

The Secret of Dependable Antiseptic Safety in Feminine Sex Hygiene!

* * * the modern woman with her numerous responsibilities cannot afford to take risks when it pertains to the preservation of her health, youth, and happiness. She must have knowledge at hand of an antiseptic which is safe beyond doubt, easy to use, and absolutely dependable.

Lucorol, the original vaginal jelly * * *.

* * * places the jelly where it cannot fail to be effective * * * giving *certain* protection from germs. * * * Certain, * * * Lucorol * * * has as its active antiseptic, imported Chinsol. This is so highly regarded that it is used in European hospitals in solution, internally to counteract ptomaine poisoning. * * *

Lucorol clings and penetrates * * * *maintaining* a germ-free condition for hours, * * * forming an adhesive rubber-like film * * * impervious to *dangerous* germs! So dependably certain is this antiseptic that no douche is required * * *.

Lucorol Checks Leucorrhœa! * * * Lucorol is used in leading hospitals and clinics in the country in the treatment of this and more severe cases of vaginal disorders. Leading gynecologists use and prescribe Lucorol.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing

to be published or circulated, any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) Directly or by reasonable implication that said preparation is a contraceptive. It is understood that this provision shall not apply to advertising literature sent exclusively to members of the medical profession.

(b) That the use of said preparation will—

1. Provide freedom from worry.
2. Eliminate risks.
3. Preserve a woman's health, youth, or happiness.
4. Provide protection from germs, unless qualified to indicate that it only afford partial protection.
5. Form a film that no germ can penetrate or that is impervious to germs, provided that respondent may describe the physical nature of the film formed by the preparation.
6. Maintain a "germ-free" condition.

It being understood that paragraphs 1 and 2 hereof shall not prevent the respondent from representing the preparation as providing freedom from worry or eliminating risk, provided the nature of the worry and risk is clearly stated and is not dangerous conception.

It being further understood that paragraphs 4 and 6 hereof shall not prevent the respondent from stating any antiseptic or germicidal properties that may be substantiated by reliable scientific tests, provided such statements shall not be made in such a manner as to imply that said product is a contraceptive;

(c) That said preparation is the "original" formula for feminine hygiene or the "original" Vaginal jelly, it being understood that this agreement does not prohibit the respondent from representing that Lucorol is the first Vaginal jelly introduced into America or that it is the first product of its kind sold in the United States;

(d) That said preparation is safe, dependable, or certain, provided that this shall not prevent the respondent from representing the preparation to be harmless;

(e) That said preparation is the secret of dependable "antiseptic safety";

(f) That said preparation is used internally to counteract ptomaine poisoning;

(g) That said preparation is a competent treatment for leucorrhœa unless all such representations are qualified by statements to the effect that leucorrhœa is frequently a symptom of more serious disorders and that medical consultation is at all times recommended. It is understood that this provision shall not apply to advertising literature sent exclusively to members of the medical profession;

(h) That the active antiseptic ingredient is imported Chinsol, unless it contains an effective quantity of such imported Chinsol; and from making any other claims or assertions of like import. (Jan. 18, 1935.)

0809. Vendor-Advertiser—Printed Horoscopes, Etc.—The Psycho-Logic Institute and Alpha Publishing, San Diego, Calif., vendor-advertiser, are engaged in selling printed horoscopes, courses of instruction in psychology, etc., and in advertising represented:

YOGI ALPHA'S BOOK OF MYSTERY

* * * Read on and learn more about this wonderful book. Special Added Chapter—How To Make Others Love You. Complete revelations of a Hindu Method of making persons at a distance think of you and to cause them to love you.

ASTROLOGY

15 page reading only \$1.00

What do the stars predict for the entire year of 1932? A complete Astrological reading—12 to 18 pages, giving you predictions month by month, with exact days, dates and happenings, together with character analysis and vocational guide—all based on your sign of the Zodiac * * *.

Lesson No. 4—Psychic Power. * * * How to know the Future.

Lesson No. 6—The Million Dollar Secret of Attainment of All Desires. * * * How to cause others to do your bidding. How to get what you want. * * * How to attain your desires. * * *.

My years of experience have shown me many things of value, which to many are indeed Secrets; and these secrets are necessary in order to have what you want, no matter what you desire, Love, Wealth, Success, or Happiness. There is a Good, Sure Way to have all these, or any one of them; * * *

* * *, I have decided to offer you this work in a Manuscript form so that you may have it for two dollars; and it is entitled "The Secret of Having What You Want." It is divided into Three Parts; Part One—How to Acquire Wealth and be Successful. Part Two—Creating Mental Conditions (The Three Secrets Of Having What You Want.) Part Three—Love: How to Have it (The Meaning of all You do When In Love.) The answers to your problems are given here; weave into your every-day life the Secret, and its mysterious power shall gradually bring you What You Want * * *.

* * * Scientific Astrological Chart and Character Analysis.

A Perfect Guide In Love, Health, Marriage, and Business. * * * Let Astrology guide you to Success and Happiness scientifically. Perform the task that nature best fitted you for—and succeed. There is no excuse for failure and unhappiness—if you first consult nature, then intelligently plan your future. A copy of this great book should be in every household. * * *

THIS EXTRAORDINARY WORK

Sometimes called the great "Magic Cure Book" is held by thousands to be the only sure means to avoid sickness in their families; to make them fortunate in their crops and stock raising, and prosperous in all their undertakings, en-

abling them to acquire wealth, honor, and esteem amongst their friends and neighbors.

THE LONG LOST FRIEND

* * *, by the celebrated Author and Necromancer, John George Hohman, who claims that whosoever carries this little book with him is safe from all his enemies, visible or invisible, and whosoever has this little book with him cannot die * * *; nor drown in any water; nor burn in any fire; nor can unjust sentence be passed upon him. * * *.

MAKE YOUR DREAMS COME TRUE

Yogi Alpha Offers YOU "The Secret of Having What You Want". * * * Wealth, and all it implies, can be yours when you know how to make your dreams come true. * * * Money, independence, fine cars, luxurious homes, delightful travels to far-away lands are yours, when you fully understand yourself. * * *

Lesson One. How to Acquire Wealth and be Successful.

Lesson Two. * * * How to Absolutely Eliminate the Obstacles for Success and Happiness. * * *.

* * * SOUTHERN JOHN THE CONQUEROR

It is believed by certain voodoos and high priests that a person carrying a piece of this root in his pocket will never be without money and can obtain anything he desires; he will always feel strong and powerful and have much luck. Unusual as these claims are, there are many who believe in them. * * *

ADAM AND EVE ROOT

A pair of roots in one, named Adam and Eve. The upper one is Adam and the lower one Eve. Valued for its magic qualities in restoring vitality to the generative organs, also to bring back and hold the love of a husband, wife, or sweetheart. * * *.

MAN CAN NOW USE STRANGE INNER POWER

New and Revolutionary Teaching Reveals Secret of Happiness and Financial Success Without Physical Effort.

The story of a new and revolutionary teaching which reveals a strange inner power so dynamic and forceful that it can carry man to complete happiness, health, and financial success, is told in a 5,000-word lecture, "Key to Your Inner Power", recently compiled by Yogi Alpha, internationally known psychologist and Philosopher. * * *

The author offers for a limited time to send this amazing lecture to readers of Psychology free of cost or obligation. It reveals the astounding secret, which, mastered, can enable you within the next few months to increase your earning power, attract new friends, and make your visions of achievement, health, and happiness come true.

* * * Man can now use a strange Inner Power so dynamic and forceful that it can bring complete fulfillment of your visions of happiness, health, and financial success. Write for free copy of remarkable 5,000-word Lecture "Key to Your Inner Power" which reveals the Seven Steps to Success and how you may receive this new and revolutionary teaching in your home. * * *.

* * * What is Psycho-Logic? It is a NEW SCIENCE that is attracting worldwide attention because it enables man to use a strange Inner Power to bring him everything he desires. * * * It shows you how easily your every need can be supplied; your every want fulfilled.

YOU HAVE THE POWER TO MAKE YOUR DREAMS COME TRUE DURING 1934

Psycho-Logic, a new and revolutionary science of the mind which goes far beyond both age-old or modern teachings, gives you an amazing secret which enables you to tap this *all powerful force within you*, hands you the Key to the gates of success so they will quickly open for you to the fulfillment of every dream or desire. Not within ten years, nor five years nor next year—but *this year, 1934.*

* * *, you can have the power to put your life dreams into action at once.

I am so positive that Psycho-Logic will bring you success and happiness, I accept your application only on a strict trial, with a written agreement to refund your money if you are not satisfied in every way with results obtained.

* * * Yogi Alpha is so positive that his teachings will bring to you the same success and happiness that it has to others that he accepts your application only with a strict money-back refund agreement. * * *.

* * * Psycho-Logic is a new science that is attracting world-wide attention because it reveals a strange Inner Power that *you* possess, which mastered, can enable you to: Increase your earning power, make your visions of achievement, of love, health, and happiness Come True. * * * And when you learn to tap this great power it can bring you everything you desire—Without Physical Effort.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) That the astrological readings sold by respondent for \$1.00 are complete readings;

(b) That by reading or studying any of the publications or courses of instruction sold by respondent a person will be able to

1. Make others love him; or
2. Know the future; or
3. Cause others to do his bidding; or
4. Attain all desires; or
5. Get what he wants; or
6. Achieve financial success or happiness; or
7. Increase his earning power; or
8. Attract new friends; or
9. Make visions or dreams come true; or
10. Supply every need or fulfill every want; or
11. Eliminate obstacles to success or happiness; or

12. Acquire wealth or be successful;

(c) That any of the publications or courses of instruction sold by respondent

1. Discloses the secrets necessary in order to have love, wealth, success, happiness, or whatever one desires; or

2. Provides a sure way to have love, wealth, success, happiness, or whatever one desires.

(d) That the publication entitled "Key to Your Inner Power" is a course of instruction on psychology or related subjects or that it contains an exposition of any of the principles or teachings on psychology or related subjects.

(e) That any of the teachings set forth in respondent's courses of instructions are new or revolutionary;

(f) That the astrological charts sold by respondent are scientific guides to success or happiness;

(g) That there is no excuse for failure or unhappiness if respondent's astrological charts and character analysis are consulted and followed;

(h) That any publication sold by respondent

1. Is a "Magic Cure Book"; or

2. Is a sure means to avoid sickness; to make persons fortunate in crops and stock raising; or to acquire wealth, honor, or esteem;

(i) That the carrying of any book sold by respondent will render one safe from his enemies, immune from drowning, immune from burning, or safe from unjust convictions;

(j) That a person who carries any root sold by respondent

1. Will never be without money; or

2. Can obtain anything he desires; or

3. Will feel strong or powerful; or

4. Will have luck.

(k) That any root sold by respondent

1. Has magic qualities; or

2. Will restore vitality to the generative organs, or

3. Bring back or hold the love of husband, wife, or sweetheart;

and from making any other claims or assertions of like import. (Jan. 10, 1925.)

0810. Vendor-Advertiser—Radiator Cement.—Tropic Weld, Inc., Minneapolis, Minn., vendor-advertiser, is engaged in selling a preparation for stopping leaks in radiators, designated as "Tropic Weld Radiator Cement", and in advertising represented:

100% PROFIT SELLING DEALERS RADIATOR CEMENT CAPSULES

Earn Big Money supplying dealers with radiator cement capsules. Beautiful Counter Display makes fast easy sales. 100 Dealers should give you

monthly profits of \$300. Tremendous Demand. Write for free sample offer. Exclusive territory.

Tropic Weld Radiator Cement Guaranteed to Stop That Leak.

Respondent stipulates and agrees in soliciting the sale of and selling said preparation in interstate commerce, to cease and desist from publishing and circulating, or causing to be published or circulated any statement or representation directly upon the responsibility of the undersigned respondent, or indirectly as purporting to be upon the responsibility or in the words of another, which is false or misleading; and specifically stipulates and agrees,

That respondent will not make unmodified representations or claims of earnings of salespersons in excess of the average earnings of the active full time salespersons of respondent achieved under normal conditions in the due course of respondent's business. (Jan. 11, 1935.)

0811. Vendor-Advertiser — Medicinal Preparations.—Hiram Carter, Inc., Elmhurst, N. Y., vendor-advertiser, is engaged in selling various medicinal preparations designated as "Old Surgeon Remedy," and in advertising represented:

* * * maybe my name is familiar to you as related to a useful necessity * * *

* * * Before I felt like a burnt-out old man; now I can step out and hold up my end with the rest * * * finally I completely regained my old time power * * *

* * * I was a real man once more!

* * * my whole being wonderfully changed with new life * * *

* * * I was asked time and again what amazing thing I had done to give me this new lease of life.

* * * It seemed to make short work of the miseries of subacute rheumatism. * * *

* * * you ought to see *real results within 24 hours by the clock.* * * *

Old Surgeon's is what you need to * * * give you new ambition. * * *

"I have been under the care of three different doctors, but my case defied their best efforts. I got so bad I was told I could not be cured."

"* * * I have spent a good deal of money for * * * gland treatments * * * without success. I had pain in my right arm like neuritis * * *"

* * * I cannot tell you how much money I spent for * * * gland treatments * * * without lasting results. * * *

* * * "There is only one way to get real results, * * *."

* * * Why the glands, nerves, and functions could never work with their full vigor when hampered by mischief-making impurities forever dragging them down; upsetting things *generally—and particularly* by exhausting the force and activity of various organs. * * * But you will, I think, find it *unmistakably different* from any medicine you ever used before.

* * * It has to respond sooner or later. He thought it was nonsense that anyone should put up with such falling when it was so easy to relieve it.

* * * "You want to get rid of the troublesome symptoms. * * * Now is the time to revive the latent powers and stamina you once possessed."

* * * when you know for sure you can give a good account of yourself whenever and however called upon. * * * I reckon you will be willing to pay a reasonable amount to cover the costs. * * * I want you to expect great things from Old Surgeon's Remedy—more than you hoped for from any remedy you ever used before. * * *

* * * I hope you will worry no more about your troubles, you'll do everything with new vim and zest.

* * * gland extracts * * * failed to do what they wanted.

* * * I have been troubled two years with rheumatism and spent much money for treatments without lasting good, Old Surgeon's is the best remedy I have ever used. * * *

GET AT THE CAUSE

* * * To end the want of strength—loss of ambition—aches and miseries * * * to have renewed Force—Take Old Surgeon's— * * *

"* * * I lacked vitality."

"* * * I was so short of breath; gland functions. * * *"

"* * * several doctors told me flatly I could never be cured. * * *"

"* * * I feel stronger, more vigorous, and have more pep. * * *"

* * * He knows now what it's all about—how to stop needless premature old age—and what to do if ever there's the least sign of the old falling showing its ugly presence again. * * *

"* * * I used Old Surgeon's Remedy and I am glad to say * * * that I am entirely rid of rheumatism * * *."

"* * * I was attended by two competent physicians but neither was able to cure me. * * *"

* * * the purpose of the first course is only to *prepare*. * * *

* * * I figure the costs amount to about \$1.95 * * * you pay only \$1.95 to defray actual expenses. * * * renew normal vigor and power * * *.

* * * And when Old Surgeon's does for *you* what it has done time and again for others * * *.

* * * What's troubling a lot of folks isn't Old Age at all—it's Premature Old Age * * *."

* * * Old Surgeon's is slower, that's a fact, but it is none the less sure. * * * You are to have a regular \$5.00 treatment by depositing only \$1.95 to cover costs I have already paid.

* * * Don't you suppose it would make a difference to others if this failing of yours presently disappeared * * * ?

* * * I do hope you decide to go on with Old Surgeon's *because I feel so sure of what is coming*.

The Pride and Power of Sturdy Manhood and How It May Be Maintained

* * * What they say is regarded by many as the *sum of all truth obtainable*.

* * * It is indicated in * * * vital debility, asthenia—in neurasthenia * * *.

* * * Two groups of medicaments act upon the genital organism—one by dilation of their blood vessels which is the peculiar action of the *Ingredient C*.

The second group act * * * in cases of exhaustion and impotence—as is accomplished by *Ingredient A*. * * * *Ingredient E* is a remedy of recent introduction, depending upon its antiseptic power for * * * influence on

metabolism and apparently specific action against some of the causes of acute articular rheumatism * * * .
 * * * how its value can hardly be overestimated in these cases of *lost energy and weakness*— * * * .

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) That any of said preparations or any combination thereof is a competent treatment for—

1. Impotence or lost energy.
2. Neuritis.
3. Rheumatism.
4. Gout.
5. Sciatica.
6. Vital debility.
7. Asthenia.
8. Neurasthenia.

(b) That the use of said preparations is the only way to get real results;

(c) That any ailment is sure to respond to the use of any of said preparations;

(d) That the price charged for any of said preparations is merely an amount sufficient to cover the cost thereof;

(e) That real results can be obtained from the use of any of said preparations, or any combination thereof within any definite period of time;

(f) That any of said preparations or any combination thereof is—

1. A necessity;
2. A gland treatment;
3. Different from any other medicine ever sold;
4. A vitally needed treatment;
5. A specific for any ailment or the cause thereof;

(g) That the use of any of said preparations or any combination thereof, will—

1. Enable one to regain power;
2. Make a person "a real man";
3. Instill new life;
4. Restore youth or pep;
5. Give one "new ambition";
6. Cure any disease or ailment;
7. Restore the functioning of exhausted glands or nerves;

8. Enable one to get "rid" of troublesome symptoms;
 9. Revive latent power;
 10. Enable one to give a good account of himself "whenever and however called upon";
 11. Produce results that are more than ever hoped for from any remedy used before;
 12. Enable one to stop worrying about his troubles;
 13. Enable one to do everything with vim and zest;
 14. "End" the want of strength, loss of ambition, aches or miseries;
 15. Get at the cause of any disease;
 16. Stop premature old age;
 17. Renew normal vigor or power;
 18. Produce the same benefits that have been produced in other cases;
 19. Cause any "failing" to disappear;
 20. Enable one to maintain manhood;
 21. Produce beneficial action upon the genital organism;
 22. Influence metabolism unless qualified to indicate the manner in which it does so;
- (h) That substantial benefits may be expected from respondent's first course of treatment;
- (i) That medical opinions cited by respondent are regarded as the sum of all truth obtainable;

and from making any other claims or assertions of same meaning. (Jan. 11, 1935.)

0812. Vendor-Advertiser—Cold Tablets.—W. E. Shuit, Inc., Clifton, N. J., vendor-advertiser, is engaged in selling cold tablets designated as "Bel Caps", and in advertising represented:

Feverish Achy Colds Banished in 6 Hours. * * * This famous recipe clears stopped up head, loosens tight chest. * * * It works in the blood. * * * Results in 6 hours * * *.

Kills Colds in 6 Hours * * *.

Feverish Achy Colds *Banished in Hours Instead of Days* * * *.

* * * Kills Colds * * * no heart depressing drugs * * *.

Bel-Caps alone will kill a cold. * * * This is guaranteed the safest, fastest, easiest way to knock out colds and grippe. * * *

Now Fight Your Cold Without Depressing Your Heart.

Bel Caps are Safe. They are safe for adults. They are safe for little children.

The Success of Bel Caps dates back to the great Flu Epidemic. They withstood the most trying test any medicine for colds and grippe ever faced.

Bel Caps is not only the Safe way to break up a feverish, achy cold—but also the speediest. Banishes colds in hours instead of days! It works by activating the circulation, the stomach, liver, and kidneys. * * * Bel Caps drive out the infection * * *.

* * * Bel Caps stimulate the body cells to greater resistance to cold germs invasions. * * * Your system needs medicine which will get right to the seat of the trouble. * * *

* * * the real help you need to throw off the attack of the cold germs. * * *

* * * This prescription is as safe and easy to use as the glass of pure water which you take with it.

* * * Nothing to hurt anyone. * * *

. No heart depressing drugs. * * *

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) That the use of said preparation will afford any relief from colds or other ailments within a period of six hours;

(b) That said preparation will—

1. Clear stopped up head;
2. Loosen tight chest;
3. Work in or improve the blood;
4. Drive out infection;
5. Activate the liver or kidneys;
6. Afford resistance to cold germs;
7. Get at the seat of the trouble;
8. Help to throw off the attack of cold "germs";

(c) That said preparation is a competent treatment for la grippe or influenza;

(d) That said preparation will not depress the heart or that it does not contain any heart depressing drug;

(e) That said preparation is as safe or as harmless as water;

and from making any other claims or assertions of like import .

Respondent further stipulates and agrees in soliciting the sale of and selling said medicinal preparation in interstate commerce, to cease and desist from using the words "Banish" or "Kill" to describe the effect of said preparation upon colds or any other ailment. (Jan. 11, 1935.)

0813. Advertising Agency—Mushroom Spawn.—The Ankrum Advertising Agency, Chicago, Ill., prepared and placed for publication advertising copy alleged to contain false and misleading claims, statements and representations for the vendor of mushroom spawn.

In a stipulation filed with and approved by the Federal Trade Commission this advertising agent admits preparing and placing for publication such advertising copy; disclaims any interest in the business of the advertiser or the publication of such advertising copy which he desires to defend before the Commission; and waives all right to be joined therein as respondent in proceedings instituted

against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulations or other agreement between the advertiser and the Commission of which he has notice. (Jan. 11, 1935.)

0814. **Vendor-Advertiser—Mushroom Spawn.**—The Mushroom Growers Association of America, Chicago, Ill., vendor-advertiser, is engaged in selling mushroom spawn and in advertising represented:

Earn Up to \$50 a Week at Home! Experience unnecessary. Grow year round in basement, cellar, garage, idle places. We buy crop. Free Book.

MUSHROOM GROWERS ASSOCIATION

431 DR. N. Clark St., Chicago, Illinois.

Almost any vacant, idle space about your home can be quickly and inexpensively converted into an ideal Mushroom bed. Any cellar, garage or shed is suitable. Consequently just a few dollars will get you well on your way to success. Later on, following the proven methods of our successful growers, you can quickly enlarge your business out of your profits.

The Mushroom Growers Association teaches you, step by step, how to grow Mushrooms successfully.

The Mushroom Growers Association buys your Mushrooms, guaranteeing you not less than 30¢ a pound at all times.

The Mushroom Growers Association co-operates with you in every possible way, through its Free Service Bureau, to help you establish and build up a pleasant, profitable business in your own home.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) That he will not represent or hold out as a chance or an opportunity any amount in excess of what has actually been accomplished by one or more of respondent's customers under normal conditions in the due course of business;

(b) That he will not represent or hold out as maximum earnings by the use of such expressions as "up to", "as high as" or any equivalent expression, any amount in excess of what has actually been accomplished by one or more of respondent's customers under normal conditions in the due course of business;

(c) That in future advertising where a modifying word or phrase is used in direct connection with a specific claim or representation of earnings, such word or phrase shall be printed in type equally con-

spicuous with, as to form, and at least one-fourth the size of the type used in printing such statement, claim, or representation of earnings; and

(d) That respondent will discontinue the use of the name Mushroom Growers Association of America until such time as the business shall be duly conducted as a bona fide organization of mushroom growers legally organized as a trade association;

and from making any other claims or assertions of like import. (Jan. 11, 1935.)

0815. Vendor-Advertiser—Poultry Worm Medicine.—Parke, Davis and Co., Detroit, Mich., vendor-advertiser, is engaged in selling a poultry worm medicine designated as "C-A Worm Capsules", and in advertising represented:

* * * One Treatment Kills Both Large Roundworms and Large Tapeworms in Chickens and Turkeys * * *

Our trouble was with tapeworms and it took the C-A Capsules to get them. When you get the tapeworms it requires a real wormer. * * *

A Scientific Product for the removal of both *Large Roundworms* (*Ascaridia*) and *Large Tapeworms* in poultry.

* * * we have discovered a combination of scientifically recognized drugs that have proved to be highly effective, removing both large roundworms (*Ascaridia*) and large tapeworms. * * *

* * * 80 to 100 of the large tapeworms were removed by a single treatment. * * *

* * * The combination when given to chickens or turkeys is very efficient for the removal of practically all large roundworms and large tapeworms present in the intestinal tract at a single dose. * * *

* * * They are offered only for the removal of large roundworms and large tapeworms.

* * * Treatment with C-A Worm Capsules will remove all or practically all large roundworms and large tapeworms. * * *

1. C-A Capsules will remove 80 to 100% of both large Roundworms and Tapeworms at one treatment.

* * * Kill Tapeworms and large Roundworms in one treatment. * * *

* * * In C-A Capsules they have found a worm remedy that does not cause long, costly setback to the birds' development—one they can give as a precaution, thereby keeping the flocks in good, clean, worm-free, condition at all times. * * *

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) That C-A Worm Capsules will kill tapeworms in fowls, or that they will remove from fowls the heads of tapeworms or more than the segments;

(b) That the use of C-A Worm Capsules will keep poultry in a "worm-free" condition, unless such representations are limited to large roundworms.

(c) That C-A Worm Capsules are a treatment for poultry infested with tapeworms, unless such representations are qualified to indicate that the efficacy of the capsules is limited to helping to reduce large tapeworm infestation;

and from making other claims or assertions of like import.

The respondent assumes all responsibility for any and all representations appearing in testimonials published by it and stipulates and agrees that it will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 12, 1935.)

0816. Vendor-Advertiser—Hair and Scalp Preparation.—A. A. Miller Co., Chicago, Ill., vendor-advertiser, is engaged in selling a hair and scalp preparation designated as "Miller's Hair Life" and in advertising represented:

Grow Long Hair * * * will make your hair long, soft and glossy * * *. It will end your dandruff, tetter, hair-fall, and make your scalp stop itching. * * *

Test it Without a Penny's Risk. * * * It is postively guaranteed to make your hair longer! * * *

* * *. Don't risk wrecking your life. Don't lose your chance to be loved—to make money—and to have power, * * *. Be the first one in your crowd to have really * * * long hair. * * *

* * * Miller's Hair Life grew hair for them—it can Grow Hair For You Too.

Read how Miller's Hair Life ends dandruff, stops falling hair, grows long hair, stops scalp itch, * * * you can test this marvelous product without risking any of your own money.

You have always wanted long, luxuriant, soft hair. Now is your chance to get it, and get it in a hurry. * * *

You Can Grow Long Hair * * * Makes Hair Long, Stops scalp Itch, Ends Dandruff, Stops Falling Hair. * * *

Simple Test Proves That it grows Hair; Ends Dandruff.

* * * Notice that your scalp stops itching; your hair stops falling; and your dandruff disappears. * * *

You can actually test Miller's Hair Life without risking a penny of your own money. * * *

We Don't Want Your Money Unless We Grow Your Hair!

Miller's Hair Life is growing long, luxuriant hair for other people and can do the same for you. * * *

* * * will postively Grow Straight Long Glossy Hair For You in Double Quick Time. * * * *Guaranteed* to make your hair longer. * * *

* * * This sensational brand new discovery—*Miller's Hair Life*—brings new life and growth to even the most stubborn heads of hair. It grows hair where all others have failed. * * *

* * * More and more people tell me that by continual use of Miller's Hair Life their hair gets longer and glossier and straighter every day. * * *

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) That said preparation will grow hair, increase the length of hair, or stop falling hair;

(b) That said preparation is a competent treatment for dandruff, tetter, or scalp itch, or that it will end or stop any of those conditions;

(c) That any results that may be expected from the use of said preparation are "Guaranteed";

(d) That the failure to use said preparation entails the risk of wrecking one's life or of losing chances to be loved, to make money, or to have power;

(e) That a prospective purchaser may test said preparation without risking any money, as long as the payment of any money is necessary before the preparation is received and used;

(f) That the hair of persons who use said preparations will become longer every day;

(g) That said preparation is sensational or new discovery; and from making any other claims or assertions of like import.

(Jan. 12, 1935.)

0817. Vendor-Advertiser—Medicinal Salt.—Sleepy Water Co., Chicago, Ill., vendor-advertiser, is engaged in selling a medicinal salt designated as "Sleepy Brand Crystals" and in advertising represented:

How to Lose Fat Quickly.

Without Drugs.

Without Starving.

No Violent exercise.

Eat Big Meals, Yet See Inches Melt Away.

10 POUNDS GONE

"On only one small bottle Sleepy (Brand) Salts, I've lost 10 lbs." * * *
If you want to lose excess fat, if you want to reduce from 1 to 5 inches off waist, bust, hips, arms, ankles, and legs, if you want that double chin to disappear and do it, as Dr. Clarence W. Flint says, SAFE and sure, start this fast working Sleepy (Brand) Salts treatment today. * * * cuts down moisture weight, it ferrets out and eliminates from the system the blood borne acids and fat producing poisons, that pills and tablets often miss entirely. It works against fatty foods. Watch weight return to healthy normal as fat disappears. * * *

I have prescribed Sleepy (Brand) Salts to many of my obesity patients and also in cases of neuritis, arthritis, rheumatism, lumbago * * *.

* * * How Sensational Discovery Reduces Fat Figures.

To Fashionable, Active, Youthful Slenderness.

Takes Off Pounds and Inches of Ugly Fat Without Starving or Exercise!

Nature developed the Safe and sure way to take off ugly excess fat, but it took modern science years to find it. Now there is no excuse for being too fat! * * *

As Attractive a Figure as a Movie Star's.

You just take Sleepy Salts every morning. * * * You need only take Sleepy Salts in the morning. Just one small dose and you have fortified yourself against fat for the entire day. * * * Results Certain * * * You must lose excess weight and feel and look better for losing it, or not cost. * * *

* * * Lose 15 to 20 Lbs. in 2 Weeks. " * * * Someone told me about Sleepy Salts. Desperately, I bought a small jar. I took it regularly every morning—I was surprised to find it didn't taste bad at all. Fat started to disappear immediately and in only two weeks I had lost an even 20 pounds. * * *."

Now Lose Fat Without Drugs if You Want to Regain Physical Loveliness and Healthful Vigor.

* * * It is a combination of vital health salts, of earthly metals, blended together to produce the quickest Safe results in reducing excess fat. Sleepy Salts is based on the famous natural mineral water, from Hot Springs, Arkansas, called Sleepy Water. * * * It reduces excess fat like nothing else can. * * *.

Do This and Regain a Slender Fashionable Figure.

You just take Sleepy Salts every morning. * * * You can get big meals—lunch, dinner, supper, yet you will actually lose weight! * * *.

* * *. Lose Ugly Fat—But Build Health!

The amazing thing about Sleepy Salts is that while it takes off weight so easily, it actually builds health. It is readily understood that the same dangerous acids and body poisons which may cause you to be too fat, also may cause poor complexion, headache, chronic colds, sour, weak stomach, gas pains, heartburn, fatigue, neuralgia, rheumatism, neuritis, kidney and bladder weakness, constipation, and many other very common complaints. Sleepy Salts removes the very cause for so many ailments * * *.

* * *. If You Want to Regain Physical Loveliness and Healthful Vigor. No Starving—No Exercise!

Fat Just Seems to Melt Away.

If you carry excess weight, if you are too fat, if your friends remark how heavy you are getting, or if you tire too easily and can't get around with your former pep and vigor, don't swallow a lot of dangerous drugs, dope, or pills. * * * medical science has perfected a way to make you lose fat naturally, fast, * * * Sleepy Salts is based on the famous natural Sleepy Water and it acts to cut down moisture weight instantly. Fat disappears and physical loveliness returns. * * *

* * * Sleepy Salts banishes weight-inducing poisons and breaks up and eliminates excess fat. * * *

* * *. Unhealthy excess weight is no longer a problem. Violent exercise, dangerous drugs, and starvation diet as a means of fat reduction are things of the past. Nature itself, through the research of modern science, now pro-

vides the safe, simple, and effective remedy. Flabby flesh melts away! Double chins disappear. Ugly contours of body are slenderized. * * * A Figure as Youthful and Slender as a Movie Star's.

Start the Sleepy Salts treatment today and watch surplus flesh melt away. * * *

Rheumatism, Neuritis, Acidity, Kidney, and Bladder—Bladder Troubles Disappear * * *.

Grandmother Ends Neuritis Without Drugs.

* * * Sleepy Salts is considered as wonderful in the treatment of Neuritis, Neuralgia, Rheumatism, Arthritis, Lumbago, and any such pain wracking ailment * * *.

Kidney and Bladder Trouble.

* * * It stimulates the activity of the liver, and has a beneficial effect on the nervous system.

High Blood Pressure.

* * * Drugs may reduce blood pressure temporarily and relieve urgent symptoms, but they do not strike the cause.

Sleepy Salts Water contains mineral ingredients in such proportions as to make it of special use as a solvent of waste materials. It promotes digestion and metabolism. It retards germ growth and neutralizes toxins. * * *

* * * How to Make Your Own Mineral Water at Home.

* * * This outstanding product contains all the important health salts in practically the same proportions as found in the original Sleepy Water from Hot Springs, Ark. * * *

SLEEPY SALTS BRINGS QUICK RELIEF

Suffers Sciatic Rheumatism * * *

Respondent also admits that in aid of the sale of said commodity it prints and distributes a publication, designated as Hot Springs News, purporting to be a newspaper and purporting to be published at Hot Springs, Ark. Included in said publication are various items printed and set up in such a manner as to indicate that they are news items, when, in fact they are advertisements of the respondent's product. The designation of said publication as Hot Springs News, and the statement in the headline of Hot Springs, Ark., misleads the reader in believing that the publication is in fact published at Hot Springs, Arkansas, and that the respondent has a place of business at that place.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) That said preparation is of itself a competent treatment for obesity or excess weight;

(b) That by the use of said preparation a person will be able to effect a reduction in weight of any definite amount or within any definite period of time;

(c) That by the use of said preparation a person will be able to reduce any part of the body to any definite extent;

(d) That said preparation is a competent treatment for Neuritis, Arthritis, Rheumatism, Lumbago, Headaches, Chronic Colds, Sour Stomach, Weak Stomach, Gas Pains, Heartburn, fatigue, Neuralgia, Kidney or Bladder troubles, Acidity, Sciatic Rheumatism, High Blood Pressure, or that it removes the cause of any of those ailments;

(e) That any reduction in weight can be accomplished by the use of said preparation without dieting or without exercise;

(f) That the use of said preparation will fortify one against fat;

(g) That any results claimed for said preparation are certain;

(h) That said preparation is a natural product or a product of nature;

(i) That a slender, youthful, or attractive figure can be acquired by the use of said preparation;

(j) That said preparation will build health;

(k) That said preparation is based on a natural mineral water, or that it is obtained from natural mineral water;

(l) That said preparation activates or stimulates the liver;

(m) That said preparation beneficially affects the nervous system;

(n) That said preparation promotes digestion or metabolism;

(o) That said preparation retards germ growth, neutralizes toxins;

(p) That said preparation contains all of the important salts in practically the same proportions as are found in Sleepy Water obtained from Hot Springs, Arkansas;

and from making any other claims or assertions of like import.

Respondent further stipulates and agrees in soliciting the sale of said commodity in interstate commerce to cease and desist from—

1. Issuing any publication purporting to be published at Hot Springs, Arkansas, unless and until such publication shall actually be published at that place.

2. Including in any publication issued by respondent any advertisement in the form of a news item.

3. Representing in any manner that respondent has a place of business at Hot Springs, Arkansas, unless and until such place of business is actually established at that place.

The respondent assumes all responsibility for any and all representations appearing in testimonials published by it and stipulates and agrees that it will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 18, 1935.)

0818. Vendor-Advertiser—"Tailored-Rite Suits."—The Tailored-Rite Corporation, Milan, Tenn., vendor-advertiser, is engaged in selling "Tailored-Rite Suits", and in advertising represented:

(a) That persons who would secure orders for suits would make and receive—

Big commissions.

Large Bonuses.

Free Suits.

\$1.50 cash on each suit.

(b) That it offered and sold:

Quality clothes at a low price;

Style-Tailored Tropical Suits;

at "New York-Milan-Paris;

Tropictwist Suit for \$7.95.

(c) That:

It bought its cloth in large quantities for cold cash;

Depended on large volume of business and small profit on individual suits for its earnings;

Tailored-Rite Suits really fit and feel right;

In Tailored-Rite clothes all the details of fit, comfort, and stylish appearance have been carefully worked out in accordance with the most accurate known designing principles;

Tailored-Rite clothes sold at amazingly low prices for six substantial common sense reasons:

1. Large purchases of fabrics for cold cash enable us to obtain the lowest rock-bottom prices.

2. Direct-mill-dealing eliminates jobber's profits and expenses.

3. We are satisfied with a small profit on thousands of orders rather than a large profit on a few.

4. Low overhead expenses; no high rents.

5. Business conducted on a strictly cash or C. O. D. basis * * * no credit losses.

6. Unexcelled tailor facilities; skilled labor; guarded economy in every department of this The Nation's Largest Exclusive Direct to Wearer Tropical Suit Factory.

(d) That "Tropictwist" is—

A firm-faced, tightly woven fabric with stamina, endurance, and fine appearance.

Drapes handsomely and is shine resisting.

In its perfection of materials and weaving are many seasons of satisfactory wear.

That America turns to it. Style Authorities say so, and the big swing is to the richest of all the twist—Tropictwist.

(e) That it offered as a supplement—midsummer line.

"Lin-N-Twist" wash suitings; and that such "Lin-N-Twist" suits—

Were cool, Carefree Comfort—all summer long.

Although airy-light, the cloth is sturdily constructed and can be depended upon to deliver many seasons of satisfactory wear.

Are mercerized to a beautiful, permanent, silk-like finish.

Lin-N-Twist Suits will look fresh and new after numerous launderings. Can be washed and ironed as easily as a handkerchief, because they are made right.

Guaranteed 100% shrink proof!

Lin-N-Twist Suits can never, never shrink, because they have been Sanfordized—the scientific, mechanical method devised to prevent fabrics from shrinking. You can wash them once—twice—or a hundred times—they absolutely will not shrink; cannot shrink!

The respondent represents to the Federal Trade Commission that it has definitely discontinued advertising and selling such commodity, does not intend to resume such advertising, or selling, and is now in the process of legal dissolution. (Jan. 18, 1935.)

0819. Vendor-Advertiser—Ointment.—Deuel's, Centerville, Mich., vendor-advertiser, is engaged in selling Deuel's Ointment and in advertising represented:

* * * Deuel's Ointment, a good remedy for skin eruptions and rashes; also brings relief for sunburn. Used for many years in cases of eczema, acne, salt rheum, and other skin ailments, including Athlete's foot so prevalent in the summer; it will also be found efficient in the treatment of sunburn.

* * * Deuel's Ointment, for many years a standard remedy for skin blemishes. The good old summer time isn't so good for those who may experience athlete's foot and sunburn, for both of which Deuel's Ointment generally brings prompt relief. Deuel's Ointment has also been used for many years in the treatment of eczema, acne, salt rheum, and other skin ailments * * * skin infections * * *

The torture of itching, bleeding, internal, protruding piles instantly relieved.

Deuel's Ointment, a product compounded by the old Swiss, was brought to this country sixty years ago. In all this time Deuel's Ointment has a record of giving permanent relief to ninety-five per cent of all the cases it has been called upon to treat.

You can not afford to go on suffering from any skin disease, or from any case of piles, when such a small amount of money and such a little effort will give you permanent relief you have been looking for.

"I have found your skin ointment to be the real thing to cure and heal Boils. I suffered a series of Boils across the back of my neck until I tried just one jar of your ointment which brought instant relief. I had tried several ointments and some home remedies, but nothing did the work like Deuel's Ointment.

"NORMAN, J. E."

Piles are caused from strain and therefore cannot be entirely healed in a few days. The strained tissues and muscles must be given time to return to normalcy.

For Acne— * * *

For Eczema— * * *

For Itching Skin, Athlete's Foot, Salt Rheum, Pimply Skin, Chapped Hands, etc.— * * *

For sixty years we have been relieving skin troubles, and in that time we have a record of giving permanent relief to ninety-five per cent of all the cases we have been called upon to treat.

* * * for Piles whether they are internal or external; whether they are protruding, itching, or bleeding. No matter how long you have had them, Deuel's Ointment will give you the relief you have been looking for. Our full treatment for piles, consisting * * *

For Eczema, Acne, Salt Rheum, Athlete's Foot, Skin Itch, Scalds, Burns, Running Sores, Sunburn, etc., Deuel's Ointment will give you the safest and quickest relief you have ever had * * * for skin diseases * * *

The respondents represent to the Federal Trade Commission that they have definitely discontinued advertising and selling such commodity in interstate commerce, and do not intend to resume such advertising or selling. (Jan. 18, 1935.)

0820. Vendor-Advertiser—Kelp Tablets.—Moby Dick Kelp Co., San Diego, Calif., vendor-advertiser, is engaged in selling Moby Dick Kelp Tablets and in advertising represented:

MOBY DICK TALKING

Some say it's a food, others a medicine. Whatever it should be called—Moby Dick Kelp Tablets or any of the other famous brands are wonderful in their results and are doing more good than is generally known.

100,000,000 GUINEA PIGS

Read the book. Common sense will then lead you to Moby Dick. Millions of people are using kelp tablets. One of California's most famous chemists calls Moby Dick Kelp Tablets a "Fifty in One Remedy." They are effective, even delicious.

We deliberately made them that way. People buy them and come back for more. Profits are forgotten, at any rate they are small. One hundred pounds of Kelp produces nine pounds of material suitable for Moby Dicks.

VOTE FOR MOBY DICK

Are you starving yourself sick. Eating plenty, following a rigid diet, counting your calories, But Starving for Want of Minerals?

Maturity, Maternity, Middle Age, all these three trying periods a woman needs: Moby Dick Kelp Tablets.

A Vegetable Sea Mineral Food.

Give it to your daughter when she comes to womanhood. Take it for strength before and after childbirth. Take it to tide you over change of life.

Take it whenever you are nervous, weak, run-down. Give it a chance to help you.

MOBY DICK KELP TABLETS

The most wonderful organic mineral Kelp Tablets on the market.

FIGHT MINERAL DEFICIENCY

It Ravages With the Speed of a Forest Fire. Moby Dick Kelp Tablets are available now at 95¢ for a package of 200 tablets. 3 packages—more than 3 months' supply—\$2.50. Of course you need them, most everyone does. Sold and used widely—It is one of the very few remedies used by the producers themselves, as well as the distributors, the factory help and everyone

connected with the manufacture of the Moby Dick Kelp Tablets. Honestly—hand upon your heart—what other remedy can claim this.

MOBY DICK KELP TABLETS NOT A MEDICINE BUT A MINERAL FOOD

A deficiency of Mineral Elements, according to our leading authorities, is responsible for Acidosis, Anemia, Loss of Appetite, Arthritis, Asthma, Body Odors, Colds, Constipations, Colitis, Eczema, Emaciation, Gastritis, Gout, Goutre, Gout, Over and Under Weight, Stomach Ulcers, Loss of Vitality, High and Low Blood Pressure, Kidney-Liver and Bladder Disorders, Heart Troubles and Many Other Complications.

It is also well known, that a sea vegetable, commonly known as Dulse or Kelp, is amazingly rich in the following minerals: Calcium, Magnesium, Silicon, Phosphorus, Chlorine, Sulphur, Potassium, Sodium, Iron, Manganese, Hydrogen, Oxygen, Nitrogen Carbon, Copper, Etc.

We know, and You Should Know, and it cannot be too often said, that the absence of the above mentioned minerals, are the contributing cause to most of our ailments.

The richest known source, the vegetable Kelp grown by Mother Nature in the ocean, contains practically every mineral, essential to normal well being, now produced in tablet form, palatable and pleasant to take.

Millions are using Kelp Tablets. Sold throughout the country to an increasing following day by day.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise—

(a) That Moby Dick Kelp Tablets, or Kelp in any form, is a food.

(b) That Kelp contains any mineral properties, other than iodine, in quantities of therapeutic value.

(c) That Moby Dick Kelp Tablets are wonderful in their results.

(d) That Moby Dick Kelp Tablets are doing more good than is generally known.

(e) That any definite number of people are using Kelp Tablets, unless it can be verified by competent evidence.

(f) That "one of California's most famous chemists calls Moby Dick Kelp Tablets a Fifty in one remedy."

(g) That Moby Dick Kelp Tablets are effective without stating the disease, disorder, ailment, symptom, or condition for which iodine is recognized by substantial medical opinion as an effective treatment.

(h) That profits are forgotten.

(i) That Moby Dick Kelp Tablets will provide the minerals necessary for human well being.

(j) That Maturity, Maternity, or Middle Age are periods when these tablets are particularly needed by women.

(k) That Moby Dick Kelp Tablets are essential or helpful at any definite time of life.

(l) That Moby Dick Kelp Tablets are the most wonderful organic mineral.

(m) That Moby Dick Kelp Tablets are a competent treatment for mineral deficiency unless limited to iodine deficiency.

(n) That Moby Dick Kelp Tablets are a mineral food.

(o) That any specific disease is due to mineral deficiencies, unless it is recognized by a consensus of medical opinion that it is due to iodine deficiency.

(p) That Kelp is rich in calcium, magnesium, silicon, phosphorous, chlorine, sulphur, potassium, sodium, iron, manganese, hydrogen, oxygen, nitrogen, carbon, copper, or any other mineral except iodine.

(q) That Moby Dick Kelp Tablets or kelp has any therapeutic value except in cases of iodine deficiency; and from making any other claims or assertions of like import.

The respondents assume all responsibility for any and all representations appearing in testimonials published by them and stipulate and agree that they will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 18, 1935.)

0821. Vendor-Advertiser—Beverage Flavoring.—The Home Manufacturing Co., Chicago, Ill., vendor-advertiser, is engaged in selling a preparation for flavoring or improving alcoholic beverages, designated as "Oakroma", and in advertising represented:

With Oakroma a good Bourbon or rye can be made * * * If you can show your customers how to make good mellow Bourbon at low cost, you've got something and Oakroma does just that. It makes a rich mellow Bourbon * * *.

I've developed my Master Sales Plan that assures you success. This plan not only shows you exactly how to go about getting orders for Oakroma but it actually sells Oakroma for you * * * all you do is call on your customers and receive their orders * * * make \$8.70 the first day out.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated, any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) That Bourbon, Rye, or any other kind of whiskey can be made by the use of Oakroma;

(b) That the success of prospective agents or dealers is assured by the respondent's Sales Plan;

(c) That respondent's Sales Plan will sell Oakroma for the prospective agent or dealer;

(d) That all a prospective agent or dealer need to do is to call upon customers and receive their orders; and from making any other claims or assertions of like import.

Respondent stipulates and agrees in soliciting agents, salespersons, or dealers to sell said commodity in interstate commerce:

1. That it will not make unmodified representations or claims of earnings of salespersons in excess of the average earnings of the active full time salespersons of respondent achieved under normal conditions and in the due course of respondent's business;

2. That respondent will not represent or hold out as a chance or an opportunity any amount in excess of what has actually been accomplished by one or more of respondent's salespersons under normal conditions in the due course of respondent's business. (Jan. 18, 1935.)

0822. Vendor-Advertiser—Feminine Hygiene Preparation.—W. and K. Distributing Co., Philadelphia, Pa., vendor-advertiser, is engaged in selling a feminine hygiene preparation designated as "W. K. Periodic Regulators" and stimulants designated as "Peptabs" and "Pepagland Capsules" and in advertising represented:

Regarding his feminine hygiene preparation—

Ladies end worry and delay. WK Periodic Regulators safely relieve some of the longest, stubborn, and unusual cases in 3 to 5 days. * * *

Regarding his stimulants—

* * * our remarkable glandular aid Peptabs.

Naturally every mail brings numerous inquiries with questions pertaining to glandular weaknesses. * * *

* * * If you value youthful energy, * * * and manly power, isn't it worth a conscientious effort on your part to overcome your weaknesses? * * *

* * * Perhaps you will hesitate in answering this vital question, and to help you I say, the most precious pleasure is that of normal and natural intercourse, unhampered by any weakness.

Seven people out of ten are sexually weak. * * *

If you want to overcome that weakness, if you want to know what a pleasure it is when unhampered, if you want to radiate vim and vigor, in all, if you want to step out of the seven class, then use Pepagland Capsules.

Pepagland capsules is a scientific and physiologic tonic, a restorer of mental, physical, and manly vigor. Pepagland capsules supplies the enfeebled glands with endocrine substances essential to the repair and proper function of the organs. * * *

* * * If you had weak glands, * * * would you feed your glands small daily doses so the glands would gradually be strengthened to function and secrete normally?

* * * Pepagland tablets is a food, a gland food * * *

* * * a potent and most effective tablet that will make you glad you are living and able to enjoy nature as meant for you. * * *

RENEW VITALITY—GAIN NEW PEP AND VIGOR

For abused and overworked glands, to enjoy life with new energy, and that youthful peppy feeling. No reason for slowing down at 40 or over, if you keep your glands in active condition with the proper stimulation and food they need, and which is contained in

PEPTABS

A safe, effective, and guaranteed remedy, used for years, with more than satisfactory results for loss of natural powers * * *.

* * * If you feel tired, worn out, weak, and lacking in manly vigor, Peptabs should give you back your youthful strength. * * *.

Help Your Glands—New Pep—Real Vim—Manly Vigor to *weakened* and abused glands with Peptabs, a strong stimulant to increase natural powers and renew vitality. * * *

* * * Peptabs. A valuable and potent tonic used as a reconstructive and tonic to the digestive and nervous system. * * *

Peptabs * * * useful in depleted and exhausted conditions of the ductless glands.

Peptabs, modern science prescribed without question, gland extracts for gland weakness. * * *

The respondent represents that he has definitely discontinued the business of selling said "W. K. Periodic Regulators" in interstate commerce, without intent to resume the same.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) That any of said stimulants is a glandular aid;

(b) That seven people out of ten (or any other proportion not substantiated by reliable statistics) are sexually weak;

(c) That any of said stimulants is a competent treatment for

1. Sexual weakness.
2. Weak, overworked, or abused glands.
3. Loss of natural powers.
4. Depleted or exhausted condition of the ductless glands.
5. Glandular weakness.

(d) That any of said stimulants

1. Is a food;
2. Is a gland food or gland extract;
3. Contains any food;
4. Is a safe or guaranteed remedy;
5. Is a tonic;
6. Is a reconstructive.

(e) That the use of any of said stimulants will

1. Cause one to radiate vim or vigor;

2. Supply endocrine substances;
3. Repair the organs or cause them to function properly;
4. Strengthen the glands;
5. Cause the glands to secrete normally;
6. Enable one to enjoy nature;
7. Overcome any weakness or other ailment;
8. Renew, restore, produce, or maintain vitality, youthful energy, manly power, manly vigor, mental or physical vigor or pep;
9. Enable one to enjoy life with new energy;
10. Prevent one from slowing down at 40 or any other age;
11. Help the glands.

(f) Directly or indirectly that any results that may be produced by the use of any of said stimulants are permanent; and from making any other claims or assertions of like import. (Jan. 22, 1935.)

0823. Vendor-Advertiser—Finger-Printing Instructions.—Institute of Applied Science, vendor-advertiser, is engaged in selling instructions by mail in finger-printing, and in advertising represented:

\$3,000 a year and Up.

You can become a Finger Print Expert at home, in spare time.

Earn \$3,000 a Year and Up.

Any man who can read and write, and think can make good.

Would you accept a position at \$250 per month, straight salary to start?

Do you know that the man in charge of the Identification Bureau of Chicago gets over \$3,000 a year? Do you realize the fact that there are over 40 banks in this city alone that use finger prints?

What does all this mean? It means that You have the chance to enter a new field—a field where you can practically name your own price for your services.

Will you be qualified to fill a position as the head of a Finger Print Department in some large manufacturing concern six months from today, provided it pays \$250 or more per month? If you are ambitious for such a position, let me hear from you.

We need so many Finger Print Experts that I want you to help me get hold of a few ambitious men.

I am giving you Extraordinary privileges. I am offering you exclusive advantages.

This (\$70) is indeed a low rate and may be raised in the very near future.

It may be that this low offer will never be made again. It is quite possible that this will be your last chance to obtain this complete course and the practical working outfit for this price. The price may be increased to as much as \$100.00.

* * * If you are making less than \$200 per month, I feel sure that I can show you how to better your condition in life and start you on the road to making much more than \$200 per month.

MY COMPLETE \$70.00 COURSE FOR ONLY \$21.75

Ten years from now we estimate there will be 48 state bureaus and over 2,500 city bureaus. We estimate these new bureaus will average 5 men each, which means a demand for 12,500 more finger print experts.

We never send a graduate out on a job for less than \$150.00 per month. That is the very least. They actually make all the way from that to several thousand dollars per year straight salary, not including rewards which often add much more.

WANT A JOB PAYING \$2,500.00 TO \$10,000.00 PER YEAR? STRAIGHT SALARY

YOUR CHANCE

for

BIG MONEY—BIG SUCCESS

\$2,500.00 to \$10,000.00 a Year

There are splendid paying positions paying steady monthly salaries opening up all the time everywhere. * * * Within a short time, it is possible for you to have an income many times what you are making today and be on a regular monthly salary.

Anyone with a common school education can become a Finger Print Expert by studying my simplified Secret Service Intelligence and Finger Print Course.

Everyone agrees that the Institute of Applied Science of teaching Finger Print and Secret Service Work is the greatest ever devised.

A SURE, STEADY INCOME WITH BIG PAY!

You can make a steady income of from \$2,500 to \$10,000 a year as a Secret Service Operator and Finger Print Expert. Your opportunity as a Finger Print Expert and Secret Service Operator is practically unlimited * * *.

A chance to enter a field of work where the demand for trained men is greater than the supply.

I furnish my students with a complete Professional Finger Print Outfit * * *. This outfit is Free of any extra cost.

I also furnish my students a complete course of Secret Service Intelligence in 22 lessons. Free of extra charge.

New Bureaus of Identification are being established almost every week. Trained men are needed and men from the Institute of Applied Science get the preference.

You can know that you are able to cope with any situation that confronts you.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondent "needs" so many finger print experts that he must have help in filling the places;

(b) That within ten years there will be a demand for 12,500 finger print experts;

(c) That new bureaus of identification are being established almost every week and/or that men from the Institute of Applied Science get the preference;

(d) That "on every hand" big paying positions are just waiting for trained finger print men;

(e) That splendid paying positions are opening up all the time everywhere;

(f) That a finger print expert who has been trained by respondent: Is in "a field of work where the demand for trained men is greater than the supply"; or

Is able to cope with "any situation" that confronts him;

(g) That respondent is either giving to the prospect "extraordinary privileges" or "offering exclusive advantages";

(h) That anyone can easily master respondent's course who can read and write and think;

(i) That respondent's system of teaching finger printing and secret service work is "recognized by everyone as the greatest ever devised";

(j) That the charge for respondent's course "may be raised in the very near future"; or that "this low offer may never be made again"; or that it is "quite possible that will be your last chance to obtain this complete course for this price"; or that the price may be increased to as much as \$100—so long as the price, instead of being maintained or increased, is actually reduced from \$70 to \$21.75, or to any other sum less than the purported regular price;

(k) That anything is furnished "free", when the cost thereof is included in the price of the course;

and from making any other claims or assertions of like import.

Respondent further stipulates and agrees:

(l) Not to make unmodified representations or claims of earnings of finger print experts in excess of the average earnings of such persons achieved under normal conditions in the due course of business;

(m) Not to represent or hold out as a chance or an opportunity any amount in excess of what has actually been accomplished by one or more of respondent's former students under normal conditions in the due course of business;

(n) Not to represent or hold out as maximum earnings by the use of such expressions as "up to", "as high as" or any equivalent expression, any amount in excess of what has actually been accomplished by one or more of respondent's former students under normal conditions in the due course of business; and

(o) That in future advertising where a modifying word or phrase is used in direct connection with a specific claim or representation of earnings, such word or phrase shall be printed in type equally conspicuous with, as to form, and at least one-fourth the size of the type used in printing such statement, claim, or representation of earnings. (Jan. 22, 1935.)

0824. Vendor-Advertiser—Feminine Hygiene Preparation.—The Hyne Co., Chicago, Ill., vendor-advertiser, is engaged in selling a feminine hygiene preparation designated "Valgene", and in advertising represented:

WOMEN'S GREATEAT PROBLEM SOLVED!

Feminine Sex Hygiene Now Safe and Simple!

A Message of Vital Importance to Every Married Woman

Dear Madam:

No longer need you worry about the matter of Feminine Hygiene.

No longer need you wonder what to do.

You can now stop worrying about the matter, knowing that you are safe—that you are taking no chances—that you are doing the right thing for yourself.

For now Science offers you Valgene—the Safe Antiseptic—the Antiseptic that positively destroys germ life without risk or danger—and does it in the simplest, easiest, and most convenient way—a way that has been found effective by thousands of women during the past 46 years.

* * * * *

Valgene comes in suppository form—the simplest and most convenient for the purpose, as every woman who has had experience knows.

You insert one of these suppositories before going to bed, or at any other time that may be necessary. The heat of your body melts Valgene quickly. As it melts, it spreads. Every part of the organs—every fold and crevice—becomes covered with its powerful antiseptic.

And so you are protected.

You Do Not Have to Douche. Valgene by itself will do the work. For remember: Valgene by itself is powerfully antiseptic and thoroughly cleansing.

And because Valgene is in suppository form it can be used anywhere, at any time.

You just insert Valgene—allow it to melt—and at once you have the safest, most effective, most dependable antiseptic protection Modern Science can offer you.

Bear in mind that only a suppository like Valgene can give you such protection. Douching cannot do this. For you cannot mix a douching solution strong enough. Sensitive feminine tissues won't stand it.

Then, too, you cannot retain a douching solution long enough. To get real benefit from douching, it is necessary to lie flat on the back and hold the douching mixture inside the body for a half hour or more. The average woman cannot do this. Conditions won't permit.

The only practical way you can get protection is with a suppository like Valgene which, after it melts, may be retained the whole night long.

Valgene will not spoil. It is made of the finest and purest products and will keep indefinitely. Above all, remember that Valgene is not poisonous. There's nothing in them to harm the most delicate feminine tissues.

The Valgene Formula has been prescribed by thousands of doctors for more than 46 years. These doctors endorse and approve Valgene. They prescribe it in their private practice. And, as you know, no preparation can get the approval of the doctors unless it does the work. Valgene does. That's why it has such approval.

We cordially invite you to visit our laboratories where we can show you over 20,000 testimonials that we have received from women during the 46 years (since 1887) whom we have been supplying with Safe Feminine Hygiene. Over 100,000 women are using this suppository regularly * * *.

But I know that when you try Valgene Suppositories, you'll discover new happiness—you'll rejoice at this simple, easy, dainty, and dependable way to stop *worrying*—to enjoy life without doubt.

The respondent hereby stipulates and agrees in soliciting the sale of said commodity in interstate commerce, to cease and desist from representing, directly or otherwise, that such preparation is effective or dependable for use either as a contraceptive or as an abortifacient; and from making any other claims or assertions of like import.

The respondent assumes all responsibility for any and all representations appearing in testimonials published by it and stipulates and agrees that it will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 22, 1935.)

0825. Publisher—Cold Preparation.—American Newspaper, Inc., Atlanta, Ga., the publisher of the Atlanta Georgian, a newspaper of wide interstate circulation, printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a cold preparation.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser of the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Jan. 22, 1935.)

0826. Vendor-Advertiser—Medicated Ointment.—Derma-Health Company, Omaha, Nebr., vendor-advertiser, is engaged in selling a medicated ointment designated as Derma-Health Ointment, and in advertising represented:

Derma Health Ointment is offering real and permanent relief for athlete's foot and many other painful skin irritations. Derma Health is quick to correct any unnatural condition of the skin.

* * * Derma-Health, the remedy that brings quick and lasting relief in the most stubborn cases.

Derma Health Ointment is offering real and permanent relief for eczema, ring worm, barber's itch, athlete's foot and many other painful skin irritations.

Derma Helth Ointment—the treatment that brings quick and lasting relief in the most stubborn cases of athlete's foot, eczema, ring worm, and barber's itch.

Derma Helth will bring prompt relief to itching, burning skin, even in severe cases. It * * * relieves the itching the moment it is applied. Use Derma Helth Ointment to clear away eczema, ringworm, athlete's foot, and to restore the skin to normal.

Don't spend hundreds of dollars trying to rid yourself of athlete's foot and other skin disorders. Derma Helth Ointment, a new scientific preparation, will do the job simply and inexpensively.

* * * Derma-Helth Ointment, a medical cream with remarkable healing powers.

Are you searching for a clear, beautiful complexion? Derma Helth Ointment * * * has changed many a harsh ugly skin to a clear, velvety complexion.

Don't give up that swimming party because of sore, cracked, or blistered feet * * * Derma Helth will bring relief to the most severe cases and restore your skin to normal.

Are you suffering from * * * intense itching between the toes? * * * Derma Helth Ointment, a medicated cream with remarkable healing powers, will bring you relief after one or two applications.

Derma Helth Ointment, A scientific Preparation of unusual Healing Powers for the Treatment of Sore Feet * * * Eczema * * * Pimples.

Derma Helth Ointment, a new scientific preparation, gets to the root of the trouble.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That said ointment is a competent treatment for:

1. Eczema;
2. Stubborn or severe cases of athlete's foot, blistered feet, or other skin irritations;
3. Pimples, unless limited to pimples confined to the outer layer of the skin;
4. Sore feet;
5. Skin disorders;
6. Foot disorders.

(b) That any relief afforded by the use of said ointment is permanent or lasting;

(c) That said ointment will correct unnatural conditions of the skin;

(d) That said ointment will "Clear away" or "rid" one of eczema, ringworm, athlete's foot, or other skin disorders;

(e) That said ointment possesses remarkable healing powers;

(f) That the use of said ointment will produce a clear, or velvety complexion;

(g) That said ointment will restore the skin to a normal condition;

(h) That said ointment will bring relief after one or two applications;

(i) That said ointment will get to the root of any trouble; and from making any other claims or assertions of like import.

Respondents further stipulate and agree in soliciting the sale of and selling said commodity in interstate commerce, to cease and desist from using the term "Derma-Helth" to designate or describe said ointment. (Jan. 23, 1935.)

0827. Vendor-Advertiser—Electric Trouser Presser.—Empire Electric Co., Cincinnati, Ohio, vendor-advertiser, is engaged in selling an electrical appliance designated as "Empire Electric Trouser Presser" and in advertising represented:

* * * Puts in a knife-edge crease while you count 10. * * * Bonus given. * * * Average Sale made in 6 minutes. * * * We guarantee you will make sales. * * *

* * * It's the presser that puts razor-edge creases in pants while you count 10. * * *

* * * This new presser is ready for duty on a minute's notice. * * *

* * * Puts creases in Trousers instantly * * * makes the tie look like brand new. * * * Does the job in less than a minute. * * *

* * * We recommend that you start by sending for the Special 6 Offer, you can sell six in a couple of hours * * *

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or indirectly or otherwise:

(a) That said appliance puts a crease in trousers "while you count 10", or within any other period of time shorter than that required by the average user;

(b) That said appliance "Does the job in less than a minute", or that trousers can be pressed within any other period of time shorter than that required by the average user;

(c) That the average sale can be made in six minutes, or within any other period of time shorter than the average period of time in which sales have been made by sales representatives, agents, or dealers of respondent;

(d) That said appliance is ready for use on a minute's notice, or any other period of time shorter than that required to thoroughly heat the appliance under normal conditions;

(e) That said appliance will put a crease in trousers "instantly";

(f) That said appliance will make ties look "brand new";

(g) That respondent guarantees the prospective agent or dealer will make sales, unless and until respondent actually pays the prospective agent or dealer the regular commissions on the initial order in the event that he is unable to sell the appliance;

(h) That the prospective agent or dealer can sell six in a couple of hours, or any other quantity in excess of the average sold by representatives, agents, or dealers in that period of time;

(i) That a bonus is given, unless and until respondent establishes the practice of giving a uniform amount of money to agents and dealers who sell a required number of respondent's appliances;

and from making any other claims or assertions of like import.

The respondent assumes all responsibility for any and all representations appearing in testimonials published by it and stipulates and agrees that it will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 28, 1935.)

0828. Vendor-Advertiser—Cold Preparation.—E-Z Chemical Co., Washington, D. C., vendor-advertiser, is engaged in selling a medicinal preparation designated as "Hall's Expectorant" and in advertising represented:

* * * prevent the spread of cold germs. * * * medical science considers creosote a great healing agency for irritated bronchial tracts. * * *

Halls' does more than stop the cough; it goes directly to the seat of the trouble by entering the blood stream * * * in this way cold germs are checked and prevented.

* * * an excellent preparation for promptly and safely ending stubborn, disagreeable coughs due to colds. * * *

* * * The first pleasant spoonful will ease the pain of your irritated bronchial tract. * * *

Stop That Cough * * * Safely!

* * * It promptly * * * soothes and heals the irritated membranes of the bronchial tract * * *

* * * Disagreeable coughs from colds sap your energy, lower your vitality, and make you an easy victim of "flu" and pneumonia. * * *

* * * A cough due to a cold is perhaps not alarming at first, but if allowed to continue it lowers your vitality, saps your strength, and makes you easy prey of many dangerous illnesses * * *

* * * quickly quiets dangerous coughs * * *

* * * Quickly relieves dangerous coughs due to colds.

Coughs Stop Right Away

* * * dissolves phlegm * * *

No More Coughs at Night * * *

Stop Coughs! Here's How * * *

Warms Tissues; Cuts Mucus; Ends Coughing.

* * * releases oxygenized creosote vapors which flow through air passages to end soreness and guard against infection * * * and the creosote reaches the blood to help build up resistance * * *

Ends Coughs by Cutting Away Tickly Mucus.

* * * It contains creosote which vaporizes and is carried into air passages * * *.

* * * serves to build up resistance. * * * It is safe * * *.

* * * Get at the cause of your cold cough with Hall's Expectorant * * *.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That said preparation is safe unless qualified to indicate that it is safe when taken according to directions;

(b) That persons who use said preparation will have no more coughs, or from otherwise representing that permanent benefits will be effected;

(c) That said preparation or any of its ingredients will reach or enter the blood or help to build up resistance;

(d) That the creosote in said preparation is vaporized and carried into the air passages;

(e) That said preparation will "get at" the cause of a cough or reach the seat of the trouble;

(f) That said preparation will check cold germs, prevent the spread of germs, or guard against infection;

(g) That said preparation will dissolve phlegm or cut mucus;

(h) That one spoonful of said preparation will ease the pain due to the irritation of the bronchial tract;

(i) That coughs from colds make one an easy victim of influenza or pneumonia;

(j) By implication (or otherwise) that the use of said preparation will prevent one from contracting influenza or pneumonia, or other dangerous illnesses;

(k) That said preparation will relieve or quiet "dangerous" or "stubborn" coughs;

(l) That said preparation will "end" coughs;

and from making any other claims or assertions of like import. (Jan. 28, 1935.)

0829. Vendor-Advertiser—Cold Remedies.—The Larned Corporation, New York City, vendor-advertiser, is engaged in selling cold remedies designated as Hill's Cascara Quinine Tablets and Hill's Nose Drops, respectively, and in advertising represented:

COLDS GO EXTRA-QUICK

Tens of thousands of people will tell you that the Faster, Surest Way to get rid of a cold is to take a couple of Hill's Cold Tablets and a couple of glasses of water, now and then.

Fight off cold germs that infest you.

Your cold goes in a jiffy. * * *

How to get rid of that Cold *Quick*.

Relief is Quick and Sure. Because Hill's gets at the root of the trouble * * * Fights off cold germs * * * and your cold goes in a day. A cold is too serious to trifle with. Get rid of it this Proven, Faster Way.

STOPS COLDS IN A JIFFY

When you have a cold do what most of your neighbors do and get rid of it in a day. A couple of Hill's Cold Tablets and a couple of glasses of water now and then get right at the seat of the trouble.

Fight off cold germs that infect you.

Kills colds in a day.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondent's products cause colds to "go" extra quick, or in a jiffy, or in a day;

(b) That by the use of said products one may get "rid" of a cold quickly, or in this proven, faster way, or in a day; or that this is the surest way to get rid of a cold;

(c) That said medicinal preparations stop colds in a jiffy, or kill colds in a day;

(d) That said preparations fight off cold germs;

(e) That said preparations get at the root of cold trouble; and from making any other claims or assertions of like import. (Feb. 7, 1935.)

0830. Publisher—Toilet and Beauty Preparations.—The Philadelphia Enquirer Co., Philadelphia, Pa., the publisher of the Philadelphia Enquirer, a newspaper of wide interstate circulation, printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for a manufacturer and vendor of toilet and beauty preparations.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Feb. 12, 1935.)

0831. **Publisher—Toilet and Beauty Preparations.**—W. H. Gannett Pub. Inc., Augusta, Maine, the publisher of *Comfort Magazine*, a magazine of wide interstate circulation, printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for a manufacturer and vendor of toilet and beauty preparations.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Feb. 12, 1935.)

0832. **Publisher—Toilet and Beauty Preparations.**—W. J. Thompson Co., Inc., New York, N. Y., the publisher of *Gentlewoman Magazine*, a magazine of wide interstate circulation, printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for a manufacturer and vendor of toilet and beauty preparations.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Feb. 23, 1935.)

0833. **Vendor-Advertiser—Pain Relief Preparation.**—Hexin, Inc., Chicago, Ill., vendor-advertiser, is engaged in selling a medicinal preparation designated as "Hexin" and in advertising represented:

HEXIN—MUCH QUICKER RELIEF

Headache—Neuralgia—Head Colds—Pain

Physician's Formula: * * *

1. Eases pain by relaxing tense muscles, and blood vessels removing pressure on nerve ends—the cause of pain.

2. Alkaline formula combats colds by neutralizing acidity and relieving congestion.

* * *

4. Tends to induce sound sleep in cases of insomnia.

5. Does not harm the heart * * *
* * *

7. * * * originally developed for children.

8. Prescribed by modern physicians * * *.

* * * 10-minute relief!

* * * Stops Headaches (any severe pain) faster than anything heretofore known.

* * * Take 2 Hexin tablets with water. In 3 to 5 minutes your pain should begin to lessen noticeably. In 5 to 10 minutes it should vanish like magic.

All modern doctors and druggists know the Hexin formula (printed on every box) and endorse it enthusiastically.

* * * * *
To the millions who suffer needlessly from * * * other disturbances due to congestion, Hexin now offers Relief by Relaxation—the latest and most startling discovery of modern medical science.

Now modern physicians know that pressure on sensitive ends is the direct cause of pain, and that safe relief can only be attained by complete relaxation of the muscles and blood vessels near your nerve ends.

* * *—is much safer than ordinary tablets because it works entirely by Relaxation. As Hexin relaxes your muscles, taut and cramped from overwork, (1) blood resumes its normal flow, (2) congestion—the cause of pressure on nerve ends—is removed, * * *.

Hexin was originally developed for children. * * *.

* * * Modern Doctors Prefer Hexin—a new alkaline pain-killer—because it stops pain faster and combats these 2 common causes of pain. Users say they get relief with unheard-of speed. * * * Just lightning-quick relief * * *.

* * * It's advertised as the 10-minute pain-relief but it usually works quicker than that for me. * * *.

* * * Part of this new 5-grain tablet dissolves at once in the stomach, affording immediate relief. * * *.

* * * many people find that if they take 1 Hexin tablet with water every hour, until a total of 6 or 7 have been taken, that a threatened cold has failed to develop.

* * * Pains due to * * * arthritis * * * usually yield quickly to the action of Hexin. * * *.

* * * Its alkaline formula will not injure the heart * * *.

* * * Hexin relieves congestion safely by relaxing taut tissues and reestablishing the normal flow of blood. Hexin is alkaline * * *.

* * * Hexin relieves colds by striking at the cause. Most people find that 1 Hexin tablet every hour until 6 or 7 have been taken keeps a cold from starting * * *.

* * * free from the depressing action of acetanilid or its derivatives.

Hexin is highly recommended for the Quick Relief of Pain and Discomfort due to Periodic Pains.

It is equally effective for the Quick Relief of Pain before * * * Tooth Extraction.

* * * Your headache will be gone in 15 minutes Hexin never fails * * *.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and

selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

- (a) That Hexin will afford "quicker" or faster relief;
- (b) That Hexin is compounded according to a physician's formula;
- (c) That Hexin will—
 1. Relax the muscles or blood vessels.
 2. Remove pressure on nerve ends.
 3. Neutralize acidity.
 4. Relieve congestion.
 5. Induce sound sleep in cases of insomnia.
 6. Cause the blood to resume its normal flow.
 7. Afford immediate relief.
 8. Prevent colds from developing.
- (d) That Hexin is an alkaline preparation;
- (e) That Hexin will not harm the heart;
- (f) That Hexin was originally developed for children;
- (g) That Hexin will afford relief within any definite period of time;
- (h) Generally that Hexin is prescribed, prepared, or endorsed by modern physicians or druggists;
- (i) That Hexin combats the cause of pain;
- (j) That Hexin will afford relief from—
 1. Periodic pains;
 2. Pains due to arthritis;
 3. Pains before tooth extraction;
- (k) That Hexin strikes at the cause of colds;
- (l) That Hexin is free from the depressing action of acetanilid or its derivatives;
- (m) That Hexin will cause pain to vanish like magic;
- (n) That Hexin affords lightning-quick relief or acts with unheard of speed;
- (o) That Hexin never fails;
- (p) That Hexin is the latest or most startling discovery of modern science;

and from making any other claims or assertions of like import. (Feb. 28, 1935.)

8834. Vendor-Advertiser—Eyelash Treatment.—De Los Rios and Co., Detroit, Mich., vendor-advertiser, is engaged in selling a treatment for the growth of eyelashes designated "Pestanola", and in advertising represented:

First time in America, "Pestanola", Spain's Old Secret Eyelash Grower and make up base.

An age-old secret originating in Spain, the land famous for the charm of its beautiful women.

De Los Rios & Company, Barcelona.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) That said preparation, "Pestanola" is capable of growing or promoting the growth of eyelashes;

(b) That the formula from which said preparation is made originated in Spain;

(c) That said preparation is Spain's old secret.

The respondents further stipulate and agree in soliciting the sale of said commodity in interstate commerce, to cease and desist from representing or designating it as an eye lash grower.

The respondents further stipulate and agree to cease and desist from using the name "Barcelona" on labels or otherwise indicating that they maintain a place of business in Barcelona. (Feb. 28, 1935.)

0835. Vendor-Advertiser—Mineral Crystals.—Dollar Crystal Co., Omaha, Neb., vendor-advertiser, is engaged in selling mineral crystals designated "Genuine Texas Minerals Crystals", and in advertising represented:

If you are suffering from Constipation, Piles, Kidney, liver, or stomach disorder; rheumatism in any form, skin diseases, lumbago, or any of the many ailments which are caused by faulty elimination, then give Texas Crystals a trial.

If you are suffering and you want to gain back your health then give Texas Crystals a trial.

This use of Genuine Texas Mineral Water Crystals is guaranteed to help you if you are suffering from one of the common ailments such as stomach or kidney trouble, high or low blood pressure, nervousness, sick headache, indigestion, rheumatism, gout, arthritis, neuritis, sciatica, lumbago, or chronic constipation.

If this is your condition (faulty elimination) and you continue to let it run it will cause more trouble such as rheumatism, arthritis, Bad Breath, Blotchy Complexion. Let us suggest an easy and sure way to correct this before it is too late. Start drinking Genuine Texas Mineral Crystal Water.

* * * and sooner or later will run into Rheumatism, Upset Stomach, Chronic Gastritis, Kidney and Bladder Trouble, and other more serious disorders. You can correct this as thousands of folks are doing every day, by drinking Genuine Texas Mineral Crystal Water.

It is Mother Nature's way of getting rid of faulty elimination and in helping thousands of folks back to health every day.

For over two thousand years doctors have been advocating the use of Mineral water for chronic disorders and chronic constipation in every corner of the globe. It was used by the American Indians hundreds of years ago and has always proved its value because it is nature's own way of restoring your health.

These waters contain more than eleven essential body-minerals which you all need to be as fit and full of life as nature intended, but you don't have to journey to Texas to drink of those wonderful waters. Enjoy a fountain of youth right at home by adding Genuine Texas Mineral Water Crystals to your regular drinking water.

They are guaranteed! Chronic constipation, gall bladder trouble, kidney, stomach, or liver disorders, rheumatism, arthritis, neuritis, sick headaches, or that tired, run-down feeling—all these are immediately relieved by Genuine Texas Crystals or your money refunded.

Health Crystals are invaluable in helping to overcome nervousness, high blood pressure, diabetes, and other chronic ailments. While regaining health, Texas Mineral Health Crystals are most effective in reducing excess weight.

We want you to know friends that they are guaranteed to bring you relief from the following ailments: Chronic constipation, high or low blood pressure, indigestion, dyspepsia, chronic gastritis, neuritis, chronic gall bladder disturbances, sick head-ache, nervousness, arthritis, colitis, and that tired run-down feeling. Any of these ailments, no matter how long you have suffered from it, or what you have tried in the past to get relief, and have failed; Texas Mineral Water Crystals added to your drinking water will bring you that relief.

They will rid your system of the poisons that cause these different ailments, and at the same time supply your system with health giving minerals to build you up; Then you will never have these attacks in the future.

On the other hand, many of you have not been eating the proper foods, foods that contain the necessary minerals that your bodies need to keep you in a strong healthy condition.

When you purchase a package of Genuine Texas Mineral Water Crystals friends, and start mixing them with your ordinary drinking water, you are drinking exactly the very same health giving water you would get as though you spend your time and money to go where these famous health wells are located.

When you start drinking Genuine Texas Mineral Water friends, you are supplying your body with the eleven essential minerals it needs in order for you to enjoy good health.

Now friends, when you purchase a box of Genuine Texas Mineral Water Crystals, and you start mixing them with your ordinary drinking water, you will have the very same health giving water right in your own home just as though you spent the time and money to go to that great health state of Texas and drink that water from these famous mineral wells. When you start drinking Genuine Texas Mineral Water you will rid your system of the poisons and excess acids that are causing 95% of your ailments.

Start drinking Genuine Texas Mineral Water today, friends, and watch your aches and pains disappear.

Due to the discovery of Genuine Texas Mineral Water Crystals, science has made it possible for you to now have that very same health giving water right in your own home.

Even you Mothers listening in this morning, you need have no fear giving it to the kiddies; let them drink Genuine Texas Mineral Water for a few days, see how their appetites will improve, they will sleep better at nights and they will also be supplying their little bodies with the necessary mineral foods nature requires them to have in order for them to make strong, healthy men and women.

I had an ulcerated stomach for at least 17 years; I took all sorts of patent medicine, but nothing helped me like your Crystals.

Every year thousands of men, women, and children who are bearing the burden of poor health journey to the town of Mineral Wells to enjoy the wonderful benefits that are derived from the curative waters of the oldest and most famous of the mineral wells. Right now it is not necessary to make this journey, for you can now have the same famous mineral water right in your own home and all you do is simply add them to your drinking water. And you have the same mineral water with all of its famous health-giving, life giving minerals in it.

* * * colitis, high or low pressure, chronic gall bladder disturbances, stomach trouble, and kidney trouble. Folks, these and many other ailments are directly caused by faulty elimination.

Genuine Texas Mineral Water Crystals are recommended in the treatment of chronic constipation, high blood pressure, gastritis, rheumatism, neuritis, stomach, liver, and bladder trouble.

Genuine Texas Mineral Water Crystals are a pure concentrated mineral water in crystal form, a product of mother earth's, not man's, and containing most of the minerals found in every healthy person.

You can correct this (rheumatism and other ailments) as thousands of folks are doing every day, by drinking Genuine Texas Mineral Crystal Water.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That said product is a competent treatment or an effective remedy for either piles or kidney, liver, or stomach disorders, or rheumatism in any form, or skin diseases, or lumbago;

(b) That if you are suffering and want to gain back your health, this product will help you do so;

(c) That said product—

Is either guaranteed to help in, or

That it affords immediate relief in, or

That it is invaluable in overcoming, or

That it will "correct", or

That it will rid the system of, or

That it will put an end to Stomach or kidney troubles, High or low blood pressure, Nervousness, Sick headaches, Chronic constipation, Indigestion, Rheumatism, Gout, Arthritis, Neuritis, Sciatica, Lumbago, Bladder trouble, Gall Bladder trouble, Liver disorders, Chronic gastritis, Diabetes, Ulcerated stomach, Colitis, or Annoying skin diseases;

(d) That such product is guaranteed to bring relief from any of the foregoing conditions no matter of how long standing or what remedies have been tried without success;

(e) That said product rids one of:

Faulty elimination, or

The poisons that cause the aforesaid ailments, or

95% of your ailments;

(f) That respondent's product is "nature's way of restoring health from chronic disorders;"

(g) That faulty elimination is the cause of rheumatism, arthritis, blotchy complexion, chronic gastritis, kidney and bladder trouble, or skin trouble;

(h) That the cause of the following ailments is poison in the system or that the same are generally the result of poisons: Chronic constipation, Indigestion, Dyspepsia, Chronic gastritis, High or low blood pressure, Chronic gall bladder disturbances, Sick headaches, Nervousness, Colitis, Diabetes;

(i) That 95% of your ailments are caused by poisons or excess acids;

(j) That one will never have such (above named) attacks in the future after having taken Texas Mineral Crystals;

(k) That this product:

Supplies the system with "health-giving minerals to build you up;" or

Supplies your body with "more than eleven essential body minerals" needed by it in order for you to enjoy good health; or

Supplies the health giving minerals to the body which your improper foods fail to supply; or

Supplies the little bodies of children with the necessary mineral foods required by nature to make them strong, healthy men and women; or

Contains most of the minerals found in every healthy person;

(l) That said crystals:

Improve the appetite of children, or

Make children sleep better at night, or

Build up resistance for us, or

Get the inactive organs working for you again, or

Put aside all possibilities of faulty elimination ever getting a foothold in our lives;

(m) That your "aches and pains will disappear" when you start drinking "Genuine Texas Mineral Water";

(n) That by these crystals "science has made it possible for you to have the very same health giving water right in your own home;

(o) That by adding these crystals to your regular drinking water, the same Texas Mineral Water may be had right at home;

The respondent assumes all responsibility for any and all representations appearing in testimonials published by it and stipulates and agrees that it will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 1, 1935.)

0836. Vendor-Advertiser—Cold Treatment.—K. A. Hughes Co., Boston, Mass., vendor-advertiser, is engaged in selling a treatment for colds designated "Salicon" and in advertising represented:

Does not depress the heart.

Does not affect the heart.

Does not harm the heart.

Drive colds out of the system with Salicon.

It's going to stay cold. How the cold germs love that. Salicon stops a cold quickly.

Drive away cold germs by taking Salicon.

Two tiny tablets of Salicon taken every hour for a few hours are practically certain to break up the most stubborn cold in short order.

Cold germs will be in the air * * *. Be safe and keep Salicon handy.

Kill a cold in an evening * * *. Take Salicon Tablets. Salicon is *sure* as well as *safe*.

Aspirin has upset the stomach, caused gastric distress, nausea, heart palpitation, and constipation.

When it (aspirin) comes in contact with the hydrochloric acid in the stomach, it liberates free salicylic acid; also some acetic acid is formed.

These acids are irritating, extremely so, in the stomach.

The decomposition of the aspirin under the action of the hydrochloric acid reduces its efficiency from 15% to 35%.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and stipulated and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondent's preparation Salicon does not depress the heart, or does not affect the heart, or does not harm the heart;

(b) That Salicon Tablets will drive colds out of the system; or will kill a cold in short order;

(c) That Salicon will drive away cold germs or stop or have any other effect upon cold germs; or inferentially or otherwise that colds are caused by germs, or that cold germs thrive in cold air;

(d) That the action of Salicon is either "practically certain" or "sure", or that it is "safe" in all cases. (Mar. 4, 1935.)

0837. Vendor-Advertiser—Chewing Gum.—Clark Brothers Chewing Gum Co., Pittsburgh, Pa., vendor-advertiser, is engaged in selling confections designated as Clark's Teaberry Gum and Clark's Peppermint Gum, and in advertising represented:

Clark's Peppermint Gum * * * When you feel drowsy see how it braces you up.

* * * you'll find there's no fading * * * no matter how long you chew Clark's Peppermint Gum.

The flavor lasts * * * five whole hours.

Chew them every day * * * after meals to promote the flow of gastric juices * * *. You'll find they polish * * * the teeth.

No other gum has the same ability to moisten the throat and quench the thirst.

Peppermint gum is made from the tips of choice young peppermint plants.

Holds the flavor five whole hours.

The gum with the exotic flavor.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations, and stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce, to cease and desist from representing in advertisements or otherwise:

(a) That Clark's Peppermint Gum or Clark's Teaberry gum will relieve the "drowsy" feeling or will "brace" a person;

(b) That the flavor of either of said gums will last for five hours or for any certain definite period of time;

(c) That the flavor of either of said gums is "exotic";

(d) That either of said gums will polish the teeth;

(e) That either of said gums will materially influence the flow or character of gastric juices;

(f) That "no other" gum has the same ability to moisten the throat or quench the thirst;

(g) That either of said gums derives its flavor from the "tips" of peppermint plants. (Mar. 4, 1935.)

0838. Vendor-Advertiser—Medicinal Preparations.—W. H. Comstock Co., Ltd., Brockville, Ont., and Morristown, N. Y., vendor-advertiser, is engaged in selling preparations designated as "Dr. Morse's Indian Root Pills" and "Comstock's Dead Shot Worm Pellets", and in advertising represented:

Constipation—* * *

When Constipation becomes chronic, * * * Indigestion, dyspepsia, kidney troubles, liver complaints, heart derangements, etc., are almost sure to follow.

* * * To Get Rid of Constipation, take from one to four of these pills regularly * * *."

A SLENDID CORRECTIVE FOR BILIOUSNESS AND SLUGGISH LIVER

Dr. Morse's Indian Root Pills are the finest remedy known for toning up and invigorating the liver, stimulating the secretion and flow of bile, * * * Keeping the blood pure and rich. At the first symptoms of sluggish liver or biliousness, take two or three pills. * * *

* * * To remove pimples, facial blemishes * * * The real remedy is to get your blood in good condition, and for this there is nothing better than Dr. Morse's Indian Root Pills.

These pills * * * free the system of impurities, so that your blood becomes rich and pure, and the oil supplied to your skin is a light, thin oil which * * *. With this treatment, your skin will clear up Naturally.

* * * Two or three Dr. Morse's Indian Root Pills. These will stimulate the liver and counteract the effects of overeating or drinking. * * *

* * * To get rid of the worms you must also break up their nests and get rid of their eggs, and that requires a specific remedy. Comstock's Dead Shot Worm Pellets not only expel the worms, but also remove the eggs, and are unfailing in results.

* * * You will notice an improvement immediately on taking Dr. Morse's Indian Root Pills. They rectify the trouble at its very source; * * * Maybe it's Indigestion or Dyspepsia; perhaps it's Constipation or Liver Trouble. Is it Kidney Trouble or Stomach Acidity?

In any case, Dr. Morse's Indian Root Pills will help you.

A Great Benefit in Cases of Rheumatism, Lumbago, Sciatica.

* * * * * * * * *

The use of Dr. Morse's Indian Root Pills has proved of great benefit in thousands of rheumatic cases, bringing the long-sought relief after so-called "Rheumatic Cures" had failed. If you suffer from any rheumatic condition, we strongly advise you to give these pills a trial; they are bound to help you.

* * * They get at the cause and give you clean bowels, a healthy stomach, a lively liver, and a sweet, clean breath.

* * * Dr. Morse's Indian Root Pills are unequalled for removing the causes of impure blood and protecting the general health.

* * * Don't discount the tragic and even fatal results of worms in children!

Comstock's Dead Shot Worm Pellets is the safe, sure, and reliable remedy to kill these parasites which sap vitality.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Dr. Morse's Indian Root Pills are a competent treatment for *Chronic Constipation, Bilioussness, Sluggish Liver, Dyspepsia, Liver Trouble, Stomach Acidity, Rheumatism, Lumbago, Sciatica.*

(b) That Indigestion, Dyspepsia, Kidney Trouble, Liver Complaints, or Heart Derangements are almost sure to follow Chronic Constipation.

(c) That Dr. Morse's Indian Root Pills will—

1. Tone up or invigorate the liver.
2. Stimulate the secretion or flow of bile.
3. Keep the blood pure or rich.
4. Remove pimples or facial blemishes.
5. Free the system of impurities.
6. Enrich or purify the blood.
7. Rectify any trouble at its source.
8. Give the user a healthy stomach, lively liver, or sweet breath.
9. Remove the causes of impure blood.

(d) That the use of Dr. Morse's Indian Root Pills will cause the skin to "clear up."

(e) That Dr. Morse's Indian Root Pills have brought long-sought relief after so-called rheumatic cures have failed.

(f) That the use of Comstock's Dead Shot Worm Pellets is a specific remedy or a sure remedy for worms.

(g) That worms may produce "tragic" or "fatal results" to children.

Respondent further stipulates and agrees in soliciting the sale of said preparations in interstate commerce to cease and desist from using the word "rid" to describe the effect of said preparations on any ailment or disease. (Mar. 11, 1935.)

0839. Vendor-Advertiser—Poultry Worm Treatment.—The Gland-O-Lac Co., Omaha, Nebr., vendor-advertiser, is engaged in selling a treatment for worms in poultry designated "Gland-O-Lac Enteric Capsules" and in advertising represented:

Gland-O-Lac Enteric Capsules contain 15 grains of Hamala and aspidium for removal of tape worms.

Gland-O-Lac announces a new treatment for * * * tape worms.

These capsules contain two tape worm removers.

Gland-O-Lac Enteric worm Capsules contain accurate doses of tape worm removers.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

That Gland-O-Lac Enteric Capsules will remove tape worms from poultry; or that they constitute an effective treatment for tape worms;

The respondents assume all responsibility for any and all representations appearing in testimonials published by them and stipulate and agree that they will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 13, 1935.)

0840. Vendor-Advertiser—Eyelash Treatment.—Ross Co., 243 West 17th St., New York City, vendor-advertiser, is engaged in selling a treatment for eyelashes designated "Winx-EyeLash Grower" and in advertising represented:

Winx-EyeLash Grower, Promotes the growth of lashes and eye brows—Instantly beautifies.

Black and brown are wonderful eyelash beautifiers as well as eyelash growers.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations

and stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise—

(a) That Winx Eyelash grower will promote the growth of lashes or eyebrows;

(b) That Winx Eyelash grower is a wonderful eyelash grower.

Respondent further stipulates and agrees in soliciting the sale of said commodity in interstate commerce to cease and desist from representing, designating, or labeling said treatment as an eyelash grower. (Mar. 13, 1935.)

0841. Vendor-Advertiser—Hair Coloring Preparation.—The Brookline Chemical Co., Boston, Mass., vendor-advertiser, is engaged in selling a hair coloring preparation designated as "Farr's For Gray Hair" and in advertising represented:

Is there any way I can bring back its youthful color? Many women ask themselves these questions. Coloring gray hair is a simple matter with Farr's. In your own home you can transform the gray to glorious, youthful color.

* * * Bring back the youthful original color to gray or faded hair. * * *

* * * leaves the hair natural looking, * * *

* * * It costs so little in effort and cost to keep it natural, youthful looking, * * *. Once you've got the shade you wish a few occasional touches keep a uniform color. * * *

* * * harmless as your lipstick, * * *; leaves the hair soft, lustrous, natural, full of youthful lights and shadows women love. * * *

* * * Youthful hair free from gray. * * *

* * * Once the hair has returned to the desired color it is a very simple matter to keep it that way. * * * we have a preparation that really does change the color of gray and faded hair to the desired color * * *.

* * * Farr's for Gray Hair gives to your hair its natural and attractive appearance * * *. The faded look gives place to soft, glossy, lustrous hair, sparkling with girlhood color, so like the original shade no one in your family can detect its use. * * *

* * * Keeps Your Hair Youthful * * *.

* * * A few minutes once a week, at your home, and your hair will have that soft, lustrous beauty that nature originally gave to it. * * *

Why not regain this color and lustre of youth. Farr's for Gray Hair will do this for you. * * *

* * * Farr's for Gray Hair is an absolutely safe and easy method for transforming gray hair to glorious youthful color. * * *

* * * Farr's for Gray Hair brings back to their hair its original color. * * *

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That said preparation will bring back or restore the color of hair;

(b) That said preparation will impart the original or former color to gray hair;

(c) That said preparation will impart a natural or youthful color to gray hair, unless limited to natural or youthful appearance;

(d) That by the use of said preparation any desired "shade" can be imparted to the hair;

(e) That said preparation is harmless;

(f) That by the use of said preparation one can regain the color of youth;

(g) That said preparation will make the hair soft;

(h) That the use of said preparation cannot be detected. (Mar. 13, 1935.)

0842. Vendor-Advertiser—Face Powder.—L. J. Piver, Inc., New York, N. Y., vendor-advertiser, is engaged in selling a face powder designated as "matite" and in advertising represented:

* * * You powder to *take away* shine. Yet the powder you use *produces* a shine! That's because it contains talcum. * * *

* * * Matite is the *only* face powder without talcum. * * *

* * * The talcum in your face powder that *creates* a shiny nose! Because talcum is a shiny substance.

All face powders contain talc—except Piver's sensationally new powder called Matite. This is the *only* powder made without talc, orris root, starch, or pollen. * * *

* * * It's the *only* face powder *made without talcum*.

* * * It * * * re-vitalizes *all* skins * * *.

* * * It's the *only* powder that contains no talc, orris root, or starch.

All other face powders contain talcum. And talcum always produces a shine. * * *

* * * All ordinary face powders contain talcum. * * *

* * * It's the talcum in all face powders that gets shiny on your nose! * * *

* * * It contains ingredients that sooth, soften, and give new life to skin tissues. * * *

* * * Up to now all face powders * * * contain talcum. Talcum reflects light and produces a high shine. The more you rub it the *higher* it shines * * *

* * * talcum is today the basis of practically all face powders * * *.

* * * —the *only* face powder that is absolutely free from sheen * * *.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondent's face powder "Matite" is the *only* face powder that contains no talcum, orris root, starch, or pollen;

(b) That face powders containing talcum will produce a shine;

(c) That all face powders except respondent's "Matite" contain talcum;

(d) That all face powders except respondent's "Matite" will produce a shine;

(e) That respondent's face powder "Matite" will re-vitalize the skin or give new life to the skin tissues. (Mar. 18, 1935.)

0843. Vendor-Advertiser—Medicinal Salts.—Major Products Co., Distributor, San Francisco, Calif., vendor-advertiser, is engaged in selling a medicinal salts designated as "Byron Hot Springs Crystals" and in advertising represented:

* * * As I was walking to the studio this morning, I met an old friend, one I hadn't seen for many months. We exchanged greetings, then it dawned on me that the last time I had even heard of him, he was quite ill * * * in fact I had seen him through the various stages, going from a perfectly healthy, active person, first on a cane, then on crutches, then the last news that he was bed-ridden. Naturally, I asked him about it, how he had recovered. Frankly, to look at him now one would never even imagine he could ever have been anything but the active, well looking person he appeared today * * *.

* * * suffering humanity has been going to Byron Hot Springs for relief from acidosis, neuritis, rheumatism, and the many ailments caused by faulty elimination.

* * * It isn't always convenient to make a trip to the springs * * * in fact, it isn't necessary any more, as they come to you * * * and you * * *.

If you have been suffering the pains of rheumatism or neuritis or have no pep, go to your druggist today, *right now* * * * phone and ask him, he knows the analysis is on every bottle which guarantees the absolute genuineness of these well-known Byron Hot Springs Crystals * * *.

* * *, every day, people tell me of the almost unbelievable relief they find from the pains of ordinary rheumatism, neuritis * * *.

* * *, don't forget to tell your friends that they can have this same water right in their own homes now * * * crystals, you know, don't forget * * *.

* * * The best mineral water to be found anywhere, from Byron Hot Springs, is now at your druggist in the form of pure, Byron Hot Springs Crystals, ready to dissolve in your drinking water. * * *

* * * these very same health giving waters have been reduced to crystal form and it is now possible for every one of you to start drinking Byron Hot Springs Water today, right in your own homes. * * *

* * * Relief from the pains of ordinary rheumatism, neuritis, and oh, the many other ailments caused by slowly accumulating body poisons that must take their toll * * *. * * * one of the most important achievements the year of 1934 was the bringing of these health giving waters to you. * * *

* * * relief from suffering pain such as I endured, even helplessness, then a complete reversal, practically the beginning of a new life, * * *. * * * So if you are suffering from the many, many ailments of accumulated body waste, the pains that come with ordinary rheumatism, arthritis, neuritis, or even that worn out feeling, muddy complexion * * * go to your phone right now and order your bottle of Byron Hot Springs Crystals. * * *

* * * find the right way to good health. There is a way. The same way that specialists have been recommending to hundreds of thousands of chronic

sufferers for years, who finally realize the joy of a healthy body. Now you can have that same help far easier and for a slight cost. The help that came to those who traveled to Byron Hot Springs in California to drink the best mineral waters * * *. * * * an adjunct in the relief of that ordinary rheumatism, sciatica, neuritis, and so on. * * * Byron Hot Springs Crystals * * * will * * *, renewed body minerals and good health. * * *

* * * every day people tell me of the wonderful relief from the pains of ordinary rheumatism. Relief caused by the drinking of Byron Hot Springs Crystals * * *.

* * * an antiaacid adjunct for colds, for fevers. Acid Stomach and many other conditions * * *. * * * The waters of Byron Hot Springs have brought relief to hundreds of thousands of sufferers from the pains of ordinary rheumatism. Neuritis as well as over acidity * * *.

* * * you have probably tried everything you ever heard of for your pains and aches. * * * There has been an incessant demand from health authorities for a pure mineral water. * * * To aid in restoring the health that has robbed the body of its natural mineral balance, a mineral water Crystal must offer many things. * * * They merit first place in the care of your health * * * Byron Hot Springs Crystals are entirely different and when added to your drinking water complete a perfect alkaline water, * * * Byron Hot Springs Crystals gently remove body poisons and contain the necessary body mineral so essential to good health. * * * to keep the system purified—there is little more to hope for than to add Byron Hot Springs Crystals to your daily drinking water. No matter what degree of over acidity or accumulated poisons you are suffering from * * *. * * * Start again in your battle against ill health. No matter how slight or how severe. * * * fight the poisons creeping toward every nerve and muscle * * *.

* * * If you are suffering from some chronic ailment caused by retained body poisons, think of the hundreds of thousands of chronic sufferers who found relief and new health at Byron Hot Springs * * *, and think what it means to you to bring this same opportunity right into your home. * * *

* * * Add Byron Hot Springs Crystals to your drinking water and eliminate the anxiety and grief of ill health * * *.

* * * I had a most interesting conversation yesterday * * *.

* * * Many have gone to Byron Hot Springs on stretchers and crutches and been able to discard both before leaving.

To those folks Byron Hot Springs Crystals will mean much. They mean that no longer is it necessary to go to Byron Hot Springs to drink of the waters * * *.

* * * To every sufferer from chronic organic troubles resulting from those slowing creeping insidious poisons * * *.

* * * Today you can bring this same help right into your home. * * *

Excessive Weight.

For the treatment of Acidosis, Bad Complexion, Hyperacidity, and as an * * *.

* * * When poisons are generated in the sluggish system, Mineral Water is prescribed as an adjunct in the treatment of ordinary rheumatism to arrest the progress of such common ailments as Acidosis, Hyperacidity, Heartburn, Bad Complexion, etc., Nature * * *.

* * * Byron Hot Springs Crystals, absolutely retaining all of the original properties found in the hot mineral water * * *.

* * * Hepatic, Stimulate, Billousness, Auto-Intoxication; * * *

Ordinary Rheumatism as an Adjunct in the Treatment of Ordinary Rheumatism, Sciatica, Neuritis; * * *

* * * Recommended in the treatment of chronic constipation, * * * acidosis, biliousness, sluggish liver, auto-intoxication * * *.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) Directly or by reasonable implication that Byron Hot Springs Crystals are a competent treatment for acidosis, neuritis, rheumatism, sciatica, bad complexion, acid stomach, heartburn, hyperacidity, excess weight, biliousness, auto-intoxication, sluggish liver, body poisons, colds, or fevers;

(b) That Byron Hot Springs Crystals will relieve aches or pains;

(c) That Byron Hot Springs Crystals are a hepatic simulant or that they act upon the liver;

(d) That Byron Hot Springs Crystals are a competent treatment for chronic or organic ailments;

(e) That faulty elimination is the cause of acidosis, neuritis, rheumatism, arthritis;

(f) That the benefits to be expected from drinking water made from Byron Hot Springs Crystals are equal to the benefits derived from visiting a spring resort or drinking natural spring water;

(g) That the water made from Byron Hot Springs Crystals is the same as or equivalent to the water obtained directly from Byron Hot Springs;

(h) That Byron Hot Springs Crystals will—

1. Renew body minerals,
2. Restore the natural mineral balance,
3. Restore health,
4. Keep the system purified,
5. Eliminate ill health,
6. Remove the accumulation of body poisons;

(i) That Byron Hot Springs Crystals retain all of the properties of the water from which they are made.

Respondent further stipulates and agrees that in selling said commodity in interstate commerce it will cease and desist from relating or publishing any fictitious event or conversation, pertaining to benefits alleged to have been derived from the use of Byron Hot Springs Crystals, in such a manner as to imply that such event or conversation actually occurred.

The respondent assumes all responsibility for any and all representations appearing in testimonials published or caused to be published any testimonial containing any representation contrary to the foregoing agreement (Mar. 18, 1935).

0844. Vendor-Advertiser—Toilet and Beauty Preparations.—Paramount Products, Inc., Des Moines, Ia., vendor-advertiser, is engaged in selling toilet and beauty preparations and in advertising represented:

CAN YOU FIND 10 FACES

In the Picture Below?

Answer Quick! Get the Opportunity to * * * Win \$2,250.00 or Buick Sedan and \$1,250.00 Cash!

Look sharply and mark the faces you find. Then fill in the coupon, mail quick, and you will receive opportunity to win as much as \$2,250.00. Some one, maybe you, will receive a new Buick Sedan, and if prompt, \$1,250.00 cash extra or, if all cash is preferred, \$2,250.00. * * *

This is our unique way of advertising * * *.

SEND NO MONEY—JUST MAIL COUPON

Hurry—mark the faces you find. Just mail the coupon if you can find ten hidden faces. This gives you the opportunity to win the \$2,250.00.

You cannot lose anything. Send in this coupon and we will give you the opportunity to win the \$2,250.00 First Grand Prize. Don't put it off until tomorrow. It may be too late. Do it today—Right Now!

SEND ANSWER QUICK

Remember, send not one penny with your answer. All you do now is to find ten faces if you can and mail the coupon. Send answer right away.

PRIZE MONEY NOW IN BANK

Hurry! Just mark the faces you find and send with the coupon right away. This gives you the opportunity to win \$2,250.00 First Grand Prize. Someone wins. Maybe you. Mail your answer quick. Don't delay. Do It today.

Send Only the Coupon Below and we will tell you how YOU can qualify to—Win \$2,250.00 or Buick Sedan and \$1,250.00 Cash!

Here's a lot of cash for some one. Would you like to have it? I am going to give it away. We want to advertise our business quickly and get wide distribution for our products. Someone, maybe you, will receive new Buick Sedan and \$1,250.00 cash extra for promptness or if you win 1st prize and prefer all cash you get \$2,250.00. Duplicate prizes paid in case of ties.

Surely you would like to have this magnificent prize. Then fill in the coupon below and you can easily qualify for the opportunity to win as much as \$2,250.00.

This is our unique way of advertising. * * *

This is your opportunity. Answer today—qualify for your share of this money that must be given away. No subscriptions to buy or sell. No more puzzles to solve. There is nothing hard to do to qualify to win the Buick Sedan, but you must act quick to make the most of this opportunity. Just mail the coupon if you find 5 of the hidden faces. Do it Now!

CAN YOU FIND 5 FACES

Answer today and see for yourself if you can win the first prize. Oh Boy! what you could do with \$2,250.00 all in cash at one time. I will be glad to pay it to you if you are adjudged the winner.

Hurry—mark the 5 faces you find, send your answer quick. You may be the one to receive the \$2,250.00 prize.

SEND NO MONEY, JUST MAIL COUPON

For Promptness \$1,250.00 extra or a total of \$2,250 if you are prompt and win 1st prize.

Remember, send not one penny with this coupon—all you do now is to find 5 faces, if you can, and mail the coupon. We will answer you right away and tell you how you stand.

The money to pay every prize is on deposit in a big strong Des Moines bank. Get your share of \$4,305.00 in cash prizes, besides thousands of dollars in Special Cash Rewards, Sixty grand prizes in all. All prizes will be paid promptly. Hurry! Just mark the faces you find and send with coupon right away. Some one wins—maybe you. Send your answer and see for yourself if you win first prize. Don't Delay! * * * Mail your answer today.

G. F. STAYTON, *President* Dept. 000
1912 Grand Avenue, Des Moines, Iowa.

I have found 5 faces in the enclosed picture and I want to win. Tell me how I stand.

My name-----
Address-----
City----- State-----

HOW MANY FACES CAN YOU FIND IN THE PICTURE BELOW?

We are looking for smart People

We want smart people everywhere to help us advertise our business and distribute our products. We are going to award several thousands of dollars in big cash prizes to people everywhere.

Send Only the Coupon Below and We Will Tell You How to Win \$2,250.00 or Buick Sedan and \$1,250.00 Cash!

SEND NO MONEY—JUST MAIL COUPON

Study this interesting picture and see how many of the faces hidden in the tree, clouds, etc., you can find. * * * Mark them and send to me quick with the coupon and I will tell you how to win first prize so you will receive the Buick Sedan and \$1,250.00 cash extra for promptness.

FOR PROMPTNESS \$1,250.00 EXTRA

Send answer quick and we will tell you how to get \$1,250.00 extra cash for promptness.

First Inquiry Follow-up Mailing:

DEAR FRIEND: Here is Good News for You! Your answer to my announcement *Fully Qualifies* you for the opportunity to win *Your Choice of a Beautiful New Buick 8 Sedan and \$1,250.00. Cash Extra for Promptness or \$2,250.00 All Cash.*

Enclosed is your Certificate of Award which Proves and Guarantees your standing toward this marvelous \$2,250.00 First Grand Prize which may mean Success and Independence to you. No one has received a greater award for

answering my announcement. You have a Splendid start, now take advantage of this big opportunity.

Just imagine the Thrill and Excitement, the Joy and Happiness that winning this Huge Sum of \$2,250.00 cash would bring to you. Truly, it would be one of the Great days of your life. Think of the Praise and Admiration of your friends. People all around would hear of your Success—and I would get a lot of advertising for my Bleu de France Beauty preparations.

I know you are anxious to see right away what to do to get the \$2,250.00 *all in cash*, or if you prefer, the beautiful Buick 8 Sedan delivered right to your door with \$1,250.00 Cash Extra just for being prompt.

I am anxious to get new friends for Bleu de France beauty preparations in your community. For that reason, I am giving you an opportunity to win the Buick 8 Sedan. To get Quick Action I am offering \$1,250.00 Cash Extra in addition to the Buick. That is why I want you to watch the date stamped on the enclosed Buick Prize Bond. Everything is plain and simple—nothing hard to do to qualify for the \$1,250.00 promptness prize—but remember, promptness on your part may mean \$1,250.00 to you.

Now you can see for yourself why I can afford to give Thousands and Thousands of dollars in cash prizes. 60 big prizes totaling over \$4,300.00. We know it is good business to give these prizes away. If I award you the Buick Sedan and \$1,250.00 Cash Extra you would be Mighty Proud of your Success, wouldn't you? Many people in your community would hear about it. Quite naturally they would also be talking about my company and I would have many new friends and customers there. Therefore, I am thoroughly convinced that if we awarded a Buick Sedan and a lot of money in your community that it would be the very best kind of advertising for us.

We have never given a big prize in your neighborhood. I would like to have a Buick Prize Winner around where you live. You can easily see for yourself what a Tremendous Boost in an advertising way it would be for us to have the Buick Sedan and \$1,250.00 Cash Extra go into your community.

That is why I will be glad to have your nearest Buick dealer deliver You a new latest Model Buick Sedan and send you \$1,250.00 cash extra for promptness just for following my rules and instructions enclosed and getting the most points as explained. It is so Simple and Easy to qualify your entry for the \$1,250.00 promptness prize. Simply mail the enclosed Buick Prize Bond with \$2.00 for the Big Six Bargain Assortment of Bleu de France beauty Preparations. Be Sure to send it on or before the date stamped and you will be *completely qualified* for the promptness prize. Remember, the \$1,250.00 Cash Extra is for promptness In Addition to the Buick Sedan. Mail the Buick Prize Bond right away . . . Be ahead of time!

Thousands and Thousands of dollars will be given in this great advertising campaign to make new friends.

You take no risk at all.

Remember, I am not asking you to send the full regular price of \$3.35—just send \$2.00, the Special Introductory price—but send it At Once so you will be qualified for the \$1,250.00 promptness prize.

Now you see how Simple and Easy it is to qualify for the \$2,250.00 cash. Only one thing to do now—just rush your Buick Prize Bond by return mail. Nothing hard to do—no risk to you whatever, but it is important (to you) that you act Quick! Just as soon as your Buick Prize Bond and \$2.00 remittance arrives you will be qualified to win *both the Buick Sedan and the \$1,250.00 cash extra*. I'll also send you 7,440 more points to add to the enclosed 17,500 points, making you a Grand Total of 24,940 points. Then

get only 60 more points according to the rules and you will receive the first \$2,250.00 Grand Prize.

So rush your Buick Prize Bond Quick! Now is the time to qualify for the big \$2,250.00 First Grand Prize. It takes so little time ,so don't put it off. Send It Today!

Certificate of Award for 17,500 Prize Points.

This is to Certify that you have been awarded 17,500 Prize Points toward the beautiful Buick Sedan, or \$1,000.00 Cash, or any one of the 59 big Grand Prizes that will be given in this contest closing September 29, 1934. Only one such certificate valid in your name. Keep this certificate for your record. It will be Good For \$1,250.00 Cash Extra to the holder hereof in addition to the first Grand Prize Buick Sedan provided the winner has sent his or her Buick Prize Bond on or before the date stamped on it and is declared the winner of First Grand Prize.

PARAMOUNT PRODUCTS, INC.,
1912 Grand Ave., Des Moines, Iowa.,
G. F. STAYTON, *President.*

BUICK PRIZE BOND—BE SURE TO MAIL PROMPTLY

Place X Before Prize You Would Choose

- Buick Sedan and \$1,250.00
- \$2,250.00 all in cash

PARAMOUNT PRODUCTS, INC., *Des Moines.*

Yes, please send without any risk to me the Big Six Bargain Assortment of beauty preparations on which You Even Pay the Postage. Enclosed is \$2.00 (the Special Introductory Price) in full payment according to your Money Back Guarantee.

I am to immediately receive 7,740 more prize points toward the Beautiful Buick Sedan or other grand prizes and by sending this order on or before the date stamped below I Am At Once Qualified For The \$1,250.00 Promptness Prize.

Send only \$2.00.

Only \$2.00 to you!

Here is what I am to receive:

1 Box Bleu de France Face Powder.....	\$1.00
1 Jar Bleu de France Cleansing Cream.....	\$1.00
1 Tube Bleu de France Tooth Paste.....	.25
1 Tube Bleu de France Shaving Cream.....	.35
1 Bar Bleu de France Toilet Soap.....	.25
1 Bottle Bleu de France Hand Lotion.....	.50
Regular Retail Price of This Assortment.....	\$3.35

YOU TAKE NO RISK AT ALL—MONEY BACK GUARANTEE

After receiving your assortment if you decide they are not the Biggest Bargain of High Quality beauty preparations you have ever seen, or if for any reason whatever you are not Completely Satisfied, keep out Any One Item You Choose as a Gift and return the balance in good condition within 10 days and your full \$2.00 will be promptly returned.

Mail This Buick Price Bond On or Before the Date Below, Win First Prize—You Will Get \$1,250.00 Cash Extra.

ONLY ONE THING TO DO NOW TO QUALIFY TO WIN \$2,250.00

All you have to do now to qualify for the big \$2,250.00 First Grand Prize is to send your \$2.00 order on the Buick Prize Bond for the Big Six Bargain assortment of Paramount Beauty Preparations. Isn't that simple and easy? There is nothing more to do now.

Don't Delay a Minute—mail your Buick Prize Bond today and qualify for the first grand prize.

25,000 POINTS WIN \$2,250.00

You are off to a good start because you already have 17,500 points to your credit. You will get 7,440 more points just as soon as you send the Buick Prize Bond with your \$2.00 order for the Big Six Bargain assortment. This is all you have to do to qualify for the \$2,250.00 cash.

HERE IS HOW YOU STAND

	<i>Points</i>
You Receive 17,500 Points for Answering.....	17,500
You Receive 7,440 Points When you Send The Buick Prize Bond.....	7,440
You Receive 60 More Points according to my plan and you will be Declared First Prize Winner.....	60
You Receive \$2,250.00 Cash With.....	25,000

The important thing Now is to get 7,440 more points quickly so I can mark your entry qualified for the \$1,250.00 promptness prize. Don't delay and then be sorry. Don't put off until tomorrow what you can do today. Delays are generally costly—in this case it may mean \$1,250.00 to you!"

[Telegram]

PARAMOUNT PRODUCTS, INC.,
UW 848 DL, Des Moines, Iowa [paid]

To the First Prize Winner:

Congratulations! You win Paramount Products First Grand Prize Buick Sedan and \$1,250.00 Cash Extra. Do You Want Buick and \$1,250.00 or \$2,250.00 All Cash?

(Signed) Judges, PARAMOUNT PRODUCTS, INC.

The first prize winner will receive a real telegram like the above. This wonderful message will be flashed over the wires to someone—make that "someone" you! G. F. S.

In minute type printed on the back of one of the various enclosures ("Certificate of Award for 17,500 Prize Points") are the following rules:

RULES AND INSTRUCTIONS

Anyone residing in the United States of America, except employees of Paramount Products, Inc., in Des Moines, Iowa, can enter this contest.

Credits of any kind secured in this or any other contest are not transferable from one contestant to another or from one contest to another.

In the event of a tie for any of the prizes offered, duplicate prizes will be paid to each tying contestant.

The following schedule of points shall apply during this contest: 17,500 points have already been awarded to you. 7,440 more points will be awarded

you if you mail the Buick Prize Bond with a \$2.00 remittance for the Big Six Bargain assortment of beauty preparations listed on the Buick Prize Bond. 60 more points will be awarded to the contestant earning the largest number of auto votes as set forth in the following paragraph. The contestant thus earning a total of 25,000 points will be awarded the Second Grand Prize, and so on until all the 60 Grand Prizes totaling \$4,305.00 have been awarded.

After the 24,940 points awarded in accordance with the paragraph above, the following schedule of auto votes will apply. Each 25¢ article bought earns you 500 auto votes; each 35¢ article bought earns you 750 auto votes; each 50¢ article bought earns you 1,000 auto votes; each 69¢ article bought earns you 1,250 auto votes; each 75¢ article bought earns you 1,500 auto votes; each \$1.00 article bought earns you 2,000 auto votes. We reserve the right to add additional articles at any time for which proportionate auto votes will be awarded when bought. In addition to the above auto votes each contestant who sends a second bona fide order will be given 200,000 additional auto votes, each contestant who sends a third bona fide order will be given 300,000 additional auto votes, and each contestant who sends a fourth bona fide order will be given 500,000 additional auto votes. Not more than 1,000,000 such additional auto votes will be given to any contestant.

Second Follow-up Mailing:

My DEAR FRIEND: What a thrill it would be to have a telegram like this delivered to Your door—

"Congratulations. You Win Paramount Products First Grand Prize Buick Sedan and \$1,250.00 Cash Extra. Do You Want Buick *and* \$1,250.00 or \$2,250.00 All Cash."

(Signed) Judges, PARAMOUNT PRODUCTS, INC.

Just think of the Excitement and Joy in having these Glorious Words Flashed Over the Wires to You at the close of this big friendship making campaign. What a Great Day it would be for You to receive such a Joyful Message announcing your success. Just follow my rules and instructions, win first prize, and *I'll guarantee you will be awarded \$2,250.00.*

Do you realize the Wonderful Opportunity you have this very minute? The money to pay the \$2,250.00 cash to the first prize winner is already in the bank waiting for a new owner. That money will be In Your Hands if you do just *three things:*

1. Send your Buick Prize bond promptly with \$2.00 for the Big Six Bargain Assortment and you get 7,440 more prize points.
2. Get only 60 more prize points according to my plan and you will be declared first prize winner.
3. Accept our certified check for \$2,250.00.

Surely you have never had such a Wonderful Opportunity to gain financial independence, to have money for a fresh start in life, to buy new clothes, furniture, travel or to have a big bank account. Think of the Happiness and Security \$2,250,000 would bring you. Then make up your mind to win. I will help you in every way I can to make it yours—but you must do your part.

A few days ago, you were awarded a Certificate of Award for 17,500 prize points. No One Received Any More Points for Answering Our Ad Than You. But, I wanted you to rush back the Buick Prize Bond so your entry would be Qualified for the \$1,250.00 promptness prize. Perhaps you were away from home when my letter got there—or were you too busy with other things

to realize what a Golden Opportunity I offered you? I wonder if you have mislaid the first Certificate of Award I sent you. Just to make sure you have one I am enclosing another and also a New Buick Prize Bond.

By sending the Buick Prize Bond to me promptly you can still qualify for the \$1,250.00 promptness prize. You see I have advanced the date two weeks To Give You Time to send your order for the Big Six Bargain Assortment of beauty preparations. Doing this promptly will bring you a regular \$3.35 assortment of cosmetics at the special introductory price of \$2.00. You will also get 7,440 more prize points and Will Be Qualified for the \$1,250.00 promptness prize.

Remember, I am not asking you to send the full regular price of \$3.35—just send \$2.00, the Special Introductory price—but send it At Once so you will be qualified for the \$1,250.00 promptness prize.

All that you need to do now is to send your Buick Prize Bond on or before the date stamped on it. Then you will receive 7,440 more prize points at once. You will then need only 60 more prize points to win the \$2,250.00 first prize and I will help you every way I can to make you the winner.

So rush your Buick Prize Bond by return mail and Before You Realize It you may be sitting behind the wheel of the beautiful Buick Sedan and also have \$1,250.00 cash in the bank—or, if you prefer, \$2,250.00 all in cash.

Third Follow-up Mailing:

A note on an "Office Memo from the President" in the simulated handwriting of the president, as follows:

DEAR FRIEND: I sent you a letter a few days ago but have received no reply. I wonder why? Perhaps you were ill or maybe something happened to keep you from taking advantage of the wonderful opportunity I offered you to win the \$2,250.00 prize I am giving away to advertise. I do not want to see you lose this opportunity so I am giving you another chance to send the enclosed Buick Prize Bond right away to qualify for the \$1,250.00 promptness prize. Be sure to read every word of the letter enclosed—see how you stand and then answer quick! I will be looking for your letter—please don't disappoint me.

Sincerely,

G. F. STATTON.

No. 106

PARAMOUNT PRODUCTS, INC.,
1912 Grand Avenue.

DES MOINES, IOWA [End of Contest]

Pay to the Order of First Prize Winner \$2,250.00 (Two Thousand Two Hundred Fifty and 00/100 Dollars).

Central National Bank and Trust Company, Des Moines, Iowa.

Paramount Products, Inc.,

35-17. Specimen Only, Not Negotiable

On the back of this "specimen" check appears the following note in the simulated handwriting of the president:

"Wouldn't you like to receive a real check like this for \$2,250.00? Of course you would and if you do your part and win first prize the Judges *will send you a real check* for \$2,250.00. The money is already in the Bank to pay the prizes. Do your part and win—then what a happy day it will be for you to receive a big \$2,250.00 check."

G. F. STATTON.

Fourth Follow-up Mailing:

Mr DEAR FRIEND: Perhaps you have not been convinced that I am Actually Giving Away that \$2,250.00 First Grand Prize.

Maybe you think that You are not fortunate enough to win a big prize. But wait, Hundreds of People all over the United States Have Won Big Prizes from companies that give away Huge Sums of Money for advertising purposes. You have probably heard them on the radio and read their offers in the newspapers and magazines. Lots of people "try just for the fun of it" and then much to their surprise, many receive a Big Prize Check for their reward. Surely, what others have done, you too can do. Make This Your Time to Win the Big \$2,250.00 First Grand Prize.

"You already have 17,500 points—get 7,440 More Points Quick!

This very minute you may be closer to Financial Independence than most people are after years and years of toiling and saving. As explained in my first letter, 25,000 points win the \$2,250.00 First Grand Prize. I am enclosing a duplicate Certificate of Award for 17,500 points, so you will be sure to have one. No One Has Received a Higher Award for Answering. You get 7,440 more points at once by simply sending the enclosed Buick Prize Bond order right away for the Big Six Bargain Assortment of Bleu de France beauty preparations. You will then need only 60 points to win the \$2,250.00 First Grand Prize, and I will help you all I can.

THE \$1,250.00 CASH EXTRA IS FOR PROMPTNESS

I am offering \$1,250.00 cash extra for promptness to Quickly Introduce Bleu de France Beauty Preparations. To Qualify for the \$1,250.00 in cash extra, simply rush the enclosed Buick Prize Bond with \$2.00. Be Sure to Send it on or Before the Date Stamped on it.

MY FINAL OFFER--HURRY!--AN EXTRA \$200 PRIZE

In addition to the beautiful Buick Sedan and \$1,250.00 cash extra for promptness, I have decided to add \$200.00 worth of Special Deluxe Equipment. This equipment will include a genuine RCA Victor radio, a Flinney-Walker 8-Day Mirror-Clock combination, A Trippe safety night driving light, a chrome finished DeLuxe hot water heater, two-speed Embassy Auto Fan, all wool Brunswick Motor Robe, genuine Taylor-Made trunk and white walled tires. Just imagine this beautiful Buick with all this marvelous equipment.

Be sure to read all about this wonderful equipment on the enclosed circular. A car truly fit for a king, but yet Before You realize It, if you win first prize, you will Be Sitting Behind the Wheel of this beautiful car and be able to say "I won it from Paramount Products Inc.—it is all mine and paid for."

If all cash is preferred, then the winner will receive a total of \$2,450.00 cash—\$1,000 cash instead of the Buick—\$200.00 cash instead of the Deluxe Equipment—and \$1,250.00 cash extra for promptness—a total of \$2,450.00. Now you see—*this is my big surprise.*

"I will help you in every way I can to make it yours * * *."

Sincerely yours,

G. F. STAYTON, President.

Save This Credit Voucher Good for \$200.00 Cash in Addition to the Buick Sedan.

This credit voucher will be redeemed for \$200.00 in cash to the winner of the Buick Sedan, provided said winner prefers \$200.00 cash instead of the Deluxe Equipment for the Buick.

The Federal Trade Commission, from an investigation made, has reason to believe that the merchandising plan as indicated by the foregoing statements is misleading and deceptive, to the injury of the public and of competitors, and has the capacity and tendency to and does cause erroneous impressions in the minds of prospective purchasers, the progressive steps of this contest being summarized as follows:

The contact advertisements state that \$2,250 is to be "given" away, ostensibly to some person who finds the requisite number of faces in the picture, with no money to send, just the mailing of the coupon qualifying one to win, this being merely a "unique way of advertising", and the money being now in the bank for the lucky person; nothing hard to do, just mark the faces, and "the prizes will be paid promptly." "Send your answer and see if you win the prize."

For "promptness" there is to be \$1,250 "extra", but analysis shows that this "extra" amount is included in the \$2,250 featured as the prize.

Upon sending in the coupon, whether or not the faces are correctly marked, the prospect receives assurance that "your answer fully qualifies you", and a "Certificate of Award" for 17,500 "points" "guarantees your standing."

Respondent emphasizes the fact that it would be a tremendous advertising boost just to award the prize in the prospect's particular community; and respondent's president personally promises to do everything he can to help this particular prospect win the prize, even sending him pretended personal letters and notes, presumably handwritten.

The prospect is urged to indicate which prize he has selected, whether an automobile and cash or all cash. The effect is further heightened by a simulated telegram of congratulation as winner, and by a fac-simile check for the amount of the prize.

It then begins to appear, however, that a few trifling details are to be met to complete the transaction.

First, a prize "bond" will be validated if returned to respondent with \$2.00 cash, for which payment the prospect receives some merchandise allegedly worth \$3.35, plus 7,440 more "points", leaving but 60 points additional to be gained before the prize is paid over.

In minute type printed on the back of one of the various enclosures, and not specifically referred to, appear the "rules", whereby the prospect, if sufficiently discerning, learns that these trivial 60 points (to complete the necessary 25,000 points) are awarded only to the contestant who sells the largest amount of respondent's merchandise.

From such rules, one finds that so-called "auto votes", not mentioned in the contact advertisements or the preliminary negotiations, are to

be given for each sale made, according to the amount of sale. In addition, enormous bonuses of "auto votes" are added for subsequent orders regardless of the volumes of such orders.

Thus, a minimum of \$2.00 must be spent by the contestant before any so-called "auto votes", constituting the real contest, may be procured. The additional auto votes given each contestant who sends in a second, a third, or a fourth bona fide order (totaling 1,000,000 votes per person) are not awarded upon any uniform amount of goods purchased, thereby allowing unfair discrepancies and impositions as between the contestants.

The prospect finds himself plunged into a very strenuous and difficult merchandising contest, competing with many thousands all over the country, extending over a period of months.

Encouraged by respondent's intense "personal" interest in him, he has invested considerable money to complete his "qualification" as prize winner before he realizes what he is up against. Whether he can recoup the money spent, depends upon his ability to re-sell the merchandise bought.

As for his winning the prize (to be so easily had by finding the faces in the picture), he learns, later, that such representations were just a "catch" to lure him into buying merchandise.

In order to "qualify" for the "extra" promptness money, the prospect is urged into remitting by a fixed date, although the form literature shows that his less diligent competitors are each given several consecutive chances to "qualify" subsequently.

It appears obvious to the Commission that this set-up is intended to deceive the reader into the belief that he is to get something for finding the faces in the contact advertisement, represented as an advertising, not a merchandising proposition; whereas the prizes are awarded not for solving the problem, as indicated, but only for selling an enormous amount of goods in competition with many other contestants for the prize.

Furthermore, these so-called "Bleu de France" products are not imported from France or any other foreign country.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(1) That any prize money, or other thing of value, is to be "given" away, under respondent's merchandising scheme, unless the terms and conditions under which such prize or other thing is awarded shall be clearly set forth in immediate connection with such offer;

(2) Inferentially or otherwise, that some answer to the contact advertisement will win the ultimate grand prize or any other thing of value;

(3) That the findings of the faces in the picture will either qualify or give one an opportunity to "win" the prize; or that it affords any more than an entry into a merchandising contest;

(4) That this merchandising scheme is just a unique way of advertising; or that thousands and thousands will be given to make new friends;

(5) Inferentially or otherwise, that no money is to be sent to qualify for this prize award; or that the mere mailing of the coupon with solution is sufficient; or that one cannot lose anything; or that he risks nothing;

(6) That by answering today the reader may qualify for his "share of this money that must be given away" for advertising purposes;

(7) That there is nothing hard to do to qualify to "win";

(8) That, inferentially or otherwise, all prizes will be paid "promptly" to those who hurry and send in their answers quick;

(9) That you may "see for yourself if you win first prize" as soon as you send in your answer;

(10) That "tomorrow may be too late" to qualify, in a contest covering several months time;

(11) That "someone wins; may be you", by finding the faces and mailing the coupon;

(12) That the "promptness" item is an "extra" amount, so long as it is included in the figure advertised as the prize to be awarded;

(13) That your answer to the contact advertisement "fully qualifies" you for anything beyond the opportunity to receive literature describing a contest open to everyone;

(14) That impliedly or otherwise, respondent's "certificate of award" proves or guarantees anything;

(15) That respondent is "thoroughly convinced" it would be "the very best kind of advertising for us" to award the prize "in your community", unless it is clearly stated in direct connection therewith that the same benefit would be derived in any community; or that "that is why I will be glad to have your nearest Buick dealer deliver you a new latest model Buick Sedan", just for following instructions;

(16) That the sending of \$2 "completely qualifies" one for the promptness prize;

(17) That "just as soon" as the prospect remits \$2.00 he "will be qualified to win both the Buick Sedan and the \$1,250 extra", or either of them, or that he will be qualified to win anything whatsoever;

(18) That the certificate of award is "good for \$1,250 Cash Extra to the holder" thereof, or for any other emolument or advantage not held alike by all persons entering the contest, whether "provided the winner * * * is declared the winner of the First Grand Prize," or otherwise;

(19) That at any preliminary state of the negotiations or of the contest there is "only one thing to do now" to qualify for the first grand prize or to win the prize;

(20) That "all you have to do to qualify for the \$2,250 cash" is to send in your \$2.00 order for merchandise;

(21) By implication or otherwise that the president or any other person connected with the advertiser has any personal interest in any prospect, dealer or agent that he does not have in all other prospects, agents or dealers;

(22) That respondent "guarantees" you will be awarded \$2,250 if you will "just follow my rules and instructions," to win first prize;

(23) That "the money will be in your hands if you do just three things; Send \$2.00, get only 60 more prize points, and accept our certified check for \$2,250.00;"

(24) Inferentially, by the use of such expressions as, "No one received any more points for answering our ad than you," or, "No one has received a higher award for answering," that no one else is ahead of you in the contest, without regard to how late you may have entered;

(25) That "huge sums of money" have been "given away" in hundreds of prizes "for advertising purposes";

(26) That in the preliminary stages the contestant has already made such progress that his *choice* of prize is requested, whether auto and part cash, or all cash;

(27) That the prize of \$1,250 for "promptness" is of any advantage so long as the same chance is given several times subsequently to prospects that fail to respond on time;

and any other statements and representations of like import.
Respondent further agrees to discontinue the issuance of:

A "certificate of award" with the crediting of but 17,500 "points" or at any other time prior to the actual awarding of the Grand Prize; or

A "Prize Bond" with the crediting of but 24,940 "points" or at any other time prior to the actual awarding of the Grand Prize; or

A "Credit Voucher" for \$200 or for any other sum, unless the contestant is personally credited on the books of respondent with the amount named.

Respondent further agrees to publish all future "rules" and "regulations" in clear, readable type, conspicuously placed and with special attention called thereto in the first mailing.

Respondent also agrees to cease and desist from the use of communications in any form that may in form, letter, or substance indicate a special interest in the recipient that does not obtain in case of all other contestants.

Respondent furthermore agrees to discontinue the use, in the manner heretofore employed as herein described, of alleged "Points", "Auto Votes," and facsimile "checks" for sums of money.

Respondent further agrees to cease and desist from awarding points or other units of credit toward the winning of a prize unless each point or unit of credit shall represent the same expenditure of money on the part of the contestant, or its equivalent in personal service.

Respondent further agrees to cease and desist from using any progressive plan to sell merchandise unless every step or phase of the plan is clearly set forth in the first mailing to the prospect, before any money or service is accepted, showing without ambiguity exactly what will be required of the prospect and what compensation or reward will be given for each act or payment required in contending for a prize, award, premium, gift, or reward.

Respondent also stipulates and agrees to discontinue the use of the term "Bleu de France" to describe any products not imported from France or manufactured from ingredients not imported from France. (Mar. 25, 1935.)

0845. Vendor-Advertiser—Asthma Relief Preparation.—E. C. Powers Co., 313 Fuller St., Dorchester Center, Boston, Mass., vendor-advertiser, is engaged in selling a preparation designated "Powers' Asthma Relief", and in advertising represented:

Powers' Asthma Relief for the Relief of Asthma and Hay Fever.

Recommend and Sell Powers Asthma Relief, the best for Asthma and Hay Fever.

For over half a century Powers' Asthma Relief has been a real boon to those afflicted with asthma and its milder form known as hay fever.

* * * can check the oncoming attacks of asthma, and it will give instant relief.

* * * guard yourself against sleepless nights coughing, sneezing, etc.,
* * * so effective that one inhalation is generally sufficient for the most severe cases—with Powers' Asthma Relief all suffering can be avoided.

* * * is prepared to offer relief to chronic and intermittent sufferers from these annoying and persistent complaints.

Many severe attacks may be relieved by using this remarkable remedy.

Many severe spasms may be prevented, or greatly modified, by using the Relief when symptoms indicate an approaching attack.

* * * This remarkable remedy has been helping sufferers of these common ailments for more than fifty years.

* * * Those afflicted with Asthma should guard themselves against sleepless nights by using Powers Asthma Relief. Powers' Asthma Relief will help

you to avoid suffering and unpleasantness. This remarkable remedy is the result of years of careful observation and experiment.

Do not suffer from Asthma.

Even the most violent attacks are relieved by using this remarkable remedy.

If you are a sufferer from either Asthma or Hay Fever, fill out the coupon below and mail to us.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise—

(a) That said preparation has been or is a real boon to those afflicted with Hay Fever;

(b) That said preparation will prevent the oncoming attacks of Asthma;

(c) That said preparation will give instant relief from attacks of Asthma;

(d) That one inhalation of said preparation is sufficient to relieve all or the most severe cases;

(e) That all suffering can be avoided by the use of said preparation;

(f) That said preparation will relieve chronic sufferers; unless limited to the acute attacks or paroxysms;

(g) That those afflicted with asthma can guard themselves against sleepless nights by using said preparation; unless limited to acute paroxysms of asthma, and when the preparation is used according to directions;

(h) That said preparation is an effective treatment for asthma, unless such representations are limited to relief from paroxysms of bronchial asthma;

(i) That said preparation is a competent treatment for, or that it will relieve, hay fever.

The respondent assumes all responsibility for any and all representations appearing in testimonials published by it and stipulates and agrees that it will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 28, 1935.)

0846. Vendor-Advertiser—Herb Compound.—J. Goodman, Inc., New York, N. Y., vendor-advertiser, is engaged in selling a herb compound designated as Alpflores System Purifying Tea and in advertising represented:

It has a favorable, activating, and purifying action of the system.

An elastic person with healthy digestion and good intestinal activity remains young and efficient.

Refreshes the internal organs, purifies the system and the juices.

Goodman's Alpflores Tea is the tea for the upbuilding of the organism, * * *

It gives the body a complete, purifying bath and is therefore the most beautifying remedy.

If the system and the organic juices are poisoned by insufficient evacuations, the results are headache, fatigue, cutaneous impurities, pains in the head and joints and you should then drink Goodman's Alpflora System Purifying Tea.

ALPFLORA thoroughly purifies the intestine and juices * * *. This herb mixture of mountain and field herbs, especially those of the Swiss Alps * * *.

ALPFLORA increases the strength * * * acts advantageously on the liver and refreshes the organic juices.

* * * He who understands nature's mood takes advantage of the late spring for rejuvenating and purifying process of the organism. To prevent a disease is easier than to cure it * * *.

Alpflora System Purifying Tea purifies the system through the intestine and urine * * * It excites the functions of the liver and kidneys * * *.

Good for Headaches, Backaches, Vertigo, and Cutaneous Eruptions which are caused by sluggish intestinal activity.

It is indispensable as an effective spring-Purifying Treatment.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the use of said product will "upbuild" organs of the body;

(b) That the use of said product will increase one's strength;

(c) That said product will "purify" or "cleanse" juices of the body;

(d) That said product is a "beautifying remedy";

(e) That said product will "rejuvenate" the person taking it;

(f) That said product will stimulate or "excite" the functions of the liver;

(g) That the uses of said product will be effective of any ailment or pathological condition, unless such representation is qualified to indicate that beneficial results may be expected only in those cases where the ailments or pathological conditions are caused by constipation or insufficient flow of urine;

(h) That the ingredients composing said product or any of them come from or were imported from the Swiss Alps;

(i) That said product is indispensable. (Apr. 2, 1935.)

0847. Vendor-Advertiser—Pain Treatment.—The Sendol Co., Sedalia, Mo., vendor-advertiser, is engaged in selling a treatment for aches and pains and in advertising represented:

In taking medicines for aches, pains, nervousness, neuritic and neuralgic pains, summer colds, etc., it is just as important to achieve this vital factor *balance*. Such things as preparations containing acetanilid may, according to the United States Dispensatory, weaken the heart. Also, the United States

Dispensatory says, Aspirin, taken alone, may weaken the heart. But now, thanks to the co-operation of doctors, dentists, and chemists, there is a balanced formula for relief of these ills, which gives *quick* relief, and does not weaken the heart. This product as so many know, is Sendol—a modern formula, a scientific formula, which is safe for anyone to use. Just a few tablets of that Wonderful preparation Sendol brings relief from many of those distressing aches and pains in just a few minutes.

* * * and there is a reason why it does not affect the heart. First, Sendol contains scientific ingredients for quick relief, and *second*: Sendol is a *balanced* formula, developed through the cooperation of doctors, dentists, and chemists for your safety and your protection.

Sendol is non-narcotic, does not form a habit, and just a few of these wonderful tablets give quick relief from aches, pains, and summer-colds.

I use Sendol because it does not weaken my heart like some other medicines.

Sendol does not contain acetanilid, that drug which the United States Dispensatory says is habit-forming and may weaken the heart. With Sendol there are no heart-weakening effects. Demand Sendol for safety and for quicker results. Take just a few tablets of Sendol for quick relief of headaches, neuralgia, muscular aches and pains, and summer colds.

Millions now use this wonderful preparation for quick, safe, relief of colds. Why take chances with Acetanilid preparations which may weaken the heart? Sendol does not weaken the heart.

Ask your druggist about Sendol. He is your friend and he will tell you that a few Sendol tablets will quickly dispel headaches, summer colds, nervousness, and neuritic or neuralgia pains, without harmful after effects.

And all of you know that Sendol does not harm the heart, no more than the food that you eat! Yet just a few of these wonderful tablets of Sendol give relief almost like magic.

There must be a *reason* why Sendol is so generally preferred by its millions of users.

Perhaps you wonder at repeated warnings about cold-relief preparations containing acetanilid. These warnings, like stop signals at street intersections, tell of possible dangers ahead. The United States Dispensatory says that Acetanilid is a habit-forming drug and may weaken the heart. We believe everyone should know these facts, because many cold relief preparations contain Acetanilid. When treating Colds, why run into heedless dangers, when the warning is so clear, and *safe* relief so near? Just call your druggist for Sendol—that is the way to safety.

Millions are now getting rid of colds a new, quicker way, by use of Sendol, the modern cold preparation which contains no habit-forming acetanilid and does not depress the heart.

SENDOL-GRAM

Sendol Company

Kansas City, Mo.

Here is a warning of a danger that may vitally affect you and every member of your family. A recent check-up of several drug stores showed that 90% of the tablet medicines, powders, seltzers, and "fizzes" for relief of aches, pains, neuritis and colds, contained acetanilid, a habit forming drug. United States Dispensatory says that the frequency with which many persons use preparations containing acetanilid is a serious danger to the community, as acetanilid may often weaken the heart so that death from slight over-exertion is liable to occur. Don't take chances! Sendol, the modern, scientific relief for aches, pains, neuritis, women's pains, and colds, is the "New Deal" in medicines. Sendol is *safe*.

Sendol contains absolutely no acetanilid. Sendol does *not* weaken the heart. Just a few Sendol tablets, and aches, pains, and colds go almost like magic.

STOP COLDS QUICKLY

Beware of a Cold That Hangs On Too Long!

The Public Health Service, Washington, D. C., has issued this warning: "Look out for colds at this time of year. They may develop into influenza, pneumonia, or other serious illness in late winter or early spring." Don't take chances. If you suspect influenza or pneumonia, see your doctor at once. If your cold is one that may be relieved by self-treatment, as most colds usually are, get right after it immediately with good old Sendol, that wonderful scientific preparation developed through the cooperation of doctors, chemists, and nurses for quicker relief without harmful after-effects. Just a few Sendol tablets and relief ordinarily comes as if by magic.

WARNING!

About 80% of preparations on the market for Colds contain Acetanilid, but Sendol, the scientific relief, contains absolutely no Acetanilid and does not weaken the heart.

Many medicines for relief of these conditions are said by the United States Dispensatory to be habit-forming, and weakening to the heart. In simple language, some of these preparations are such powerful and dangerous drugs, they may unbalance our bodily functions to the extent of injury to the health. But now, thanks to scientific improvements, we have a balanced formula for relief of aches, pains, summer colds, nervousness, and sleeplessness, which is non-narcotic, non-habit forming, and which offsets the heart weakening effects that heart weakening ingredients might have on the heart. This product is that well-known formula, Sendol.

Remember, Sendol is a balanced formula, which usually gives relief in a few minutes, and offsets the deleterious effects that aspirin taken alone may have on the heart.

Sendol—sells at drug stores—for twenty cents a package. Sendol—positively "will not" weaken the heart action.

That wonderful formula is—Sendol—and may be taken with perfect safety by persons of all ages. Sendol—"does not" produce aggravating and disturbing effects—and "will not" weaken the heart action.

Sendol—is properly balanced—may be taken with safety by grown-ups or children—without disturbing effects—and relieves quickly.

Sendol—is a modern preparation—that is safe—produces no unpleasant after-effects—and that relieves quickly.

It is not merely a few chemicals or medicines thrown together carelessly, but a scientifically compounded preparation for quicker relief With Safety.

Such things as preparations containing Acetanilid may, according to the United States Dispensatory, weaken the heart. Also, the United States Dispensatory says, Aspirin, taken alone, may weaken the heart.

Just a few tablets of this wonderful preparation and relief comes almost like magic.

I suffered with bad headaches and neuralgia until I nearly went crazy. Had been taking other preparations, but the only results I got was a weak heart. About 20 minutes after I had taken Sendol my headache was gone and by next morning my neuralgia pain was gone, and Sendol did not affect my heart.

Here we are also surrounded by myriads of germs, subjected to stresses and strains which drain our vital forces, often causing headaches, nervousness, sleeplessness, summer colds, and various aches and pains. Many people resort to the use of powerful drugs to offset these conditions, and often go to extremes in the use of these drugs, thereby throwing their systems "out of balance" and often weakening their hearts. Now, however, we have a balanced formula for relief of aches, pains, summer colds, nervousness, and sleeplessness, which gives the good effects of relief quickly, but contains a counter-balancing agent for offsetting heart weakening effects. This product, Sendol, is used by millions, and is widely endorsed by physicians, dentists, chemists, druggists, and nurses.

Sendol contains a counter-balancing agent for offsetting the deleterious effects that other medicines alone might have on the heart, and it may be used by every member of your family.

I have been in the Drug Store business for 8 years, and had the opportunity to try about all the medicines on the market for Hay Fever, yet I never had such relief from anything else that I obtained from the use of Sendol. Now, folks, you all know that many Hay Fever sufferers spend thousands of dollars every summer on mountain trips, or pay as high as \$5 for hay fever treatments. But as you know, Sendol costs only 20 cents a package at any Drug Store, and your money will be refunded if you are not satisfied with results.

My mother has suffered from Hay Fever for 18 years and Sendol is the first thing that has ever done her any good.

When you have Hay Fever, think of Sendol. Why go to New Mexico or Colorado for hay fever when you may get relief for 20 cents and stay at home?

In other words, functional derangement of the nerve centers may cause irritation to the sensitive nose tissues, producing Hay Fever. In trying to find relief from Hay Fever, the sufferer often uses medicines which are merely sniffed up the nose, and neglect the important part of taking something for their nerves. Many people are now using Sendol for Hay Fever, with results which they report as remarkable.

Sendol works through the nervous system, and seems to make many sufferers less susceptible to the pollen, odors, etc., that cause Hay Fever attacks. Most Hay Fever treatments cost up to as high as \$5, but you can try Sendol for only 20¢ by getting a box at any drug store.

Stops Pain Safely, Tones up the Heart, Settles the Stomach, Aids acid Elimination, Headache, Periodic Pains, Rheumatism, Colds, Neuralgia, Reduces Acidosis—A Cause of Pains, Aches, Inflammation, Soreness, and Many Diseases. Sendol Helps the System Expel Acid Accumulations (acidosis) and Other Impurities. Sendol.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That acetanilid, in the quantities ordinarily used in medicines for the relief of pain and colds—

1. May weaken the heart to an extent greater than aspirin would do so, or

2. Is habit-forming, or

3. Is dangerous in ordinary conditions of use, or
4. Is contained in 90 per cent of all medicines for relief of aches, pains, and colds, or
5. Is contained in 80 per cent of all cold remedies, or
6. Is likely to cause death from slight over-exertion, or
7. Is a danger that may vitally affect every member of the family, or
8. Should not be warned against any more than aspirin should be warned against;

(b) That endol (containing both aspirin and digitalis)—

1. Is a scientific formula, or
2. Is safe for anyone to use, or
3. Does not weaken the heart, or
4. Does not affect the heart, or
5. Has no heart weakening effects, or
6. Does not harm the heart, or
7. Does not depress the heart;

(c) That Sendol is a competent treatment for or affords quick relief from aches and pains generally; or is effective beyond a relief of the less severe types of pain;

(d) That millions of persons use Sendol, unless authentic records prove such to be the fact;

(e) That millions, or any other number, are getting rid of colds by use of Sendol; or that Sendol does "rid" anyone of a cold;

(f) That the action of Sendol is almost like magic;

(g) That Sendol may be taken with perfect safety by persons of all ages, or with safety by either adults or children; or without disturbing, unpleasant or harmful after-effects;

(h) That inferentially or otherwise, the taking of Sendol will be efficacious in the combating of germs;

(i) That Sendol is widely endorsed by physicians, dentists, chemists, druggists, and nurses, unless authentic records prove such to be the fact;

(j) That the "counter-balancing agent" (digitalis) offsets the "deleterious effects that aspirin taken alone might have on the heart";

(k) That Sendol is a competent treatment or an effective remedy for hay fever; or that one may stay at home and with a 20 cent package of Sendol get the same relief from hay fever that he might by a summer trip to the mountains costing several hundred dollars, or to New Mexico or to Colorado, or else by a physician's \$5 treatment;

(l) That Sendol makes sufferers less susceptible to the pollen, odors, etc., that cause hay fever attacks;

(m) That Sendol either—

1. Tones up the heart, or
2. Settles the stomach, or
3. Aids acid elimination, or
4. Reduces acidosis, or
5. Helps the system expel acidosis.

Respondent further stipulates and agrees to discontinue the use of misleading punctuation whereby a quotation from the Public Health Service appears to include additional statements made by respondent, or from publishing any quoted statement unless such statement is clearly set apart from all other text or printed matter.

The respondent assumes all responsibility for any and all representations appearing in testimonials published by it and stipulates and agrees that it will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 5, 1935.)

0848. Vendor-Advertiser — Dentifrice Preparation.—Hyral Distributing Co., Fort Worth, Tex., vendor-advertiser, is engaged in selling a dentifrice preparation designated as "Hyral", and in advertising represented:

Hyral * * * positively removes film and whitens the teeth. Its continued use absolutely prevents all mouth disorders including pyorrhea and trench mouth.

* * * or if you are troubled with such disorders as Bleeding Gums, Pyorrhea or Trench Mouth, Hyral used according to directions will eradicate them 100% to the extent it reaches the affected parts.

* * * Hyral does all that is claimed for it. Believe it or not, if Hyral were universally used, mouth disorders of mankind would practically disappear.

Bleeding gums (the beginning of Pyorrhea) usually are relieved in three to ten days, by daily twice-a-day use of Hyral; used more often quicker results follow. Trench mouth usually in about the same time. Severe cases of Pyorrhea take longer because the germs have penetrated deeper * * *. Once eradicated these ailments cannot again occur during continued use of this amazing New Dentifrice.

Hyral held in the mouth liberates oxygen which reaches into the crevices between and around your teeth cleansing them thoroughly and banishing harmful germs. * * *

Insure your teeth and mouth against all mouth disorders such as pyorrhea and trench mouth * * *.

* * * Its continued use absolutely corrects and prevents all mouth disorders, including pyorrhea and trench mouth. * * *

* * * Many men and women are using Hyral regularly, and all of them are enthusiastic over this wonderful New product, * * *

* * * Pleasing and satisfactory results have followed its use without known exception, * * *

Hyral removes tartar and keeps it away * * *.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees, in soliciting the sale of, and

selling its said product in interstate commerce, to cease and desist from representing directly or otherwise:

(a) That the use of Hyral will prevent pyorrhea, trench mouth, or mouth disorders;

(b) That Hyral is of itself a competent treatment for pyorrhea, trench mouth, or mouth disorders;

(c) That Hyral is 100% efficient as a dentifrice or as a treatment for diseased conditions of the mouth;

(d) That most mouth disorders would practically disappear if Hyral were universally used;

(e) That beneficial results from the use of Hyral may be expected within any definite period of time;

(f) That Hyral will "banish" germs;

(g) That the use of Hyral will insure the mouth or teeth against pyorrhea, trench mouth, or all mouth disorders;

(h) That all users of Hyral are enthusiastic over it;

(i) That pleasing or satisfactory results have without exception followed the use of Hyral;

(j) That Hyral will remove tartar from the teeth.

The respondents assume all responsibility for any and all representations appearing in testimonials published by them and stipulate and agree that they will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 12, 1935.)

0849. Vendor-Advertiser—Medicinal Preparation.—M. L. Clein & Co., Atlanta, Ga., vendor-advertiser, is engaged in selling a medicinal preparation designated as "Pap-O-Dine" and "Kurto" and in advertising represented:

If Pap-O-Dine fails to relieve your indigestion, stomach ulcers, nausea, heartburn, gas pains, * * * this store will refund your money.

* * * One dose of Pap-O-Dine and there is that relief for which you have been looking * * *.

* * * I've heard you talking about this product called Pap-O-Dine for stomach distress * * * I've tried about all remedies, and they all did absolutely no good * * * We got a package of Pap-O-Dine * * * took the prescribed amount and in just a few minutes * * * was free from stomach pain. * * *

* * * Pap-O-Dine * * * is carefully compounded, using only those agents recognized and recommended by the medical profession * * * All references to their products, * * * are actual facts backed by scientific data and testimonials from thousands of satisfied users * * *.

* * * There are thousands whom Pap-O-Dine has helped—bringing relief from * * * Stomach Ulcers, Indigestion, and Stomach Disorders caused by excess acid * * *.

Pap-O-Dine—The Ideal Prescription for Stomach Distress. * * *

Suffer No Longer—Don't Give Up Hope—No matter how many medicines you have tried or how long you have suffered. Start Taking Pap-O-Dine Today. * * *

WARNING

Taken over a period of time in ordinary doses. Bicarbonate of Soda produces acid, and does the stomach more harm than good. * * *

Find Out How Your Stomach Can be Brought Back to Normal—ask for Pap-O-Dine * * *.

IS YOUR STOMACH WORTH 75 CENTS?

Pap-O-Dine, the ideal prescription for stomach distress, is guaranteed to relieve stomach, ulcers, indigestion, gas pains, heartburn, or other forms of Stomach Discomfort, due to excess acid. * * *

Stops Indigestion in 3 Minutes—Suffer No Longer With a Bad Stomach. Don't Give Up Hope—you can get well. No matter how many medicines you have tried or how long you have suffered. Start taking Pap-O-Dine today. * * *

Pap-O-Dine is an ideal prescription for Stomach Distress, Acid Indigestion, Sour or Upset Stomach, Gas, Bloating, Etc. Stomach Ulcers, Nausea of Pregnancy * * *. * * * It stops pain instantly * * *. Heals Ulcer in 3 weeks.

I've found sure relief for that bad case of "Athlete's Foot" that spoiled our last golf match. Simply paint your cracked and itching toes with "Kurto." Within five minutes you'll forget you ever suffered.

Kurto is the real five minute relief for Athlete's Foot, eczema, impetigo, and many other skin disorders.

* * * Kurto is relieving Athlete's Foot, eczema, impetigo, and other skin disorders every day * * *.

* * * Kurto * * * is good for almost any kind of skin disorders * * *.

Find out how to relieve Athlete's Foot, Eczema, Impetigo, Toe Itch, and similar skin irritations in five minutes. Ask Her About "Kurto."

* * * If you are troubled with Athlete's Foot, Toe Itch, or any of numerous skin infections, be sure to see the skin expert demonstrate Kurto at * * *.

* * * I * * * bought a bottle of "Kurto." I painted some of it on these bad feet of mine, and now all signs of "Athlete's Foot" is gone. * * *

* * * My sandlot team sends a vote of thanks. Most of them were suffering with Itching Feet and cracks between their toes. After you told me about "Kurto" the five minute sure relief for "Athlete's Foot" I got each of them a bottle. * * *

* * * I've found a sure relief for that bad case of "Athlete's Foot" * * *.

Athlete's Foot, Eczema, and Toe Itch Relieved in Five Minutes—Simply paint affected parts with "Kurto" (pronounced Cure Toe), * * *.

And here is good news for those who suffer from Athlete's Foot, Eczema, Impetigo, and similar skin irritations. After weeks of exhaustive research the makers of Pap-O-Dine have taken over the sales distribution and manufacture of Kurto—spelled Kurto. Kurto is the only positive five minute relief for Athlete's Foot—* * * Simply paint Kurto on any part of your body affected by Athlete's Foot * * * Eczema * * * Impetigo, or similar skin irritations. Within five minutes all pain—itching—and discomfort has disappeared.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations

and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That any substantial benefit will be derived from one dose of Pap-O-Dine; except in cases of simple gastric hyperacidity;

(b) That Pap-O-Dine is a competent treatment for indigestion, stomach ulcers, nausea, heartburn, gas pains, stomach pains, stomach distress, stomach disorders, bloating, ulcers, or nausea of pregnancy;

(c) That Pap-O-Dine proved effective after "about all other remedies" had failed;

(d) That beneficial results may be expected from the use of Pap-O-Dine regardless of the number of other medicines tried or the length of time a person has suffered;

(e) That all claims made for Pap-O-Dine are backed by scientific data;

(f) That bicarbonate of soda is harmful;

(g) That the stomach can be brought back to normal by the use of Pap-O-Dine;

(h) That curative action may be expected from the use of Pap-O-Dine by employing such statements as "Free", "Stop", and "Is your Stomach Worth 75 Cents?";

(i) That any benefits that may be derived from the use of Pap-O-Dine will be produced instantly or within any definite period of time;

(j) That the ingredients from which Pap-O-Dine is compounded are recommended by the medical profession for the particular ailments for which Pap-O-Dine is recommended;

(k) That any benefits claimed for Pap-O-Dine are guaranteed;

(l) That Kurto is a competent treatment for impetigo, cracked toes, skin disorders, or skin infections;

(m) That Kurto is a competent treatment for athlete's foot, or eczema unless such statements are limited to the relief of itching caused by those ailments;

(n) That Kurto will produce beneficial results within any definite period of time;

(o) That Kurto is a sure or positive relief for athlete's foot, or any other ailment;

(p) That Kurto is sold and distributed by the makers of Pap-O-Dine.

The respondent assumes all responsibility for any and all representations appearing in testimonials published by it and stipulates and agrees that it will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 25, 1935.)

0850. Vendor-Advertiser—Herb Tea.—Audrey Products Co., Cincinnati, Ohio, vendor-advertiser, is engaged in selling a commodity designated Audrey Herb Tea and in advertising represented:

The Audrey method of weight reduction is based on a continued normal elimination. It removes toxin from the blood stream, corrects acidity, and sweeps away toxic wastes.

With the restoration of proper elimination the problem of reducing is solved. Audrey Herb Tea cannot fail * * *.

* * * Audrey Herb Tea corrects the process of elimination and opens the channels for the passage of waste matter, so that more unnatural fat can not accumulate, and that which you have is removed in the natural way until you are back to your normal weight.

* * * Its flushing action is also soothing to the eliminative organs. It tends to build up the tissues and intestinal muscles which have become weakened under the abnormal strain of the obese condition.

Audrey Herb Tea flushes clean without abrasive effect. * * * It reaches every nook and crevice of the intestinal tract. It renovates thoroughly, establishing a normal condition that is more favorable than the effects of dieting or exercise.

You can lose weight in a safe, easy, and natural way by drinking Audrey Herb Tea. It is not a drug. It is * * * positive in its results.

You, too, can lose that excess weight that is robbing you of your youthful vigor. Reduce with Audrey Tea. You can lose two to six pounds a week * * *.

After using Herb Tea for three months * * * I had been troubled with swollen ankles. Now this difficulty has also left me.

When I started taking Audrey Herb Tea * * * being short of breath and having high blood pressure * * * Mr. Randolph suffered from stomach trouble and it has made him feel a lot better. We have both tried many things that have not done the good for us the Audrey Tea has done.

Audrey Herb Tea has done wonders for me. I have been suffering with arthritis for over three years, but am now able to walk again almost as well as ever.

The Audrey way to Healthful Reducing. Reduce the Audrey Tea Way * * * Audrey Herb Tea will positively reduce ones weight. Drink one cup of Audrey Herb Tea three times a day and keep that school girl complexion. Don't let yourself become old and deformed before your time because of excess fat.

* * * The cause of fat is improper elimination. Remove it in a safe, harmless and natural way, by drinking Audrey Tea. It, is not a drug, but a healthful beverage * * * positive in results.

How can fat be gotten rid of? Nature has provided a way through Audrey Herb Tea to remove the cause.

* * * *curative—reducing.* With the restoration of proper elimination, the problem of reducing is solved. Audrey Reducing Tea cannot fail.

* * * No health endangering drugs! Reduce in a wholesome, natural way with this herb remedy, which you can take as you would any beverage. * * * Bracing and tonic in its effects.

* * * its flushing action is also soothing to the eliminative organs.

* * * Audrey Herb Tea flushes clean without abrasive affect * * * It reaches every nook and crevice of the intestinal tract * * * It renovates thoroughly. * * *.

Just a blend of functional corrective *Herbs* and *Orange Pekoe Tea* that corrects and restores natural body balance.

* * * Audrey Herb Tea improves your complexion. * * * contains no harmful drugs or chemicals * * *.

Prominent chemists attest the harmless and non-habit forming qualities of Audrey Herb Tea * * * will easily, safely, and quickly stop that fat forming habit in your body. * * * contains those functional corrective herbs that eliminate the stored up fatty tissues and do it nature's way.

* * * *Audrey Herb Tea* is a great aid to those suffering from rheumatism, stomach, or kidney disorders * * * \$1.00 package—a three weeks' supply.

* * * I was in a run-down condition, suffering from Liver Trouble and Rheumatic pains. Audrey Tea has cleared up these conditions * * *.

* * * reducing is so easy and pleasant with Audrey Herb Tea.

* * * all you do is drink one cup of this marvelous reducing tea after every meal and watch this extra poundage melt away. * * *

* * * the pleasant, healthful, harmless way to reduce fat. And the best part of it all is—no starvation or diet is necessary. You need not deny yourself those good things you crave. *Audrey Herb Tea* will reduce and at the same time build up your general health. * * *

Three cups a day will reduce your weight from two to four pounds a week.

* * * Thousands have claimed Audrey Herb Tea the perfect way—the simple, safe way to reduce. * * *

* * * Until science discovered Audrey Herb Tea—the marvelously simple way to reduce—the way to slenderfigure was marked with danger. Harsh drugs, starving diets, inconvenience, and illness was often the story. Now, thanks to the simple blending of herbs with the finest of Orange Pekoe Tea, you can reduce to a normal healthy weight and eat three meals a day while doing it * * *.

Audrey Herb Tea is an absolutely harmless, pleasant to taste tonic that tones up the entire system while ridding you of dangerous disease breeding overweight.

Thousands say Audrey Herb Tea is a "miracle in a tea cup." * * * It does not destroy overflesh, but prevents it from accumulation while present fat melts away like magic.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise—

(a) That said preparation alone has any value in the treatment for the reduction of overweight, or as a remedy for relief from obesity;

(b) That said preparation—

1. Removes toxin from the blood stream; or
2. Corrects acidity;
3. Flushes clean without abrasive effects;
4. Reaches every nook and corner of the intestinal tract;
5. Is not a drug;
6. Is a healthful beverage;
7. Contains no health endangering drugs;

8. Is bracing or tonic in its effect;
9. Renovates thoroughly;
10. Contains nothing harmful;
11. Contains no harmful drugs; or chemicals;
12. Is an absolutely harmless, pleasant to take, tonic;
13. Tones up the system;
14. Melts fat away like magic;
15. Is positive in its results;
16. Removes fat in the natural way;
17. Reduces weight in a safe way;
18. Removes the cause.

(c) That by the use of said product alone—

1. One can slenderize easily and safely;
2. Can reduce in a wholesome natural way;
3. Can restore natural body balance;
4. Can stop that fat forming habit;
5. Build up your general health;
6. Keep that school girl complexion.

(d) That the cause of fat is improper elimination alone;

(e) That weight reduction is based solely on a continued normal elimination;

(f) That with the restoration of proper elimination the problem of reducing is solved;

(g) That any stipulated quantity of said preparation taken at specified intervals will cause a reduction in weight in any stated numbers of pounds, or to any definite extent;

(h) That users of said preparation need not deny themselves the "good things they crave", or that "no starvation, or diet, is necessary" while using the same;

(i) That the benefits derived from the use of said preparation are more favorable than the effects of dieting or exercise;

(j) That said product is a remedy for high blood pressure, stomach or kidney troubles, liver disorders, arthritis, swollen ankles, or a run-down condition.

The respondent assumes all responsibility for any and all representations appearing in testimonials published by him and stipulates and agrees that he will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 25, 1935.)

0851. Vendor-Advertiser — Feminine Hygiene Preparation.—Zero-Jel Laboratories, New York, N. Y., vendor-advertiser, is engaged in selling a medicinal preparation designated as "Zero-Jel" and in advertising represented:

* * * For Positive Feminine Hygiene * * *. Know the certainty of positive antiseptic cleanliness by the use of Zero-Jel, the totally different method. Zero-Jel Laboratories, Inc., 122 East 42nd Street, New York City.

This Different Method *changes every old-fashioned idea of marriage hygiene* * * * forms a delicate film which germs cannot penetrate. * * * It gives double assurance of the healthful antiseptic cleanliness women seek in marriage hygiene. * * * Mrs. Kathryn Taylor, Zero-Jel Laboratories, Inc., 122 East 42nd Street, New York City.

A secret of wise old Europe revealed to infant America * * * gives women positive protection from germs.

RELIEF FROM LEUCORRHEA

* * * Zero-Jel is highly effective and affords quick relief for almost every form of leucorrhoea and vaginitis.

From Germany, where the importance of feminine hygiene is admitted * * * comes a completely different antiseptic * * *.

This Knowledge Means Glorious Carefree Certainty for Women Everywhere.

* * * This delicate, powerfully antiseptic jel will actually tone and revitalize membranes which have been harmed by the use of poisonous chemicals.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) Directly or by reasonable implication that said medicinal preparation is a contraceptive;

(b) That said medicinal preparation will—

1. Provide protection from germs, unless qualified to indicate that it only affords partial protection.

2. Afford women care-free certainty.

3. Revitalize membranes that have been harmed by poisonous antiseptics.

4. Form a film that germs cannot penetrate.

It being understood that paragraph 1 hereof shall not prevent the respondent from stating any antiseptic or germicidal properties that may be substantiated by reliable scientific tests, provided such statements shall not be made in such a manner as to imply that said product is a contraceptive.

(c) That said medicinal preparation is certain or positive;

(d) That said medicinal preparation affords quick relief for almost every form of vaginitis;

(e) That said medicinal preparation is a competent treatment for leucorrhoea unless all such representations are qualified by statements to the effect that leucorrhoea is frequently a symptom of more serious disorders, and that medical consultation is at all times recommended.

Respondent further stipulates and agrees in soliciting the sale of and selling said medicinal preparation in interstate commerce to cease and desist from—

1. Using the name of fictitious persons or representing in any manner that any of its advertisements are published by a woman.

2. Using the word "Laboratories" or any similar term as a part of its trade name. (Apr. 26, 1935.)

0852. Vendor-Advertiser—Laundry Preparation.—Gem Products Sales Co., Camden, N. J., vendor-advertiser, is engaged in selling a cleansing preparation for laundry use designated as Laundry Gems and in advertising represented:

No rubbing, no hard scrubbing.

Eliminate tiresome rubbing and scrubbing.

Laundry Gems literally soak your clothes clean * * * just soak, rinse, and you're through.

If your family gets their clothing very dirty * * * Laundry Gems actually soak your clothes clean. Dirt, grime, stains, even grease spots, disappear as if by magic.

They make clothes last longer.

Adds strength and wear to clothes.

Won't shrink nor injure woolens or flannels of any kind.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That by using said preparation clothes can be laundered without rubbing or scrubbing;

(b) That by using said preparation clothes can be soaked clean;

(c) That when said product is used in laundering clothes, dirt, grime, stains, or grease spots disappear as if by magic;

(d) That said preparation will add strength or wear to clothes;

(e) That said preparation will prevent woolens or flannels from shrinking. (Apr. 29, 1935.)

0853. Vendor-Advertiser—Printed Stationery.—Federal Printing Co., Inc., Chicago, Ill., vendor-advertiser, is engaged in selling Printed Stationery and in advertising represented:

If You Fail to Make at Least \$1.00 in an Hour selling our Business Stationery at \$2.80 per 1,000 and our 500 combinations, I'll pay you for your time. * * *

I am in immediate need of a high grade conscientious Sales Representative who is not afraid to work 10 to 12 hours a day full time or as many hours as possible spare time, to represent my company in your locality. To such a man, I offer the possibility to earn at least \$50.00 every week * * *.

The highest commissions are paid to you dally. Your earnings should never average less than \$10.00 a day. You are not limited to this amount. Larger profits can be yours * * *.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and

specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondent will not make unmodified representations of claims of earnings of salespersons in excess of the average earnings of the active salespersons of respondent achieved under normal conditions in the due course of respondent's business;

(b) That respondent will not represent or hold out as a chance or opportunity any amount in excess of what has actually been accomplished by one or more of respondent's salespersons under normal conditions in the due course of respondent's business;

(c) That respondent will not represent that it will pay the prospective agent, salesperson, or dealer for his time in the event that he does not earn a specified amount in one hour, unless and until the amount so specified is actually paid to those who do not earn the amount stated. (Apr. 30, 1935.)

0854. Vendor-Advertiser — Asbestos Specialties.—The Boontex Co., Boonville, N. Y., vendor-advertiser, is engaged in selling Asbestos Specialties designated holder mats and in advertising represented:

We Want Men who Will Sell to Stores.

\$4,770 a Year.

From 2 Orders a Day.

Exceptional advertising specialty proposition.

Chance for permanent connection with leading manufacturer. Main or side-line acceptable.

If making less than \$92 weekly, write giving selling experience.

The Boontex Company, Dept. 210, Boonville, N. Y.

Your profits will be so large selling Boontex Specialties that you will be surprised every day you offer them. Your commission is 25%. You receive full credit on repeat and mail orders so long as you actively represent us. An order for \$40 worth pays you \$10.00 commission. But this is only a starter. We can name any number of instances where customers order and re-order, as many as 15 to 20 times. Commissions run as high as \$600.00 per customer. Think what this means after a few months of selling. You can not afford to pass up such opportunity for increasing income.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) Not to make unmodified representations or claims of earnings in excess of the average earnings of respondents' active full-time salespersons or dealers achieved under normal conditions in the due course of business.

(b) Not to represent or hold out as a chance or an opportunity any amount in excess of what has actually been accomplished by one

or more of respondents' salespersons or dealers under normal conditions in the due course of business;

(c) Not to represent or hold out as maximum earnings by the use of such expressions as "up to", "as high as", or any equivalent expression, any amount in excess of what has actually been accomplished by one or more of respondents' salespersons or dealers under normal conditions in the due course of business; and

(d) That in future advertising where a modifying word or phrase is used in direct connection with a specific claim or representation of earnings, such word or phrase shall be printed in type equally conspicuous with, as to form, and at least one-fourth the size of the type used in printing such statement or representation of earnings. (Apr. 30, 1935.)

0855. Vendor-Advertiser—Skin Treatment.—Brossier Twins Laboratories, Orlando, Fla., vendor-advertiser, is engaged in selling a treatment for infections of the skin designated "A.F.-3", and in advertising represented:

Worried mothers have found a great solace in relieving their children from that dreaded infection of impetigo, which causes painful little sores to break out all over the body. Remove the scabs with warm water. Saturate the affected parts with A.F.-3. When liquid is dried, apply powder contained in small package. Accept no substitute for A.F.-3.

* * * Athlete's Foot: Sprinkle a few drops of A.F.-3 in your shoes at night and treat the affected parts of your feet copiously with A.F.-3, and the itching sensation will immediately disappear. A.F.-3 is recommended for all parasitic and fungus infections attacking the skin.

* * * Itching feet or scalp, irritations caused by fungus and parasitic infections yield readily to A.F.-3. * * * Keep a bottle of A.F.-3 handy and win some part of that \$50.00 in cash prizes given away by Brossier Twins Laboratories.

A.F.-3 destroys all parasitic and fungus infections. It will kill the germs which cause Impetigo (Summer sores), Athlete's Foot, ground itch, ring worm, creeping eruption, red bugs, muck itch, and all weed poisoning.

Know the merits of A.F.-3. Here's an opportunity to cash in on that knowledge. Brossier Twins Laboratories will award \$50.00 in cash prizes for the best letters * * * written on or pasted to a carton of A.F.-3, telling what this wonderful remedy has done for you. Ten prizes in all ranging from \$1.00 up to \$25.00.

A.F.-3 is a composition of oils blended together which scientifically kills parasitic dandruff, adds lustre to the hair, and health to the scalp * * * highly recommended for giving quick relief to practically all cases of parasitic or fungus infections * * *

* * * to relieve * * * weed or marsh poisoning easily contracted in damp places.

* * * This well known preparation is excellent for such skin infections as eczema, * * *

* * * Florida sores, ring worm, or that pest of the bathing beaches, creeping eruption * * *

If you would like a cure complete For itching hands or stinging feet, To take with you on camping trips For red bug bites and skeeter nips, Then all the doctors have agreed That A.F.-3 is what you need.

* * * its highly antiseptic qualities bring quick relief without blistering or removing the skin * * *.

* * * Remember every bottle of A.F.-3 carries the Brossier Twin guarantee.

* * * Discomfort from prickly heat * * * can be relieved through the use of A.F.-3 * * *.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) Generally that said preparation is a competent treatment for, or that it will relieve or heal—

1. Impetigo; or
2. Athlete's foot; or
3. Marsh poisoning; or
4. Eczema; or
5. Florida sores; or
6. Ring-worm; or
7. Creeping eruption; or
8. Prickly heat; or
9. Itching feet; or
10. Scalp irritation; or
11. Muck itch; or
12. Weed poisoning; or
13. Ground itch;

(b) That the application of said preparation to the affected parts as directed, or at all, will—

1. Kill parasitic dandruff; or
2. Add lustre to the hair; or
3. Add health to the scalp; or
4. Kill germs; or
5. Destroy parasitic or fungus infections.

(c) That said preparation is highly antiseptic;

(d) That said preparation is recommended for giving quick relief to practically all cases of parasitic or fungus infections attacking the skin;

(e) Inferentially, or otherwise, that said preparation is recommended by physicians;

(f) That by sprinkling a few drops in your shoes at night or to treat the affected parts of your feet with said product, the itching sensation will immediately disappear;

(g) That prizes will be awarded to the users of said preparation, unless the terms of such awards are clearly indicated in the announcement;

(h) That said preparation is a cure for any ailment.

The respondent assumes all responsibility for any and all representations appearing in testimonials published by it and stipulates and agrees that it will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 1, 1935.)

0856. Vendor-Advertiser—Chiroprody Course.—Evans Foot Institute, Montgomery, Ala., vendor-advertiser, is engaged in selling a printed correspondence course in chiroprody and in advertising represented:

Learn Chiroprody. Complete course by correspondence. Evans Foot Inst., Montgomery, Ala.

He cures rheumatism, neuritis, sciatica, arthritis, and the like.

He only treats the feet with his hands, three patients a minute. See our lesson No. 16.

You, too, can learn to adjust the feet scientifically, relieving suffering humanity, and owning your own business. There is nothing complicated about the procedure or it could not be accomplished in twenty seconds.

When you have completed the course, with a little experience you will be able to do any kind of orthopedic work.

Be it known that _____ having satisfactorily completed the prescribed course of instruction as taught by this Institute of Chiroprody, and being proficient in the technique thereof, and having passed the necessary requirements, is awarded this diploma.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That said course of study offered by respondent is a complete course in chiroprody;

(b) That upon completion of this course the student is in position to practice chiroprody;

(c) That through this course one can learn to adjust the feet scientifically;

(d) That there is nothing complicated about the procedure in chiroprody;

(e) That anyone upon taking this course may treat three patients a minute or may accomplish the relief of feet within twenty seconds or in any other stated period of time;

(f) That upon completion of this course anyone will be able to do any kind of orthopedic work either with "little experience" or at all;

(g) That a student upon completion of this correspondence course is proficient in the technique of chiropody.

Respondent furthermore stipulates and agrees to cease and desist from the use of the word "institute" in his trade name and from designating himself as "president" until such time as his business may be properly designated an institute and is legally organized with provisions for such an official as a president. (May 3, 1935.)

0857. Vendor-Advertiser—Leg Ointment.—Kraupner & Kraupner, Inc., Brooklyn, N. Y., vendor-advertiser, is engaged in selling a treatment for leg sores designated as Kay's Ointment and in advertising represented:

Kay's Ointment for Leg Sores.

A modern, scientific ointment expressly created and compounded as a remedy for leg sores.

Kay's Ointment the modern treatment for leg sores—stops pain and heals.

THE NEW DISCOVERY

Kay's Ointment—Science's contribution to the unfortunate victim of leg sores—is the result of years of research and experiment. The discovery of Kay's Ointment has been made possible through the combined efforts of a number of physicians and chemists.

It is a One Purpose Remedy Prepared and Used for Leg Sores. The Ointment supplies the demand for a modern remedy effective in action and giving instant relief from pain, itching, and smarting * * *.

Other sores may appear to enlarge in the early part of the treatment. This should cause no alarm. It is usually due to the action of Kay's Ointment in draining the sore and causing removal of the diseased or dead tissue along the edges.

Persistence and patience are required for the successful treatment of leg sores with Kay's Powder and Kay's Ointment. This is particularly true of chronic or old cases.

The uninformed are still using makeshift or haphazard treatments with little or no success.

* * * acquaint the sufferer with Kay's Ointment so that they too may enjoy the benefit of the treatment * * *.

Kay's Ointment gave me blessed relief after suffering for 12 years. It is worth its weight in gold.

The very first application stopped the irritation and pain * * *

HEALS LEGS—KAY'S OINTMENT

Relief at once!

For Open Leg Ulcers, Open Sores, Varicose Ulcers, Running Sores, Wounds, etc. A new scientific ointment created especially for leg sores. Stops Pain and Heals. No more sleepless nights. Heals while you work. Just the remedy for which you have been waiting.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations

and specifically stipulates and agrees in soliciting the sale of and selling its said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That said preparation is either a competent treatment or an effective remedy for—

Leg sores, or
Open leg ulcers, or
Open sores, or
Varicose ulcers, or
Running sores, or
Wounds;

(b) That said preparation is scientifically compounded or is the result of years of research and experiment through the combined efforts of a number of physicians and chemists;

(c) That said preparation will give instant relief from pain, itching, or smarting, regardless of the cause or circumstances;

(d) That this ointment drains the sore and causes the removal of diseased or dead tissue;

(e) That chronic or old leg sores are successfully treated with Kay's Ointment;

(f) Inferentially or otherwise that other forms of treatment for leg sores are makeshift, hazardous, or unsuccessful;

(g) That the very application of Kay's Ointment stops the irritation and pain of leg sores, or brings relief at once;

(h) That said ointment "heals" leg sores;

(i) That the use of this ointment will put an end to sleeplessness at night.

The respondent assumes all responsibility for any and all representations appearing in testimonials published by it and stipulates and agrees that it will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 3, 1935.)

0858. Vendor-Advertiser—Stomach Remedy.—Katro-Lek Laboratories, Inc., Boston, Mass., vendor-advertiser, is engaged in selling a medicinal preparation purported to be a remedy for stomach disorders and constipation called "Katro-Lek" and in advertising represented:

Katro-Lek—famous stomach remedy and tonic—is scientifically based on three main factors;

First, it tones up the stomach to better digestion;

Second, it acts on the bowels in a natural way, eliminating poisonous wastes;

Third, it builds up the blood and tones up the entire body.

Stomach disorders, dyspepsia, constipation, headaches, and gases are so common. * * * Why not get rid of this miserable feeling, improve your appetite, and feel peppy by using the famous stomach remedy and tonic Katro-Lek? * * *

Wonderful results * * * obtained by using your marvelous discovery—the herb stomach remedy Katro-Lek, after five years of suffering with stomach trouble and run down condition. * * *

The new discovery for stomach disorders, nervous indigestion, run-down conditions.

We sell the Famous Katro-Lek Stomach remedy and tonic.

Why is the marvelous discovery Katro-Lek so effective in *Stomach Disorders* Because—

1. It aids digestion.
2. It acts on the bowels in a natural way, eliminating poisonous wastes.
3. It builds up the blood and tones up the entire body.

Build up your resistance against winter colds.

* * * after ten years of my suffering from common stomach disorders, as other remedies have not brought me relief * * * since I started using Katro-Lek I feel much better and recommend it to all sufferers from stomach disorders.

Extensive scientific work in the laboratories of Dr. W. Wojtasinski has brought to the public this marvelous stomach remedy and tonic, Katro-Lek, made of selected juices of herbs and other medicinal ingredients of high food and tonic value. If you are one of the many victims who suffer from stomach trouble, give Katro-Lek a trial and we are sure you will be as grateful to us as thousands of others * * * who obtained satisfactory results.

For over twenty years I have suffered from stomach trouble. All treatments failed to bring me relief. Until after using this wonderful discovery Katro-Lek. I am happy to say I have regained perfect health * * *.

Katro-Lek is a great medical discovery for stomach and bowel disorders.

* * * since she started using Katro-Lek her stomach functions normally.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Katro-Lek is a competent treatment for dyspepsia; nervous indigestion unless limited to relief of acute nervous indigestion or temporary relief of chronic nervous indigestion; or stomach or bowel disorders unless limited to the specific disorders for which the treatment is a remedy;

(b) That Katro-Lek is a famous stomach remedy;

(c) That Katro-Lek is made of selected juices of herbs or other medicinal ingredients of high food value; or

(d) That Katro-Lek will build up resistance "against colds";

(e) That Katro-Lek is a new or great discovery;

(f) That Katro-Lek was "discovered" by Dr. W. Wojtasinski;

(g) That Katro-Lek is the result of "extensive" scientific work;

(h) That Katro-Lek has afforded relief after "all" other treatments failed;

(i) That Katro-Lek will cause the stomach to function normally or enable one to regain health.

The respondent assumes all responsibility for any and all representations appearing in testimonials published by it and stipulates and agrees that it will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 3, 1935.)

0859. Vendor-Advertiser—Radio.—Broadcaster Radio Co., Chicago, Ill., vendor-advertiser, is engaged in selling Broadcaster A. C.-D. C. Radios by means of a lottery scheme and in advertising represented:

Broadcaster Special—8.35.

Your Big Money Maker 4-Tube All Purpose A. C.-D. C. Radio.

(Picture of Radio.)

Complete With Tubes. For Quantity—Prices Write for Special Circular.

Model 4B, Complete with Tubes, Works Anywhere.

Amazing Distance and Tone Quality, Full Size Super-Dynamic Speaker.

Built in aerial. Unconditional Guarantee * * *

100-Hole Sales Book—Takes in \$28.50. (10¢ each).

SENSATIONAL NEW RADIO OFFER

(Picture of Radio.)

Pays Salesmen up to \$150 weekly—A Brand New Give-Away Deal—greatest value ever offered. Unheard of Big Earnings. Beats the "World" for big sales. Unlimited field—stores, offices, factories, clubs, etc. Everyone wants this beautiful A. C.-D. C., rich tone radio. Great distance getter. Our sensational Gift Plan collars the dollars for you. Don't fail to send Now for Free Details. Hurry!

Here is your Opportunity to make Five Thousand to Ten Thousand Dollars a Year by giving merchandise away Absolutely Free! Hundreds of ambitious men are earning this amount and more through our plan.

* * * Give away these beautiful radio sets and make over a hundred dollars a week doing it! The plan is very simple.

The Broadcaster plan furnishes you with salesbooks containing 100 girls' names. There are two beautiful Broadcaster A. C.—D. C. radios given away with the sale of each booklet. One Broadcaster A. C.—D. C. radio is given to the seller of the booklet, your agent, and the other to whoever has chosen the name indicated on the booklet corresponding to the name appearing under the seal. This entire plan is exceedingly simple, very practical, and easily understandable. We can furnish you with the Broadcaster A. C.—D. C. radios and salesbooks to supply your agents' needs.

* * * scores of men now selling it who are making more money in these times than they ever made before and with much less effort and at a very small investment. * * *

You can place these salesbooks with Garages, Hotels, Stores, Office Workers, Bank Clerks, Shipping Clerks, Factory Men, Elevator Men, Shop Foremen, Club or Church Members, as well as housewives and any other person or persons who come in contact with others from time to time.

Here are three easy ways to start. You buy:

Plan Number 1:

2 Broadcaster A. C.—D. C. radios @ \$8.35----- \$16.70

25 Special Sales Cards----- 2.50

Total----- 19.20

Plan Number 2:

1 Broadcaster A. C.—D. C. radio.....	\$8.35
1 Carrying Bag.....	1.00
25 Special Sales Card.....	2.50
Total	\$11.85

Plan Number 3:

25 Special Sales Card.....	\$2.50
Total	\$2.50

Active operators always manage to have fifty booklets or more working for them at the same time. All you do is explain the idea of giving the Broadcaster A. C.—D. C. radios away Free. * * *

DIRECTIONS

This catalog consists of girls' Names. The amount of each sale ranges from 1¢ to 35¢. No higher. No sale over 35¢.

There are 6 Free numbers. Persons selecting numbers 2, 5, 7, 11, 13, 17, Pay Nothing. As each person selects a name the amount to be paid appears on the inside of each slip; for instance: If No. 11 is selected the amount required to pay is 11¢; if No. 26 is selected the amount is 26¢.

Those selecting numbers over 35 pay only 35¢.

Do not remove seal until all money has been collected.

When the entire catalog is completed you will have collected \$28.50. Turn the receipts over to our headquarters (see address on this cover) and you will receive Radios as illustrated.

* * * The keynote of our plan is to have agents dispose of the salesbooks, keep one radio for themselves, and give the other to their friends selecting the name under the seal. These booklets take in \$28.50 each. The radios cost you \$8.35 each or \$16.70 for the two. The booklet costs you 10¢, leaving you a Net Profit of \$11.70 on the deal. * * *

* * * If you have fifty salesbooks working for you, these books, when disposed of, will bring you a return which will yield a profit of \$585.00. Your initial investment may be practically nothing—simply what you put up for the starting outfit.

* * * If you have not sufficient capital to try Plan No. 1, Plan No. 2 also offers an ideal start. You have the radio to show to your agent and to see this beautiful Broadcaster A. C.—D. C. set is to create a desire for it, but if your capital is still further limited, Plan No. 3 can be used, although it is much better to have at least one Broadcaster A. C.—D. C. radio to show your agent. Remember that there is a profit of \$11.70 on each salesbook in giving away two Broadcaster A. C.—D. C. radio sets, * * *.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That there is a chance or opportunity for a prospective agent to make any amount in excess of what has been actually accom-

published by one or more of respondent's salespersons or dealers under normal conditions in the due course of business;

(b) By the use of such expressions as "up to" or "over", or any equivalent expression, that the possible earnings of prospective agents is any amount in excess of what has actually been accomplished by one or more of respondents' salespersons or dealers under normal conditions in the due course of business;

(c) That respondents' sales plan is either,

1. A Brand New Give Away Deal; or
2. The greatest value ever offered; or
3. Unheard of in big earnings.

(d) That there are scores of men now selling respondents' plan who are making more money in these times than they ever made before with less effort;

(e) That respondent's plan is a sensational gift plan, or that it collars the dollars;

(f) That there is an opportunity for a prospective agent to make Five Thousand to Ten Thousand Dollars a year, or any other amount, by giving merchandise away absolutely free.

Respondents further stipulate and agree in soliciting the sale of said commodities in interstate commerce, to cease and desist from distributing to prospective purchasers any plan, scheme, or device which is designed for or may be used in conducting a lottery or game of chance.

The respondents assume all responsibility for any and all representations appearing in testimonials published by them and stipulate and agree that they will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 3, 1935.)

0860. Vendor-Advertiser—Skin Ointment.—Vervena Co., Chicago, Ill., vendor-advertiser, is engaged in selling an ointment designated "Vervena, Balsam of Youth" and in advertising represented:

Every woman can have beautiful complexion without pimples, freckles, wrinkles, and rashes * * * by using Balsam of Youth.

* * * Will help you to remove from your face various skin blemishes and will give your skin youthfulness and charm of child's.

* * * After few days of using Vervena Balsam of Youth my skin is white, clear, and without blemishes.

* * * Vervena will help you if your face is covered with pimples, black-heads, rashes, freckles, or when you have dry skin. Vervena also smoothens wrinkles, and makes your skin soft and delicate as a child's.

* * * Vervena will not only help you to get rid of various skin blemishes, but will also smooth out wrinkles, and makes your skin youthful and lovely. * * *

* * * Follow the instructions that come with every jar of Vervena, and soon you will enjoy a complexion without blemishes. * * *

* * * your complexion will be free of all blemishes, providing they do not come from internal ailments. * * *

* * * Every night, before retiring, use Vervena and soon those tiny lines that come from fatigue, worry, illness, also blemishes will disappear. Your skin will be smooth and soft, really a skin you love to touch.

* * * Vervena really brings beauty and youth to every complexion. None of cosmetics can do this to my skin what Vervena has done. Everybody thinks I am twenty-five years old, but I am already 36 and nobody believes me. This is all thanks to Vervena.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That said ointment will remove—

1. Pimples, unless limited to those not due to internal causes; or
2. Blackheads; or
3. Rashes; or
4. Wrinkles; or
5. Skin blemishes.

(b) That by the use of said ointment every woman can have a beautiful complexion;

(c) That said ointment is an efficacious treatment for smoothing out wrinkles or removing skin blemishes from the face;

(d) That said ointment will give the skin youthfulness of charm, or that it will make it as soft or as delicate as a child's;

(e) That said ointment will cause the disappearance of lines that come from fatigue, worry, or illness;

(f) That by the use of it the skin will become smooth or soft;

(g) That the use of said ointment will bring beauty or youth to every complexion.

Respondent further stipulates and agrees in soliciting the sale of said product in interstate commerce, that he will include in each advertisement published or broadcast a warning to the effect that the continued use of the ointment may result in mercurial poisoning.

The respondent assumes all responsibility for any and all representations appearing in testimonials published by him and stipulates and agrees that he will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 9, 1935.)

0861. Vendor-Advertiser—Face Cream.—Primrose House Sales Co., New York, N. Y., vendor-advertiser, is engaged in selling a face cream designated as "Delv" and in advertising represented:

Let this Beauty Miracle take place in your skin * * *. Once in a blue moon comes a truly revolutionary advance in beauty science. Primrose House

has spent years searching for some ingredient to duplicate the natural oil of the skin and its rejuvenating effect.

Delv is the result of that research. Delv is a delightful new cream that literally creates a new skin texture * * *.

Smart women who have used it are enthusiastic about its * * * stimulating effect. Its regular daily use keeps the skin * * * young and vital * * *.

PRIMROSE HOUSE Here Dwells Youth.

It * * * nourishes, clarifies, and tends to rejuvenate. * * * It penetrates * * * leaving the skin vitally refreshed and youthful looking.

Delv—rejuvenates.

Delv * * * was created by Primrose House after long research to find an ingredient that duplicates the natural oil of the skin.

Delv is based upon a new cosmetic principle for it contains a precious new beauty ingredient. This ingredient, called "Triactin" has the same action on the skin as the skin's own gland fluids that keep it young and vital.

* * * Delv is the only cream on the market that combines fresh lemon juice with rich, nourishing oils.

It brings a new life * * * to the skin.

The unhealthy functioning of an oily skin will be corrected through the daily use of Primrose House Delv.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That said face cream is the result of years spent in searching for an ingredient to duplicate the natural oils of the skin;

(b) That said face cream contains any ingredient which duplicates the natural oil of the skin or which has the same action on the skin as the gland fluids of the skin;

(c) That the unhealthy functioning of an oily skin will be corrected through the daily use of said face cream or that it will correct the cause of any ailment of the skin;

(d) That said face cream will nourish the skin;

(e) That said face cream will make or keep the skin young or vital;

(f) That said face cream tends to or will bring new life to the skin;

(g) That the use of said face cream will create a new skin texture;

(h) That said face cream will penetrate the skin. (May 10, 1935.)

0862. Vendor-Advertiser—Medicinal Preparation.—G. B. McGlenn, operating as the Cleveland Regol Co., Cleveland, Ohio, vendor-advertiser, is engaged in selling a medicinal preparation called "Regol" and in advertising represented:

Liver and Gall Bladder Irritations, is explained in a free booklet that we mail upon request.

If you are suffering from liver trouble, indigestion, gas, colic, attacks, pain in the right side * * *, sick headache, nausea, * * * try Regol a home treatment used successfully for many years for the cause of inflammation of the gall bladder and liver. * * * take Regol in time to avoid serious complications.

How a sick gall bladder upsets the stomach.

Surgeons today are finding that the gall bladder causes more trouble than any other organ in the abdomen. This is largely due to neglect, failure to adopt the health habit of keeping the bile moving.

Of course a good stomach medicine will help when this organ is upset by trouble in the gall bladder. But to get complete and permanent relief, it is necessary to stimulate the flow of healthy bile.

If you have a sick gall bladder, the entire system may be poisoned day after day. The sensible thing to do is to strike at the root of your trouble—the sick gall-bladder has been treated properly.

Doctors always prescribe medicine to control the flow of bile when they treat patients who have stomach symptoms due to a sick-gall bladder. If this treatment is carried out in time it may avoid a future operation for removal of the gall-bladder.

Always remember that many stomach complaints are really due to stagnation of bile in the gall-bladder. To get back to health, a liver medicine as well as a stomach medicine is needed.

If these early symptoms are treated in time, the liver can be stimulated to perform its functions properly. In this way the development of serious liver and gall-bladder diseases may be avoided and full health and vigor maintained.

Liver and gall-bladder diseases do not come without warning. As soon as the flow of bile becomes tardy or obstructed, your health begins to suffer. Be on the lookout for the following symptoms, so that you will be warned in time.

Sallow, Yellowish Skin. Look in your mirror tonight and study your complexion. Does it glow with health, or is it marred by ugly discolorations? People who are beginning to develop liver trouble have a sallow, yellow complexion, frequently with brown liver spots. Instead of being eliminated through the gall ducts their bile is dammed back and absorbed into the system. This bile is deposited in the skin and gives the liver sufferer a muddy complexion.

Pain in abdomen. If you have a pain in the right side of your abdomen, just under the ribs, it may be that your gall-bladder is inflamed. This inflammation is usually caused by a sluggish flow of bile. If neglected, it may easily lead to a condition requiring an operation.

For more than fifty years doctors have prescribed certain herbs for liver and gall-bladder disorders. These herbs they found to be very beneficial, because they are intended specifically for treating the liver and gall-bladder and act by stimulating the flow of healthy bile.

Regol—medicine which regulates the flow of bile—contains these same ingredients which doctors prescribe for liver and gall-bladder troubles. Take it early at the first symptom that your liver is acting sluggishly, and you should avoid future trouble. Don't wait until a prolonged illness or a surgical operation becomes the price of neglect.

There is nothing in Regol to harm you. The only harm comes from neglecting this treatment when your liver is sluggish and demands the regulation of bile flow which is afforded by Regol.

How to take Regol for the liver and Gall Bladder.

Regol is a liquid Medicine supplied in bottles containing 2, 4, and 6 ounces. Take half a teaspoonful twice a day, before breakfast and before the evening meal * * *. You can get this medicine for the liver and gall-bladder only by writing to the Cleveland Regol Company. * * *

Many of these cases had undergone operations without benefit, and many others were advised that an operation was their only hope. This large and ever increasing number have rightly come to regard * * * Regol for liver and gall-bladder disorders.

Take Regol for * * *, pain in the abdomen, right side or back, * * * gas, bitter taste or coated tongue, nausea, indigestion. * * *

Information about Regol, a scientific treatment for liver and gall-bladder trouble, can be had, etc.

Equally effective for * * *, catarrhal inflammation, and infections of the liver and gall bladder, is Regol.

Liver and gall bladder irritations and their relation to stomach trouble is explained in the free booklet which we mail on request. If you are suffering from indigestion, gas, colic attacks, pain in the right side or back, * * * sick head aches, bitter taste, coated tongue, nausea, * * *, try Regol, a home treatment used successfully for many years for the cause of catarrhal inflammation of the gall bladder and liver. Do not wait until your condition becomes serious, causing agonizing pain, but take Regol in time and you may avoid serious complications.

You may imagine that digestive trouble is caused when there is something wrong with the stomach; this is not always true, because one of the most common causes of indigestion is a "sick" gall bladder, which is not doing its work well. Almost any symptom of an upset stomach you could think of may be found in gall bladder trouble. Many of you who believe you have a stomach complaint may have a gall-bladder disorder.

If you have any one of the following symptoms, it could indicate that you have a sluggish liver or gall bladder. Take Regol for * * *; yellow eye: * * * constant weariness and mental depression; pain in abdomen, right side or back; * * *; gas, bitter taste or coated tongue; nausea, indigestion, * * *.

So far as I have observed, there is nothing that can quite serve as a substitute for good health. One of the most common causes of mental depression, tired, run-down, pepless feeling, is a liver or gall-bladder that is not doing its work well. Liver trouble may manifest itself in more physical ailments, than perhaps any other organ in the body.

Information about Regol, a scientific treatment for liver and gall bladder.

Regol—the medicine which regulates the flow of bile. We have good news for you! Medical sciences recognizes a way of treating affections of the liver and gall-bladder effectively without operation.

It will improve your health wonderfully and make you feel much better and look years younger.

Hundreds of Clevelanders who formerly suffered from stomach, liver, and gall bladder ailments will enthusiastically testify to the effectiveness of * * *, Regol for liver and gall bladder trouble.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said products in interstate commerce to cease and desist from representing directly or otherwise.

(a) That said product is a competent or effective treatment for either,

1. Liver trouble, unless limited to functional disorders of the hepatic glands of the liver; or
2. Indigestion, unless limited to intestinal indigestion due to lack of bile; or
3. Gas, unless limited to gas in the intestine due to intestinal indigestion; or
4. Colic attacks; or
5. Pain in the right side, pain in the back, or pain under the ribs; or
6. Sick headache or nausea, unless limited to sick headache or nausea due to intestinal indigestion; or
7. Bitter taste, unless limited to intestinal disorders caused by lack of bile;
8. Coated tongue; or
9. Catarrhal inflammation, gall bladder irritations or disorders, or inflammation of the gall-bladder or liver, unless limited to disordered consistency or flow of bile;
10. Constant weariness; or
11. Mental depression; or
12. Pain in the abdomen.

(b) That almost any symptom of an upset stomach one could think of may be found in "gall bladder trouble";

(c) That one of the most common causes of indigestion is a sick gall bladder;

(d) That said preparation will restore one to health;

(e) That by the use of said preparation one may avoid a future operation for removal of the gall bladder;

(f) That by taking Regol in time one may avoid serious complications;

(g) That said preparation is a scientific treatment for liver or gall bladder, unless limited to functional disorders due to lack of bile;

(h) That Regol is not harmful;

(i) That medical science recognizes the use of Regol as a way of treating affections of the liver or gall bladder effectively without operation;

(j) That Regol contains the same herbs or ingredients that doctors prescribe for liver or gall disorders, unless limited to functional disorders of the hepatic glands of the liver or gall bladder disorders due to bile consistency, quantity, or flow;

(k) That said preparation will improve the health or make one look years younger;

(l) That those who formerly suffered from stomach, liver, or gall-bladder ailments will enthusiastically, or at all, testify to the effectiveness of Regol for such troubles;

(m) That said preparation will regulate the flow of bile, or stimulates the liver to perform its functions properly, unless limited to the hepatic glands of the liver;

(n) That said preparation will afford permanent relief;

(o) That said preparation will strike at the "root" of the trouble;

(p) That said preparation has been effective in cases where operations have produced no benefits;

(q) That the gall bladder causes more trouble than any other organ in the abdomen.

The respondent assumes all responsibility for any and all representations appearing in testimonials published by him and stipulates and agrees that he will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 13, 1935.)

0863. Vendor-Advertiser—Eyezome and Spineometer.—King's Better Vision Institute, Los Angeles, Calif., vendor-advertiser, is engaged in selling a printed course in home training, a device for changing the conformation of the eyeball designated Eyezome and a device offered for the relief of head, neck, eye, organic, circulatory, and toxic troubles designated Spineometer, and in advertising represented:

HOW TO RENEW YOUR EYES

Strengthen Your Eyes! Eyes Renewed and Vision Increased With or Without Glasses by the use of Dr. Francis King's Famous "Home Eye Training Course."

STRONG EYES!

Improve your vision with Dr. Francis King's Famous Home Eye Training Course, based on 30 years of scientific research and professional practice. Remarkable results obtained. Adapted to every member of the family.

WRONGLY SHAPED EYES

Nearsightedness makes one timid, retiring, distrustful, and suspicious. Farsightedness makes a strain upon the nervous system at times almost unendurable. Wrongly shaped eyeballs cause errors of refraction, which frequently drives people insane. Blear eyes, chronic inflamed lids, lids turned in or out, weak, watery eyes, etc., are an eyesore to all who behold them, and a source of shame to the owner as well as an affliction.

Children are often blamed and scolded for being behind in their studies, when in reality it is due to defective and painful eyesight. Neglect of the eyes often results in cataracts and blindness.

To correct and prevent all of the above and more; to place in the hands of the parents the Godgiven right to Know, is the object of King's Better Vision Institute.

Afflictions Relieved by the Spineometer.

Head Troubles.

Such as Deafness, Loss of Sight, Loss of Hair, Eye Weakness, Circulatory Derangements of the Scalp, Face, Eyes, Teeth, and Nose.

Neck Troubles.

Such as Throat, Congestions, Affections of the Vocal Cords, of the Tonsils, stiffness, Soreness, Contractions and Pain at the Back of the Neck, Reflex Troubles arising from curvatures of the Neck or Pressure upon the Arteries and Vains leading to the head, causing insufficient Blood Supply or Congestions, producing High or Low Blood Pressure.

Eye Troubles.

Such as Eye Strain, Loss or Decrease of Vision, Cataracts, Inflammatory Affections, Growths, Enlarged Pupils, and many obscure Ailments, etc., resulting from a Vertebral or Muscular Pressure on Sympathetic Nerve.

Organic Troubles.

Such as Spinal Curvatures, causing a Pressure on one or more of the thirty-one pairs of Spinal Nerves, Arteries and Veins coming out from the Spine—Heart, Lung, Stomach, Liver, Spleen, Bowel (Constipation), Kidney, and Back Aches.

Circulatory Troubles.

Such as Paralysis, Numbness, Obesity, Cramps, Neuritis, Cold Feet, Nervousness, Insomnia, and many other ills.

Elimination of Body Toxins (Poisons).

To every purchaser of the Spineometer will be given absolutely free a famous Body Cleansing Course. This work has hitherto been sold at a high price and to Class Students only. It prescribes what to eat, drink, and do for ten days to eliminate the Toxins. (Poisonous matter) in the Stomach, Liver, Kidney, Bowels, and Skin. It is of incalculable value to all who use it.

Near Sight Eyes.

Are too long from front to back. Eyezone No. II flattens and shortens the Anteroposterior diameter. Eyezone No. I must not be used on near sighted eyes.

Far Sight Eyes.

Are too short from front to back. The Eyezone No. I is the only method known to Ocular Science which positively changes the conformation of the eyeball. Eyezone No. II must not be used in far sight cases.

In this manner it not only prevents the need for glasses, but so changes the shape of the eyes as to make it possible to cut down the strength of the lenses, if glasses be worn, and in the course of time to lay them off entirely in many cases. Many remarkable results have been obtained by the use of these two instruments. Vision without glasses is frequently doubled in a few weeks' time. Painful, contracted, and congested conditions of the eyes are quickly relieved. Great numbers of them have been sold with most gratifying results. They are worth their weight in gold, and should be used by everybody.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulated and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the Home Eye Training Course constitutes either a competent treatment or an effective remedy to—

1. Renew or Strengthen eyes,

2. Increase or Improve vision.

(b) That such course is capable of correcting—

1. Wrongly shaped eyeballs,
2. Nearsightedness,
3. Farsightedness,
4. Errors of refraction,
5. Blear eyes,
6. Chronic inflamed lids,
7. Lids turned in or out,
8. Weak eyes,
9. Watery eyes.

(c) That neglect of the eyes “results” either in cataracts or in blindness;

(d) That the Home Eye Training Course is the outgrowth of “30 years of scientific research”;

(e) That the use of either Eyezome No. I or Eyezome No. II:

1. Changes the shapes of the eyes, or
2. Positively changes the conformation of the eyeball, or
3. Prevents the need of glasses, or
4. Lessens the strength of lenses, or
5. Eliminates the need of lenses entirely, or
6. Doubles vision without glasses in a few weeks’ time, or
7. Relieves painful, contracted and congested conditions of eyes quickly, or at all.

(f) That the use of the Spineometer affords either a competent or an effective remedy for any of the following afflictions:

1. Head troubles, including—Deafness, Loss of sight, Loss of hair, Eye weakness, Circulatory derangements of scalp, face, eyes, teeth, nose;
2. Neck troubles, including—Throat troubles, congestions, Affections of vocal chords, Affections of tonsils, Stiffness, soreness, contractions, Pain at back of neck;
3. Reflex troubles, arising from—Curvatures of neck, pressure upon arteries and veins, Insufficient blood supply, High or low blood pressure;
4. Eye troubles, such as—Eye strain, Loss or decrease of vision, Cataracts, Inflammatory affections, Growths, Enlarged pupils, Obscure ailments;
5. Organic troubles, including—Spinal curvatures, Pressure on spinal nerves, Heart troubles, Lung troubles, Stomach troubles, Liver troubles, Spleen troubles, Bowel troubles, Kidney troubles, Constipation troubles, Backaches;
6. Circulatory troubles, including—Paralysis, Numbness, Obesity, Varicose veins, Cramps, Skin affections, Rheumatism, Neuritis, Cold feet, Nervousness, Insomnia.

(g) That respondent's Body Cleansing Course of Diet:

1. Is given "absolutely free" so long as the price thereof is included in the purchase price of the spineometer, or

2. Eliminates the toxins (poisonous matter) from the stomach, liver, kidneys, bowels, and skin, or any of them, within 10 days' time, or in any other specified period.

The respondent assumes all responsibility for any and all representations appearing in testimonials published by him and stipulates and agrees that he will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 13, 1935.)

0864. Vendor-Advertiser — Scalp Preparations.—Dermolav Laboratories, Inc., New York, N. Y., vendor-advertiser, is engaged in selling preparations for use in treating the scalp designated as "Dermolav Liquid" and "Dermolav Scalpfood", and in advertising represented:

* * * science has now found a new way to remove several causes of falling hair, baldness, and Grow New Hair.

* * * many are therefore now replacing lost hair and growing new hair on bald parts who never thought it possible.

I will make you a special offer. If you will send your order, and only six dollars (\$6.00) within two weeks' time, we will send you the complete Dermolav Method * * * for only \$5.00.

To you who are bald or afflicted with abnormal hair deficiency, this message will explain how 85% of such cases can positively correct the wrong conditions existing in the scalp and recover their hair loss where the papilla (mother of the hair) has become weakened and inactive from the dozen or more local scalp disorders.

* * * Modern research shows that only about 15% of abnormal hair deficiency and baldness cases is complete atrophy of the papilla (dead hair roots) present, * * *.

* * * The Dermolav Scalpfood applied to a clean new surface skin of the scalp, stimulates, nourishes, and activates the lazy or dormant hair roots to function and grow new hair.

Grow hair on your head this new, easy scientific way.

An Amazing, Harmless Liquid Removes Congested Skin From Scalp in 6 Days.

In 7 days new Hair Begins to Grow, to your amazement, Where Roots are Dormant.

Dandruff and Scalp-Skin Defects Disappear!

Rejuvenated New Skin on Scalp Breathes Air, Sunshine, and Absorbs Scalpfood Stimulant that Activates Sluggish or Dormant Hair Roots, Permitting Hair to Grow.

You're Astonished Beyond Expression, Because You Never Thought it Possible to Grow Hair!

Give this amazing liquid a chance to prove to you that it will positively remove, harmlessly and in 6 days' time, the thin, outer scalp film so as to give our Dermolav Scalpfood a chance to penetrate and put this new life and activity into your dormant hair roots.

Why not have a photo taken of your head (or perhaps you have a recent photo), then in about a month after you go ahead and use the Scalpfood as directed and actually grow new, thick hair, have another photo taken—merely to show your friends the new wonders now performed by science? They may not believe your story unless you show actual photographs to prove what you say.

The recent discovery of Dermolav, a harmless liquid * * * has completely exploded all of my previous theories on hair recovery * * * is revolutionary in its scope * * * it is destined to prove a veritable boon to people who wish to check their hair loss and grow new hair.

But now a most important discovery has been made that enables a man to harmlessly peel off the thin, plugged up, outer layer of abused scalp and have a Clear, new outer layer of scalp skin, thereby giving nature a chance to grow hair * * *. Many are, therefore, now replacing lost hair and growing new hair on bald parts who never thought it possible.

Full particulars of amazing new discovery that enables people who have dandruff, scalp itch, fallen hair, or baldness to harmlessly remove the congested, thin outer layer of scalp skin, and activate the dormant hair roots, to grow new hair, Will be Sent Absolutely Free to any sufferer who will write to Dermolav Laboratories.

But now a new discovery enables those with thin, fallen hair and bald spots to harmlessly absorb and remove this clogged up, thin outer skin of the scalp, thus permitting pores to breathe in air, sunshine, and receive the penetrating, nourishing, stimulating influence of a scalp food, thereby activating the dormant hair roots to function and grow hair.

It is the most sensational discovery in the history of falling hair and baldness.

The germ and congestion vanish—the new, clean, scalp skin breathes air and sunshine, the dormant roots are aroused to action and grow hair.

Mr. George C. Kimball, 50 St. Phillip Street, Charleston, South Carolina, who reports he is 50 years of age and a salesman, states, "New hair is growing where it was bald. I noticed new hair one week after using the scalp food, but I did not see any peeling. I used one bottle of the Dermolav liquid."

I am writing you just a short letter telling you about the wonderful treatment you sent me for my hair. I have a full head of hair now and all my friends are amazed at my hair. I will always speak well of Dermolav.

You might have been jumping with joy this morning in front of your mirror, when you got out of bed, and rubbing your fingers through your new growth of hair, had you accepted a very liberal offer made to you on the complete Dermolav treatment.

Now let us get together on a test—a test that will positively convince you that your prejudice is unfounded. And if it don't do what we say, "It Will Not Cost You a Cent. We are not afraid to meet you halfway, which shows we have absolute confidence in this astonishing new discovery, Dermolav."

* * * but unless you make up your mind to get rid of the germ-laden, thin, outer scalp skin—the unhealthy "lid" that prevents your hair from growing, "The Day May Come When Your Head Will Shine Like a Billiard Ball."

The use of our special, nourishing, stimulating Dermolav Scalpfood, which is used on the new surface skin made possible with Dermolav liquid, will activate the dormant hair roots to function again. A new growth of hair is thus made possible.

Complete baldness, is only a question of time if you do not act to check the spread of alopecia. As the epithelial cells of the sebaceous glands and

hair follicles are shed, the nutrition of the hair is impaired, they loosen and fall out. At a more advanced stage of the disease the wall of the hair follicles becomes the subject of an extending hypertrophy, the cavity is gradually obliterated from below upward by a new development of fibrous tissue. This condition practically "strangles" the hair roots, and prevents new hair from taking the place of fallen hair.

All the technical literature and talk, speculation, hope and use of tonics in the world will never grow any hair for you, unless you go about it in the right way and apply the proper treatment to the open pores of the scalp—and open the "doorways" to the dormant roots that have practically been caught like a rat in a trap but that thin outer skin of the scalp that acts like a "lid"—like the scum on a hardwood floor. No one ever thought of removing the "lid" until the discovery of Dormolav.

In about 6 days in most cases the removal of the hair preventing the growth of the thin, outer skin of the scalp is accomplished, through the use of the Dormolav Liquid. The 7th day you begin the use of the compound. You massage this stimulating, invigorating, cream-like compound on the new skin of the scalp. This helps stimulate and activate the glands, follicles, and lazy roots. Dormant hair roots seem to respond like water and sunshine does to a withering plant.

Science finds new way to remove germ cause, stimulate dormant hair roots, and grow hair. Get a new scalp skin in 6 days.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing, directly or otherwise:

(a) That either of said preparations will "grow" hair;

(b) That the results following use of either of said preparations will be produced within any definite period of time, provided however, that peeling of the superficial layers of the scalp following application of Dormolav liquid may be stated as occurring in such periods as have been actually demonstrated;

(c) That the use of either of said preparations will cause scalp or skin defects to disappear;

(d) That either of said preparations will—

1. Rejuvenate the skin; or
2. Penetrate the scalp; or
3. Put new life into hair roots; or
4. "Replace lost hair"; or
5. Remove or eliminate germs except those located in the superficial layers of the scalp; or
6. Nourish or feed the scalp or hair roots; or
7. Prevent baldness, stop hair from falling out, or remove the cause of falling hair or baldness, unless limited to baldness or falling hair due to excessive dandruff or neglect of the scalp.

(e) That the Dermolav treatment is a recent new amazing or sensational discovery;

(f) That the Dermolav treatment has exploded all previous theories on hair recovery;

(g) That the outer layer of the scalp skin must be removed before new hair can grow;

(h) That any definite proportion of the cases of baldness or abnormal hair deficiency can be corrected, provided, however, that quotations from recognized authorities are not hereby inhibited;

(i) That complete atrophy of the papilla is present in any definite proportion of the cases of baldness or abnormal hair deficiency, provided, however, that quotations from recognized authorities are not hereby inhibited;

(j) That the Dermolav treatment is revolutionary in its scope;

(k) That Dermolav liquid is harmless;

(l) That any reduction in the price of said preparation is offered for a limited period of time, unless the original and regular price is charged the prospective purchaser at the expiration of that time;

(m) That any reduction in the price of said preparations is an N. R. A. offer, or otherwise representing that such reduction is in accordance with any regulation, code, agreement, or policy promulgated or approved by the National Recovery Administration;

(n) That either of said preparations is a scalp food and from designating or labeling either of said preparations as a scalp food.

The respondent assumes all responsibility for any and all representations appearing in testimonials published by it and stipulates and agrees that it will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 13, 1935.)

0865. Vendor-Advertiser—Epilepsy Treatment.—Dr. Hunter Laboratories, Little Rock, Ark., vendor-advertiser, is engaged in selling two medicinal preparations designated "Dr. Hunter's Rational Treatment for Epilepsy", and in advertising represented:

"Epilepsy Epileptics." Detroit lady finds complete relief for husband. Specialists, home—abroad failed. Nothing to sell. Mrs. Geo. Dempster, Apt. 10, 6000 Lafayette Blvd., West Detroit, Mich.

I am in receipt of your letter and although I am engaged daily as a stenographer I am never too busy to answer all inquiries regarding the dread disease, Epilepsy. I am thankful you noticed my ad appearing in your local paper as I take this means of communicating the good news to all epilepsy sufferers throughout the country.

My husband has been completely relieved of this affliction—having suffered for 22 years. His attacks occurred sometimes twice daily. He doctored with the best skilled physicians and surgeons in Germany, France, and Scotland, but his efforts were fruitless. He came to the United States seeking relief and had an operation performed on the brain but without results. We were fortunate in learning of a new treatment and immediately got in touch with the wonderful doctor that accomplished this miracle.

This doctor is located at Little Rock, Ark., Dr. LaFayette Hunter. He conducts a sanatorium and also manufactures his own medicine. It is pure and harmless, being free from bromides and the so-called opiates which are so harmful to the human body and mental faculties. It is for this reason I recommend his remedy. My husband has had no attack since he began this treatment, Oct. 1924. In writing this letter I truthfully speak only from my own experience. I feel I am obligated in some way to repay this wonderful doctor for making it possible for a new day to dawn in both our lives.

In today's mail I am forwarding your name and address to Dr. Hunter and he will write you personally in detail. You will always find him willing to assist or advise as he takes a personal interest in each and every patient. I trust the one afflicted will lose no time in starting on this inexpensive road to relief, thereby enabling you to share the pleasures of life which at this time you are being deprived of.

Dr. Hunter's Rational Treatment for Immediate Relief of Epilepsy.

But epilepsy is truly a terrible affliction, not because it is immediately dangerous to life (except indirectly), but because it unfits the sufferer from the business and pleasures of living. The victim who is subject to daytime attacks never knows when a seizure may strike, when in a most dangerous situation, on a stairway, in crowded traffic, when attempting to drive a car or a team. Or in a most embarrassing position like in church or theatre. And then if the disease is allowed to go on unchecked the mind often will give way under the strain, the sufferer drifting either into insanity or imbecility, or, at the least, impairment of mental powers.

This tendency toward mental decay in Epileptics has undoubtedly been increased and hastened in many cases by the depressing nature of the medicines that have always been used in this disease, particularly the universal use of bromides. Many years ago it was found that in some cases bromides would decrease the frequency of epileptic seizure. So ever since then doctors have administered little else but bromide in epilepsy, and nearly all the advertised "cures" are practically nothing but a mixture of bromide. It made little difference which brand of "Epilepsy Cure" you bought, one was as good as another, for all were nothing but bromides.

The long continued use of bromides was found to have a markedly deteriorating effect upon the brain and nervous system, and bromides have undoubtedly done far more harm than good. For they do not cure Epilepsy (as you have probably found out before this), and they certainly create other troubles that only add to the terrible burden borne by the epileptic.

I have long been an interested and close student of the disease Epilepsy—ever since years ago when I was in charge of the Insane and Epileptic Department of a large charity institution. I have, I believe, tried and experimented with every remedy that has been suggested by the various schools of medicine and members of the medical profession—Bromides and Chloral, Verbena Mastata, Hyosycamus, Hemlock, Calabar Bean, Cenanthe Root, Solanum Carlolinensis, etc. I never got from any of these remedial agents anything but temporary and uncertain results at best, and often no results at all. But they were the best that was known in the past. I have seen Chiropractic fail in every case of Epilepsy it was tried upon. Osteopathy may benefit the general health of some, but certainly bodily manipulation of any sort will not help Epilepsy. It seems that in the past there was no reliable remedy for this dread disease, but I always had faith that some day such a remedy would be found. And now, I feel that I have not waited in

vain. Now, in the latter end of my long professional career it seems that this medicine has been found, as nearly a true specific for Epilepsy as any medicine can be for a disease. A really dependable medicine which seems not only to control Epileptic seizures but does it without harming the patient in other ways.

Just in recent years a new and strange chemical has been discovered which, experience with it is fast proving to me, has opened up a new day, glorious with hope for the Epileptic. Properly prepared by correct formula in association with other auxiliary ingredients, then administered under special directions, this medicine is doing more for Epileptics than all the remedies of the past ages put together, for this supposedly incurable malady. A cure? That is our great hope, now bordering on expectation. Many patients are already reporting that they are cured. Many hundreds report themselves free from Epileptic seizures and go about their daily life in a normal and healthy manner. Would it satisfy you to be free from Epileptic attack, to resume your old life, to enjoy a good state of health? And to be able to maintain this status, gradually reducing the amount of medicine taken until such amount reached the vanishing point with no return of attacks? And to do this without taking a single dose of nerve wrecking and health destroying bromides or narcotics.

This is the story of a lad who was restored to a life of usefulness and happiness. It is not fiction, but a true narrative of a boy who became a wage earner for his family instead of remaining a burden for the rest of his life, which would have been miserable to him and to his family. The letter quoted below tells the tale.

"It has been a long time since I have written you. I am still praising your wonderful treatment for Epilepsy. My son is still in good health. He has never shown any sign of Epilepsy in over five years."

This is the picture of little Wille Ward who was restored to perfect health by Dr. Hunter's Epileptic Treatment. Just another case of those hundreds who owe their health to this treatment.

This young lady is the daughter of Felix Brooks who was likewise relieved by only three courses of Dr. Hunter's treatment. All we ask is the opportunity to reach others who are afflicted with this dreaded malady.

"I am feeling very well, and have not even had a single spell since I stopped using the medicine. Am in grade nine and doing well in any school work."

**Dr. Hunter's
Rational Treatment for**

EPILEPSY

I make no misrepresentation or misleading statements. Such are not necessary. My treatment stands upon its own merits. You may expect my treatment to stop Epileptic seizures almost at once, unless yours is one of the rare cases which will not respond to the treatment. This contingency is fully covered by the money-back guarantee and refund offer in the circular enclosed. That is the wonderful thing about my treatment—it demonstrates itself right now. No long waiting or paying out money without knowing whether the treatment will benefit you or not.

This is the most useful thing that has been learned since 1015 in the treatment of Epilepsy. In 80 per cent of the cases tried it removed all attacks completely. It gives the best results and the least trouble of all medicines in the treatment of Epilepsy.

"All attacks stopped in a few days as by a master-stroke; that peculiar mental sluggishness disappeared, the appetite improved, sleep was undisturbed and peaceful, indeed, they were as reborn.

Since that time it has been used in thousands of cases throughout the world with the greatest success. Many of these patients have taken the treatment under the supervision of some of the greatest physicians of the day, men who are well able to distinguish between a treatment that is worthless and one which is of real value. Their enthusiasm for this great treatment was unbounded.

Having thus seen the immense benefits which every epileptic can derive from a wonderful treatment, I decided to place it within reach of every sufferer from the disease, rich or poor, whether in the largest city or the smallest hamlet. My success was immediate and astounding. Thus I offer you "The Rational Treatment".

Remember: 1. There is no more efficient treatment for the relief of Epilepsy known to the Medical Profession than "Dr. Hunter's Rational Treatment".

There is always, however, a remote possibility of mental decay in any disease of the nervous system. Take immediate steps to prevent this possibility by proper and consistent use of "Dr. Hunter's Rational Treatment".

This efficient treatment now is marketed by the Hunter Laboratories under my name as "Dr. Hunter's Rational Treatment".

The astonishing results will encourage every user of "Dr. Hunter's Rational Treatment" to follow out the prescribed course with the utmost confidence of securing satisfactory and gratifying results.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That either or both of said preparations are a competent treatment for Epilepsy, unless qualified to indicate that it will do no more than lessen the severity or frequency of Epileptic attacks;

(b) That either or both of said preparations are a dependable medicine to control Epileptic seizures;

(c) That either or both of said preparations are a new or strange chemical discovered in recent years;

(d) That experience with said preparations is proving that it has opened up a new day glorious with hope for the Epileptic;

(e) That said preparations are doing more for Epileptics than all the remedies of the past ages put together;

(f) That many patients are already reporting that they are cured by the use of said preparations or otherwise representing that either of said preparations is a cure for Epilepsy;

(g) That users of said preparations have become free from Epileptic seizures; or that they go about their daily lives in a normal or healthy manner;

(h) That a user of either or both of said preparations will—
1. Become free from epileptic attack; or

2. Be able to resume his old life; or
3. Enjoy a good state of health; or
4. Be able to maintain a healthy statue.

(i) That a person using said preparations will be able to gradually reduce the amount taken until the vanishing point is reached; or that there would be no return of the attacks;

(j) That a person may expect said preparation to stop epileptic seizures almost at once;

(k) That said preparations are the most useful thing that has been learned since 1915, in the treatment of Epilepsy;

(l) That in 80 per cent, or any other proportion of cases tried, said preparations have removed all attacks completely;

(m) That the use of either or both of said preparations will—

1. Stop all attacks in a few days; or
2. Cause mental sluggishness to disappear; or
3. Improve the appetite; or
4. Enable one to sleep undisturbed; or
5. Prevent mental decay.

(n) That said preparations have been used throughout the World with the greatest of success;

(o) That patients have taken said preparations under the supervision of either,

1. The greatest physicians of the day; or
2. Men who are able to distinguish between a treatment that is worthless and one which is of real value.

(p) That either of said preparations is nearly a specific for Epilepsy;

(q) That Bromides or other medicines have a deteriorating effect upon the brain, or that they have done more harm than good.

Respondent further stipulates and agrees in soliciting the sale of said preparations in interstate commerce to cease and desist from publishing any advertisements purporting to be inserted by a person not connected with the business of said respondent, or purporting to be inserted without the knowledge, consent, or request of respondent; and also to cease and desist from using any form letter or circular letter which appears to be written by a person not connected with the respondent's business or without the knowledge, consent, or request of respondent.

The respondent assumes all responsibility for any and all representations appearing in testimonials published by him and stipulates and agrees that he will not publish or cause to be published any testimonial containing the representation contrary to the foregoing agreement. (May 16, 1935.)

0866. Vendor-Advertiser—Cold Treatment.—The Grove Laboratories, Inc., St. Louis, Mo., vendor-advertiser, is engaged in selling a treat-

ment for colds designated "Grove's Laxative Bromo Quinine Tablets" and in advertising represented:

It goes right to the seat of the trouble.

Is expressly a cold *remedy* because it is direct and internal—and *complete*.

It fortifies the *entire* system.

World's Standard.

It is direct and does the four things necessary. Anything less than that is inviting trouble.

Kills a cold "dead"—does this amazing 4-way treatment.

Tones the *entire* system.

Anything less than (the 4 things "necessary") is not a *complete* treatment.

For more than forty years it has been the *standard* cold and *grippe* tablet of the world.

It does the four things necessary to *kill* a cold.

It *kills* the cold germs in the system, *drives out* the *poisonous* infection.

The final touch in *expelling* a cold.

Grove's Laxative Bromo Quinine is *thorough* relief—*complete* relief.

Take Grove's Laxative Bromo Quinine at the first symptoms and you will quickly *kill* the cold.

Doesn't "monkey" with a cold, but *drives it completely out of the system*.

Get that cold out—*roots and all!*

Many popular preparations taken for a cold often actually make a cold more difficult to relieve because they are constipating and also make the system acid.

Bromo Quinine quickly *destroys* and *eliminates* the cold infection from the system—and when the *cause is removed*, *all the discomforts disappear with it*.

The effectiveness of Bromo Quinine has made it the *standard remedy* for colds in every civilized country in the world.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That Bromo Quinine goes right to the seat of the trouble;
- (b) That Bromo Quinine is a cold "remedy";
- (c) That Bromo Quinine is "complete" in its action;
- (d) That Bromo Quinine fortifies the "entire" system;
- (e) That the use of anything less than Bromo Quinine is inviting trouble;
- (f) That Bromo Quinine "kills a cold dead";
- (g) That Bromo Quinine tones the "entire" system;
- (h) That, with respect to the four-fold action of Bromo Quinine, anything less is not a "complete" treatment;
- (i) That Bromo Quinine has been, for any length of time, the "standard" cold and "grippe" tablet of the world;
- (j) That Bromo Quinine does the four things necessary to "kill" a cold;

(k) That Bromo Quinine "kills" cold germs in the system and "drives out the poisonous infection";

(l) That Bromo Quinine is the final touch in "expelling" a cold;

(m) That Bromo Quinine affords "thorough" relief or "complete" relief;

(n) That other cold preparations actually make a cold more difficult to relieve, because they are constipating and also make the system acid;

(o) That Bromo Quinine destroys and eliminates the cold infection from the system, and when the cause is removed all the discomforts disappear with it;

(p) That Bromo Quinine is the "standard remedy" for colds.

The respondent assumes all responsibility for any and all representations appearing in testimonials published by it and stipulates and agrees that it will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 23, 1935.)

0867. Vendor-Advertiser—Aspirin Tablets.—Plough, Inc., Memphis, Tenn., vendor-advertiser, is engaged in selling St. Joseph Aspirin Tablets, and in advertising represented:

St. Joseph Aspirin, the largest selling Aspirin in the world for 10 cents.

Millions depend on St. Joseph Aspirin because they know it is always fresh and therefore always more fully effective. St. Joseph comes to you in its original moisture-proof Cellophane wrap which protects it from the destructive, strength-robbing action of moisture in the air. To be sure of pure, full-strength aspirin, demand St. Joseph.

We want you to know that St. Joseph Aspirin is not only genuine and pure, but absolutely *fresh*. And freshness is all-important. The United States Pharmacopoeia, recognized national authority says this about aspirin: We quote: In contact with moisture, it gradually decomposes. Preserve in self-closed containers. End of quote. This is the way the makers of St. Joseph Aspirin, at great added expense, wrap and seal every package in moisture-proof cellophane to assure you *always* fresh, full-strength aspirin to give you fully effective relief from pain.

St. Joseph Aspirin is fresh * * * as fresh as the day it was made * * * because it comes to you protected from the destructive influence of moisture in the air by its tightly sealed moisture-proof Cellophane wrap. This positive freshness, plus the intrinsic purity of St. Joseph Aspirin is double assurance of fast, complete relief from pain.

It's the best thing in the world to stop the pain.

St. Joseph is the original genuine, pure cellophane-wrapped Aspirin.

More than two years ago, the makers of St. Joseph Aspirin pioneered the way with its moisture-proof cellophane wrap, which protects each package of St. Joseph Aspirin against the destructive influence of moisture. St. Joseph Aspirin is always fresh and fully effective.

St. Joseph Genuine Pure Aspirin.

St. Joseph Aspirin is always fresh and fully effective because each package is carefully wrapped in moisture-proof cellophane.

St. Joseph is the original genuine, pure, cellophane-wrapped aspirin. It is as pure as money, any amount of money, can buy. Regardless of claims there is positively no aspirin, regardless of its higher price, that dissolves more quickly or brings more prompt relief from pain and colds than St. Joseph.

If Butter is not fresh—it can do more harm than good. Freshness is most important in all foods. It is equally important in aspirin.

If Meat is not fresh—its nutritive elements are naturally reduced. It's much the same with aspirin. Demand St. Joseph, protected from moisture, always fresh and fully effective, because wrapped in moisture-proof cellophane.

If Bread is not fresh—its beneficial nutritive properties are materially reduced. And so it is with aspirin. Be sure the aspirin you take is always fresh and fully effective. Demand St. Joseph, it's genuine and pure and wrapped in moisture-proof cellophane.

If Eggs are not fresh Nature advertises the fact and your nose knows it's best not to eat them. Be just as particular about the freshness of the aspirin you take. Demand St. Joseph; it's genuine and pure, always fresh, and fully effective because wrapped in moisture-proof cellophane.

When you buy Aspirin look for the St. Joseph moisture-proof cellophane wrap. Then you know that the aspirin inside is not only genuine and pure but you also know that it is Fresh and Fully effective, with the original purity and full strength of each tablet preserved intact.

When moisture in the air comes in contact with unprotected aspirin it often causes such aspirin to decompose and disintegrate in its box, thus materially reducing its effectiveness. This can't happen to St. Joseph Aspirin because St. Joseph is genuine and pure and each package is carefully wrapped in moisture-proof cellophane to seal in the original purity and full strength of each tablet.

You can always be sure of getting quicker, more effective relief from pain and colds with St. Joseph Aspirin. It is always fresh and fully effective because of its moisture-proof cellophane wrap.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That St. Joseph Aspirin is fresh because it is wrapped in cellophane;

(b) That freshness is an important or even a material factor for consideration by purchasers;

(c) That aspirin decomposes under ordinary conditions of merchandising and use;

(d) That aspirin requires wrapping in cellophane to protect it from deteriorating because of "moisure in the air", under the usual conditions of sale and use;

(e) That wrapping in cellophane preserves or adds to the purity or strength or potency of aspirin;

(f) That St. Joseph Aspirin is the best thing in the world to stop pain;

(g) That St. Joseph Aspirin is the original genuine, pure aspirin.

It is also stipulated and agreed that in view of the Commission's opinion that the statement, "St. Joseph's Aspirin, the largest selling aspirin in the world for 10 cents", may convey the impression that it is the "largest selling aspirin in the world" such representations will be changed to prevent any misunderstanding. (May 24, 1935.)

0868. Vendor-Advertiser—Laxative Compound.—Old Mission Tablet Co., Pasadena, Calif., vendor-advertiser, is engaged in selling a laxative compound designated O. M. Herb Tablets, and in advertising represented:

O-M HERB TABLETS DRIVE OUT ACIDS, ACID GAS, ACID ACHES, BODY POISONS

Try a Tonic Herb Treatment for all Over-Acid or Sluggish Liver Conditions.

O-M Tablets are Never Habit-Forming, No Matter how Long They are Used.

If you have headaches, dizzy spells, backaches, soreness, rheumatism, neuritis, your system is no doubt highly over-acid. These herb tablets help to clear away just such poisons and relieve the inflamed and irritated linings.

These stimulating Herb Tablets are helpful in many conditions. They can even be taken as a laxative with none of the old habit effects.

You can see that O-M Tablets are helping almost from the first dose or two. Frequent getting up at night is often completely stopped with one tablet. If there is neuritis, rheumatism, backache, due to an over-acid or sluggish liver condition, take the tablets for at least a week. The accumulation of acid poisons may be causing all your trouble.

O-M Herb Tablets will drive acid or body poisons from the system. Try One or Two Tablets for any acid condition, burning stomach, indigestion.

Try the tablets and see the almost immediate improvement in your digestion and kidney action. One Letter Says: "Your O-M Herb Tablets are the only thing I have ever found that would take hold of my trouble."

The Basic cause of many forms of illness is an over-acid condition * * * acids develop from congestion and are poisonous * * * headaches, dizzy spells, backaches, any muscular aches, the accumulation of acid poisons * * * often * * * sole cause.

O-M Tablets help to break up and clear away just such poisons * * * Tonic Herb Treatment * * *.

Again let us remind you that an over-acid condition is the cause of many forms of illness. When you have indigestion—any gastric stomach condition—headaches—backaches or dizzy spells, your system is no doubt highly over-acid. In such cases you have only one thing to treat—Reduce the over-acid condition of your system. * * * Try O. M. Herb Tablets. They will drive these dangerous acids and poisons completely from the system. * * *

It is now known that the cause of many forms of illness is acid poisoning—O-M Tablets help to break up and clear away such poisons.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That this preparation will drive out acids, or acid gas, or acid aches, or body poisons;

(b) That said preparation is a competent treatment or an effective remedy for over-acid condition, or sluggish liver conditions, or rheumatism, or neuritis, or inflamed or irritated linings, or for muscular aches, or for burning stomach, or for kidney action;

(c) That said preparation is an effective treatment for any of the following conditions except where the same may be the result of constipation:

Headaches, Dizzy spells, Backaches, Soreness, Indigestion.

(d) That said preparation is less habit-forming than other laxatives;

(e) That said tablets either clear away or break up, or drive acid poisons completely from the system.

The respondent further stipulates and agrees to cease and desist from designating his product as vegetable herb tablets, or as a tonic herb treatment until such time as the essential ingredients of his product are composed of vegetables and herbs.

The respondent assumes all responsibility for any and all representations appearing in testimonials published by him and stipulates and agrees that he will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 24, 1935.)

0869. Vendor-Advertiser—Skin Treatment.—Freedol Remedy Co., Boston, Mass., vendor-advertiser, is engaged in selling a treatment for skin troubles designated Freedol, and in advertising represented:

It is a remarkable remedy compounded from the famous prescription of a noted Swiss skin specialist.

Freedol, a * * * healing liquid, stops intense itching and burning instantly. Freedol is excellent for treating, itching eczema, boils, pimples, athlete's foot, and other skin and scalp troubles. Freedol is * * * compounded of * * * healing ingredients * * *. It is needless to suffer from skin troubles * * * get a bottle of Freedol, * * * promotes healthful healing * * *.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Freedol is a "healing" preparation or is compounded of "healing ingredients";

(b) That it "stops" intense itching and burning instantly, unless limited to itching and burning associated with some skin lesions;

(c) That it is an effective treatment or a competent remedy for either Eczema, or Boils, or Pimples, or Athlete's foot, or Skin troubles, or Scalp troubles;

(d) That with the use of Freedol "it is needless to suffer from skin troubles."

The respondent assumes all responsibility for any and all representations appearing in testimonials published by him and stipulates and agrees that he will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 24, 1935.)

0870. Vendor-Advertiser—Hair Dye.—Sophia Co., Inc., New York, N. Y., vendor-advertiser, is engaged in selling a preparation for coloring hair designated "Rejuvene" and in advertising represented:

Rejuvene A Marvelous New Method For Renewing Color in Your Hair * * * will bring back color of graying hair * * * it renews the youthful tint and natural vigor of the hair without using a single drop of dye. * * * We've proved we can do it.

Rejuvene is a new method of renewing the natural color of your hair without dye. It is a doctor's formula for bringing back the natural color to graying hair without the use of dye.

Rejuvene is the only known scalp treatment that will recondition your hair and renew its natural color at the same time.

Rejuvene A Proven Color Rejuvenator. This new, scientific treatment renews color in graying hair * * * so slowly and surely that it shows no results for weeks. When the color returns, very little care is needed to retain the natural tone.

It works with amazing speed on the prematurely gray hair of young women.

Rejuvene * * * Many persons have been thrilled with this new treatment * * * it renews the color of gray or fading hair, bringing out all the natural gloss and highlights of hair that once was lovely.

It also conditions the scalp, corrects dandruff.

Special introductory offer—Seven \$3.00 treatments, \$15.00 (treatments include finger wave).

This special price will be available for about two weeks.

Renews the natural vigor of hair.

Rejuvene treatments * * * miracles of modern science * * * bring back the sheen and vitality of youthful hair.

A scalp treatment that restores graying hair to its original color without a drop of dye.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That said preparation will restore, bring back, or renew the color of gray hair;

(b) That said preparation will impart the original or former color to gray hair;

- (c) That said preparation will impart a natural color to gray hair;
- (d) That said preparation is not a dye;
- (e) That said preparation works with amazing speed;
- (f) That said preparation will give a natural gloss to hair;
- (g) That said preparation is a hair color "rejuvenator";
- (h) That said preparation will correct dandruff;
- (i) That said preparation will recondition the hair;
- (j) That any reduction in the price of said preparation is or for a limited period of time unless the former price is charged after the expiration of that time;
- (k) That any price at which said preparation is offered is "special" or "introductory", unless such price is lower than the price at which it is regularly sold;
- (l) That said preparation will renew, bring back, or impart vigor or vitality to the hair.

The respondent assumes all responsibility for any and all representations appearing in testimonials published by it and stipulates and agrees that it will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 24, 1935.)

0871. **Vendor-Advertiser—Medicinal Preparation.**—Aspironal Laboratories, Inc., Atlanta, Ga., vendor-advertiser, is engaged in selling a medicinal preparation designated as "Aspironal" and in advertising represented:

Here's your enemy * * * the Hay Fever Weed—Hay fever sufferers have found a new friend in Aspironal. When the disease is at its worst they depend on Aspironal more and more for the comfort that few other remedies can give. Usually relief starts with the first dose. It checks that tormenting discharge through nose and eyes. It relieves congestion and stops sneezing, coughing, choking, itching. You breathe more easily. Suffering and despair are miraculously changed to comfort and hope. No matter what treatment you are using you need Aspironal because it actually resists the distressing symptoms of each attack so effectively.

BETTER THAN WHISKEY FOR COLDS AND COUGHS

The sensation of the drug trade is Aspironal, the two-minute relief for colds and coughs due to colds. Authoritatively guaranteed by the laboratories; tested, approved, and most enthusiastically indorsed, and proclaimed by the people as ten times as quick and effective as whiskey, or rock and rye.

All drug stores are supplied with the wonderful elixir, so all you have to do is to step into the nearest drug store, ask for a bottle of Aspironal and tell the clerk to serve you two teaspoonfulls. With your watch in your hand, take the drink at one swallow and call for your money back in two minutes if you cannot feel the distressing symptoms of your cold or cough fading away within the time limit. Don't be bashful, for all druggists invite you.

Take the remainder of the bottle home to your wife and children, for Aspironal is by far the safest and most effective, the easiest to take, and the most agreeable cold and cough remedy for children as well as adults. Quickest relief for catarrhal croup and children's choking up with phlegm at night.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That said preparation is competent treatment or remedy for hay fever, coughs, catarrhal croup, or choking;

(b) That said preparation will relieve congestion;

(c) That said preparation will afford relief within two minutes or within any definite period of time;

(d) That said preparation is more effective than whiskey as a treatment for coughs or colds;

(e) That said preparation has been proclaimed as ten times as quick or effective as rock and rye as a treatment for coughs and colds (June 3, 1935).

0872. Vendor-Advertiser—Pain Treatment.—Thomas Leeming & Co., Inc., New York, N. Y., vendor-advertiser, is engaged in selling a treatment for the relief of pain designated "Baume Bengue" and in advertising represented:

Ben-Gay penetrates * * * muscle * * * joints * * * kill those neuralgic and head pains * * *. No matter how far in the pain is "Ben-Gay" will find it—will stay in the pain area—and rout it.

Penetrates through * * * muscles, directly to the pain area—and does it in a flash. Then it stays there until the pain is routed. Ben-Gay relieves pain faster, because it does go deeper, * * * does stay in longer.

Its hyposensitizing (pain relieving) action is sure because it penetrates * * * into the muscles and the joints themselves.

Penetrates right to the spot of the pain. It goes deeper * * * through muscles into the very joints themselves.

You can kill the ripping pains of neuralgia and headache with "Ben Gay."

* * * Is the original "analgesique baume" so successfully used for 35 years by the medical profession in relieving pain and loosening chest colds.

(Picture of man stooped over in pain): I asked for Ben-Gay, but I was "sold" a cheap substitute that is too weak to relieve my pain.

(Picture of man erect and smiling): My druggist * * * gave me the real Ben-Gay and my pain stopped at once.

Ben-Gay is a tried and proven product. Sufferers from rheumatic pains, colds, neuralgia, neuritis; people whose muscles are sore and stiff or who are slaves of lumbago, rely on "Ben Gay" to rout the pain.

* * * Because Ben-Gay gives such relief, hordes of imitators have sprung up. But they do not possess the soothing power of the original Baume Analgesique.

Stop those stabbing pains with Ben Gay * * *.

* * * The pains of lumbago, sciatic, neuritis, go down to defeat with a good thorough application of "Ben-Gay."

Success prompts imitation. For years there have been certain imitators of Ben-Gay on the market. Since the depression, however, this situation has become acute, resulting in countless imitations of "Ben-Gay" being offered to the public mostly inferior and some even made of synthetic materials.

The situation was brought forcibly to our attention by inquiries as to whether we had changed Dr. Bengue's original formula. Investigation in each case proved that the patient was using without success a spurious imitation instead of "Ben-Gay."

* * * It * * * has a hyposensitizing (pain relieving) action never equaled by any of its imitators * * *.

"Ben-Gay" goes deep to cut binding congestion.

The original Baume Analgesique goes through skin, flesh, muscles, directly to the congested area—* * *. Once there it stays and gives marvelous relief.

(Picture of the bust of a woman with large rock tied on her back with a rope—"Backache" in large letters printed across the back). Ben-Gay lifts that heavy load * * * goes right to the trouble spot.

* * * Its medication * * * is absorbed by the blood stream. Science has proved it is carried in the blood stream to the pain area and it works effectively and efficiently to relieve you.

(Picture of the torso of a person with "Backache" in large letters across the back and with flashes resembling lightning indicating pain striking in the back), Ben-Gay quiets flashing pain. * * * Rub pain away with Baume "Ben-Gay" it penetrates.

(Picture of torso with awls sticking in back, side, and hips). *Rheumatic Pains* * * *. No matter how deep those rheumatic pains "Ben-Gay" will seek them out * * *.

(Picture of body and head with vice clamped around body and the word "Colds" across neck.) "Ben-Gay goes deep to cut binding congestion."

(Picture of back and arm, hand on hip, flashes of pain striking in back and the word "Neuritis" in large type across shoulder.) "* * * Ben-Gay never misses * * *."

(Picture of girl's head and shoulders showing flashes of pain in side of face and the word "Neuralgia" across breast in large type; hands on face and head, chisel edge against face near eye.) Stop that pounding * * * kill those neuralgic and head pains with "Ben-Gay" * * *.

(Man lying on back with hand on body, heavy weight on chest, the word "Colds" in large letters across.) "*Banish* Congestion."

(Picture of bust of man, back of head and hand spread out between shoulders, three daggers sticking in shoulder blade, and the word "Neuritis" in large type across upper part of back.) * * * Stop those stabbing pains with "Ben-Gay."

(Picture of woman's head, hands pressing on each side of face, which is frowning with pain, circular saw spinning overhead with teeth piercing forehead. "*Neuralgia*" in large type across saw.) You can kill the ripping pains of Neuralgia * * * with "Ben-Gay."

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Analgesique Baume (Ben-Gay)—

1. Penetrates "deeper", or
2. Penetrates into the muscles or joints themselves, or
3. Penetrates through muscles to the pain itself, or

4. Penetrates deeper than the superficial tissues in the locality of application.

(b) That Analgesique Baume (Ben-Gay)—

1. Stays there until the pain is "banished", "routed", or "killed".

(c) That Analgesique Baume (Ben-Gay)—

1. Is absorbed by the blood stream in sufficient quantities to materially relieve pain in other parts of the body than the area where it is applied.

(d) That Analgesique Baume (Ben-Gay)—

1. Will help throw off or relieve *all* congestion, or

2. Its action is "sure" because it penetrates.

(e) From representing by portrait, word, or phrase that Analgesique Baume (Ben-Gay) is an effective remedy for any ailment, disease, or condition, unless it is sustained by demonstrable scientific facts, or substantial medical opinion. (June 5, 1935.)

0873. Vendor-Advertiser—Skin Lotion.—Esbencott Laboratories, Portland, Oreg., vendor-advertiser, is engaged in selling a skin lotion designated "Santiseptic Lotion" and in advertising represented:

Santiseptic Lotion is a means towards skin health which is used by so many women who are noted for charm and beauty. It tones the skin tissues, preventing that sagging and flabbiness. Its gentle astringent qualities reduce enlarged pores, and it makes the skin soft, smooth, and natural in color.

Santiseptic Lotion has been called the Best Remedy Under the Sun for Sunburn. * * * It has been used effectively both before exposure and afterwards. * * * The men and children in the family appreciate Santiseptic Lotion, too. The men because of its soothing, healing qualities after the shave. The children like it because it quickly allays all skin irritations, prickly heat, and chaffing. * * *

When you see a rough and red skin texture * * * such condition can quickly be corrected by the use of Santiseptic Lotion * * *. With it you can ward off sunburn, relieve the effects of poison ivy, take the sting out of insect bites, and generally keep your skin comfortable and healthy.

* * * The final touch to a perfect shave. !

* * * Keeps the skin firm and smooth.

* * * Heals as it beautifies, tones skin tissues, and eliminates blemishes. Provides a fine protective film for face, neck, arms, shoulders, hands.

* * * Restores natural beauty to your complexion.

* * * Preserves Beauty. Clear attractive skin, radiant complexion follow daily use. * * * youthful freshness to skin and complexion. * * * refines large pores * * *.

* * * Protect your skin while acquiring a healthful sun tan by using Santiseptic Lotion before exposure.

* * * forms a perfect foundation for the make-up. Leaves that powder effect that won't rub off.

* * * prevents blistering * * *.

Many women of mature years keep their complexion "young" by daily use of Santiseptic Lotion.

The first requisite for natural beauty * * *.

A thorough and complete treatment for all skin needs.

Overcome rashes * * *.

Santiseptic Lotion imparts natural skin beauty and a refined skin texture.

* * * it stimulates circulation in the tiny capillaries.

Santiseptic Lotion is both a preventative and relief for the inflammation.

Tens of thousands of women have found a new and permanent complexion loveliness through daily use of this preparation for the skin.

* * * it 'normalizes' your skin by stimulating circulation in the tiny capillaries and causing pores to function properly.

* * * Your face will recognize instantly the difference between Santiseptic Lotion and other after shaving preparations.

* * * its smooth, healing effects will immediately counteract wind-burn.

Santiseptic fulfills all beauty requirements for the feminine members of the household.

Revitalizes skin tissue.

Not a cover-up for skin defects; eliminates them.

It clears away blemishes, refines skin texture, softens, heals, and induces vigorous skin tone.

If you are a woman of middle age wishing to avoid those tiny wrinkles, or if your skin is * * * given to blemishes, try Santiseptic Lotion.

* * * every woman knows that the key to true loveliness lies in a *flawless complexion*. To quickly attain this desire, no preparation can serve you better than Santiseptic Lotion.

"Tens of thousands of women have found a new and permanent complexion loveliness through daily use of this preparation for the skin"

* * * this single preparation, * * * by itself, will meet every need in daily care of the skin.

* * * Santisepic Lotion brings health to devitalized skin tissues, * * *.

* * * penetrates the pores and stimulates skin tissues.

No * * * wrinkled skin when this marvelous preparation is used.

* * * a medicinal toilet preparation containing ingredients that stimulate and nourish the skin, restoring it to health and glowing beauty.

It quickly stops the burning—penetrating beneath the surface and healing from the inside out.

It eliminates blemishes, coarse and roughened skin texture—refines conspicuous pores.

* * * eliminates blemishes, tones and revitalizes the skin tissues.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in-soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That said skin lotion is a competent therapeutic treatment for prickly heat, blemishes, skin defects;

(b) That said skin lotion will prevent or relieve inflammation;

(c) That said skin lotion will leave a powder effect that won't rub off;

(d) That said skin lotion fulfills all beauty requirements, or that it is a complete beauty treatment;

(e) That the daily use of said skin lotion will keep the complexion young;

(f) That said skin lotion will bring the blood to the surface;

(g) That said skin lotion will—

1. Allay all skin irritations; or

2. Tone the skin tissues; or

3. Produce skin health; or

4. Prevent sagging and flabbiness; or

5. Produce enlarged pores; or

6. Change the texture of the skin; or

7. Stimulate circulation in the capillaries; or

8. Penetrate the pores or penetrate beneath the surface; or

9. Eliminate skin defects or skin blemishes; or
10. Normalizes the skin; or
11. Revitalize skin tissue; or
12. Restore natural beauty to the complexion; or
13. Produce a flawless complexion; or
14. Bring health to devitalized skin tissue; or
15. Remove or prevent wrinkles; or
16. Nourish or stimulate the skin; or
17. Restore health to the skin.

(h) That any benefits to be derived from the use of said skin lotion will be permanent.

The respondents assume all responsibility for any and all representations appearing in testimonials published by them and stipulate and agree that they will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 5, 1935.)

0874. **Vendor-Advertiser—Obesity Treatment.**—Nurse Wilson Products, Buffalo, N. Y., vendor-advertiser, is engaged in selling a treatment for obesity designated Nurse Wilson Redu-cor, and in advertising represented:

Nurse Willson Redu-cor is in capsule form and comes to you as a creation of an English physician. Because of this fact, it is both harmless and safe to use.

Nurse Willson Redu-cor comes to you as a result of many years of research by a brilliant English physician. No more dieting for you—nor any more tedious exercises. By using Nurse Willson Redu-cor you may eat moderately and grow slender at the same time.

Retain and regain your healthful radiant loveliness by using Nurse Willson Redu-cor. It can be done and is being done this very minute by hundreds of women.

Do you know that ninety per cent of diseases can be avoided by a body which is too strong for germs to enter? Why not improve your whole appearance and health by doing away with excess fat? Maybe you do not know of any safe and sure method. I do—and I would like to tell you a little bit about a modern, scientific way to reduce—by using Nurse Willson Redu-cor. It is perfectly safe as it is a doctor's prescription for reducing—it is easy to take—as it comes in capsule form. It requires no dieting, nor strenuous exercise. It is the natural way to reduce—by dissolving the fatty tissue and absorbing the moisture in them.

* * * a product which I know is perfectly harmless and absolutely effective. That product is known as Nurse Willson Redu-cor * * *. It has revolutionized reducing methods and is worthy of the high place it has won for itself.

This brilliant physician conceived the idea of attacking the problem from an entirely new angle. The question in his mind was this: "Why not strike directly at the root of the trouble—the fatty tissues and forget such secondary phases as diet and exercise?" As an answer to this pertinent question, he evolved the treatment now known as Nurse Willson "Redu-cor."

Fat which accumulates within the vital organs actually hinders them from performing their functions perfectly.

It can be taken without harm to vital organs and is in every way effective and beneficial.

Does Nurse Wilson "Redu-cor" contain any harmful ingredients?

You probably have in mind two different ingredients when you ask that question: excess thyroid or tape-worms. "No" is the answer to both these questions.

* * * years ago we considered diet and exercise the only solution to the weight problem. However, it has been proven that these two factors do not reduce weight as much as was formerly thought.

Will one regain back weight, once it is lost?

No; when the moisture is released, the weight is reduced in a simple and permanent manner.

What are the age limits in taking Nurse Wilson "Redu-cor"?

Regardless of age, Nurse Wilson "Redu-cor" is still harmless. However, it is not advisable to use it before adolescence.

Losing weight—safely and scientifically.

Nurse Wilson "Redu-cor"—The safe, sane way to relieve obesity.

For your trial package—phone Washington 1487 or 1682—and ask them to deliver one box of Nurse Wilson Redu-cor to your home today * * *. You may prefer to write me enclosing a one dollar bill—check—or money order—for your trial treatment of Nurse Wilson Redu-cor. It will be sent you without any delay and you may begin reducing, safely and pleasantly.

Just address me as Nurse Wilson—in care of WGR—or at 411 Jackson Building, Buffalo, N. Y.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That said preparation is both harmless and safe to use, or

Is either harmless or safe to use, or

Is perfectly safe, or perfectly harmless, or

Can be taken without harm, or

Contains no harmful ingredients, or

Is a safe, sane way to relieve obesity.

(b) That said preparation is the result of many years of research by a brilliant English physician, or attacks the problem from an entirely new angle; or

Has revolutionized reducing methods; or

Is the modern, scientific way to reduce, or

Is the natural way to reduce.

(c) That by its use one may retain or regain healthful, radiant loveliness;

(d) That this preparation does not contain "excess thyroid";

(e) That weight once lost by this method is not regained, and that the reduction is permanent.

Respondents further stipulate and agree to place a caution in their advertising statements and labels that this preparation should be taken only after consultation with a physician.

The respondents assume all responsibility for any and all representations appearing in testimonials published by them and stipulate and agree that they will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 18, 1935.)

0875. Vendor-Advertiser—Medicinal Preparation.—G. M. Gordon Drug Co., Dallas, Tex., vendor-advertiser, is engaged in selling a medicinal preparation designated "Gordon's Compound", and in advertising represented:

Stomach Troubles Relieved With Gordon's Compound * * *

* * * As you know, Gordon's has brought thousands quick relief from various stomach ills, * * *.

* * * There are thousands today suffering from stomach troubles who can be relieved by taking Gordon's Compound. This is as true of those who have suffered for years as it is of those subject to occasional acute attacks; for Gordon's is effective in 90 percent of stomach cases. * * *.

Gordon's Compound—The One Relief From Stomach Troubles * * *.

The safest and most reliable medicine for stomach troubles is Gordon's Compound, prepared especially for the stomach and bowels. * * *.

It is natural for us to have good health, and there is no need for so much suffering from stomach troubles when it is so easy for you to try Gordon's Compound. Unless your case is unusual you can get relief.

"I was a sufferer from stomach trouble for 23 years and had decided there was only temporary relief to be had until I tried *Gordon's Compound*.

* * * I advise anyone suffering from stomach trouble not to give up until they have tried one bottle of this wonderful medicine. * * *".

* * * After having suffered fifteen years with stomach trouble, it is a pleasure to me to recommend the only medicine which has ever given me permanent relief. * * *.

ULCERATED STOMACH

It's a great pleasure to me to say that your stomach medicine has cured me of ulcerated stomach trouble * * *.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That said preparation is a competent treatment for stomach or bowel troubles, unless limited to gastric hyperacidity and sour stomach and to such functional disorders as a mild laxative or astringent would relieve and for which said preparation may be a remedy;

(b) That said preparation is a competent treatment or effective remedy for an ulcerated stomach;

(c) That said preparation has brought thousands quick relief from various stomach ills;

(d) That there are thousands today suffering from stomach trouble who can be relieved by taking Gordon's Compound;

(e) That said preparation is effective in the treatment of chronic cases;

(f) That Gordon's Compound is either the one relief for stomach troubles; or the safest or most reliable medicine for stomach troubles;

(g) That permanent relief may be expected from the use of said preparation;

(h) That said preparation is effective in 90% (or any other definite proportion) of stomach troubles.

The respondent assumes all responsibility for any and all representations appearing in testimonials published by it and stipulates and agrees that it will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 18, 1935.)

0876. **Vendor-Advertiser—Medicinal Preparation.**—Illinois Medical Products, Chicago, Ill., vendor-advertiser, is engaged in selling a medicinal preparation designated as "Psoracine", and in advertising represented:

* * * Skin Psoriasis-Eczema, and other obstinate skin eruptions. Is it necessary to suffer from these unsightly skin irritations? Psoracine, a wonderful new discovery now relieving many stubborn cases where other treatments failed. Try it no matter how long afflicted. * * *

Bad Skin? Unsightly, Annoying Blemishes of Psoriasis, Eczema, Acne, and other stubborn skin rashes. So many now find relief in Psoracine, new, wonderful ointment. Try it no matter how long afflicted. * * *

Psoracine is now helping thousands of persons affected with Psoriasis, Eczema and other stubborn skin disorders, to overcome their trouble, * * *

This remarkable discovery has been tried and found successful by so many people in every state of the Union. Many of these cases were stubborn ones of years standing on which much money had been spent in a vain effort to banish them. Imagine the joy and happiness of these men and women, * * * after using Psoracine * * *, their sores, they state, began yielding at once and finally vanished leaving them entirely free from the unsightly affliction. No more scales, no more itching, no more sores—the Psoriasis, Eczema or other skin eruption was completely gone.

* * * See for yourself what Psoracine has done for these people who had almost given up hope, after trying nearly everything without results. * * *

* * * It has overcome many stubborn cases of Psoriasis, Eczema and similar conditions. * * * Why continue to tolerate, when you, too, have PSORACINE within your reach? Start NOW to rid yourself of your skin trouble! It makes no difference how long you have had it or how bad your case is. Disregard all the things you have tried before—and try Psoracine. Put your faith and confidence in this wonderful product, as have so many others, to their complete satisfaction. * * *

To start on the road to recovery, mail the enclosed order at once. * * *

* * * Psoracine will be of benefit to both you * * * because of the joy and happiness it may bring you when you are rid of a troublesome, sometime humiliating skin malady. * * *

* * * You recommended Psoracine.

Your product has done for me what X-ray treatments failed to do. It has cleared up my skin.

* * * The irritable skin eruption *has left me completely*,
 * * * how wonderful your Psoracine ointment is. My ankles seem to be cured.

* * * Have used only about half of one of the large size jars of Psoracine and am almost entirely rid of a skin trouble that has *troubled* me for more than *thirty-five* years. * * *

Athlete's Foot or Ringworm. This skin disorder of the face, scalp, hands, or feet is quite prevalent and generally yields to Psoracine quickly, due to the penetrative qualities of the ointment.

Acne, Pimples, and Blackheads usually disappear in short order when Psoracine is used in accordance with direction.

* * * The faithful use of the ointment, according to simple directions, is usually all that is required to relieve and clear up many of the most stubborn cases.

Thousands * * * seeking relief from Psoriasis, Eczema, or some other stubborn skin disorder, are now well on the way to be rid of their trouble through the use of Psoracine and many, many of these have been completely cleared and relieved.

You, too, have this opportunity to get clear of your affliction Now! * * * Surely the amount that Psoracine costs is a small sum to spend for the same possible relief that others obtained. I have the preparation that has proven its efficiency in conquering many cases of Psoriasis, Eczema, and other skin disorders * * * I am confident that it won't be long before you have a clear healthy skin again and peace of mind. People affected with an unsightly skin often say, "I would give anything if I could only get rid of this trouble." If you, too, have ever said this, you don't have to give a large sum, as so many do in their hunt for relief. Just the small amount that is ridiculously low, when you think of what sufferers from skin disorders usually spend in trying to rid themselves of their trouble. * * * The longer you put off using Psoracine, the longer it may be that you will be troubled with an unhealthy skin. * * *

* * * people, who were affected with Psoriasis, Eczema, or some other skin disorder and obtained relief and spoke gratefully of Psoracine must have made you hope that *you, too, need no longer suffer*.

* * * Now, skin disorders often have a very unpleasant and uncomfortable way of spreading without warning. * * * Psoracine's ability to help you, * * *. This treatment cannot do anything but help YOU and relieve your condition. * * *. Why continue to suffer when you have within your reach this wonderful ointment that has brought results where others failed. * * *.

* * * she has had a sore on her head for the past six or seven years and has tried most every kind of remedy known, including many different salves, electrical treatments and violet rays, all of which failed to show any improvement in the condition.

Several doctors said they could never cure it, * * *.

She started using the treatment immediately, and after about a week, the soreness and itching was almost gone. Now it very seldom bothers her and is almost completely healed over, except for one spot in the center, but if it heals as it has been, I feel sure it will be totally cured in a few more weeks.

* * * I am happy to say I am still rejoicing in my freedom from Psoriasis. * * *.

The last jar has almost cured my baby, * * *.

* * * The sores are nearly all gone, * * *.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That said preparation is a competent treatment or an effective remedy for any of the following ailments:

Psoriasis, skin disorders, pimples, eczema, bad skin, skin rash, acne, sores, skin maladies, Athlete's Foot, or ringworm, unless expressly limited to palliative effects;

(b) That said preparation is a new discovery;

(c) That said preparation will be effective in cases in which other treatments have failed;

(d) That said preparation will overcome any skin disorder;

(e) That said preparation will be effective in the treatment of stubborn cases or cases of long standing; except as a palliative;

(f) That the use of said preparation will cause any skin disorder or ailment to vanish or disappear;

(g) That the use of said preparation will cure or rid one of any skin disorder or ailment;

(h) That any skin disorder or ailment can be conquered by the use of said preparation;

(i) That the use of said preparation will start one on the road to recovery;

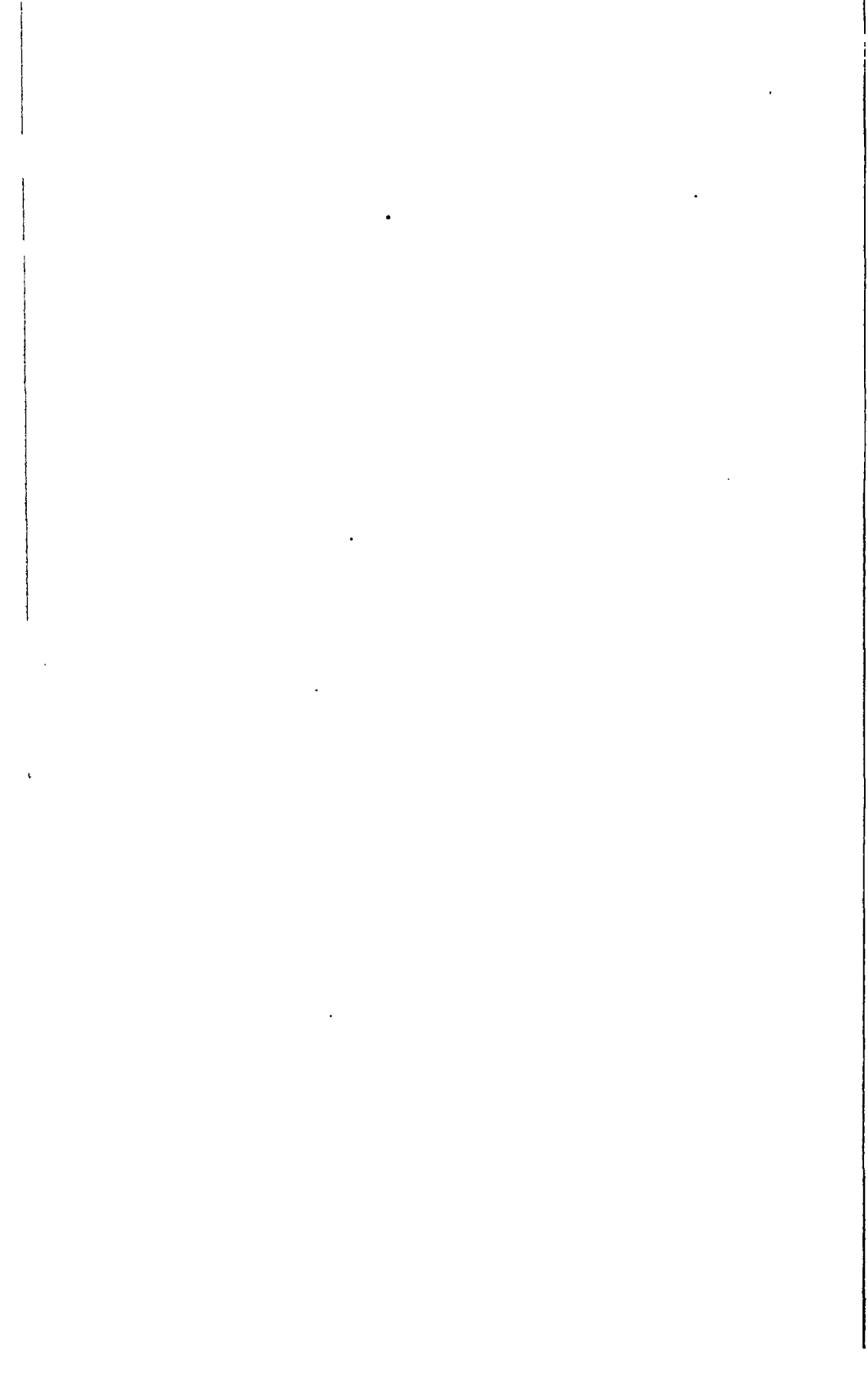
(j) That beneficial results may be expected from the use of said preparation regardless of the number of other medicines tried, or the length of time a person has suffered;

(k) That said preparation will enable one to have a healthy skin;

(l) That said preparation is a more effective treatment than X-ray;

(m) That said preparation will penetrate the skin, or that it possesses penetrative qualities.

The respondent assumes all responsibility for any and all representations appearing in testimonials published by him and stipulates and agrees that he will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 21, 1935.)



DECISIONS OF THE COURTS¹

IN CASES INSTITUTED AGAINST OR BY THE COMMISSION

FEDERAL TRADE COMMISSION *v.* E. J. WALLACE²

No. 382

(Circuit Court of Appeals, Eighth Circuit. February 9, 1935)

FINDINGS OF COMMISSION—SUFFICIENCY ON DEMURREE, ABSENT TRAVERSE THEREOF.

In proceeding by Federal Trade Commission to enforce cease and desist order, where respondent in effect demurred to sufficiency of Commission's findings to support its conclusion but did not traverse the findings, it was presumed that findings were supported by substantial testimony (Federal Trade Commission Act, sec. 5, 15 USCA sec. 45).

INTERSTATE COMMERCE—JURISDICTION—WHERE AFFECTED BY RETAILERS' CONCERT OF ACTION INVOLVING LARGELY PURCHASES FROM THOSE ENGAGED THEREIN.

Combination among retail dealers to prevent, through threats and intimidation, competitors from engaging in business and from procuring commodities essential to conduct of such business is violation of Federal Trade Commission Act provided interstate commerce is thereby affected, and such commerce is affected where purchases are made largely from producers and wholesalers in such commerce.

JURISDICTION—COMPETITION, PRESENT OR POTENTIAL—METHODS INJURING OR CLEARLY THREATENING.

To show violation of Federal Trade Commission Act, it is sufficient that there be present or potential substantial competition shown by proof or appearing by necessary inference to have been injured or to be clearly threatened with injury to substantial extent by use of unfair methods complained of, and such methods are unfair if they tend to substantial injury of public by restricting competition in interstate trade and common liberty to engage therein.

UNFAIR METHODS OF COMPETITION—COERCION BY RETAIL ORGANIZATION DIRECTED AT WHOLESALE SOURCES OF SUPPLY OF OBJECTIONABLE COMPETITORS—N. I. R. ACT AND RETAIL COAL CODE.

Where respondent and others members of regional retail coal dealers' association allegedly, through intimidation and threats of boycott, coerced wholesalers who engaged in interstate commerce to refuse to supply certain other retail dealers, Federal Trade Commission's cease and desist order *held* authorized and not in conflict with National Industrial Recovery Act or Retail Coal Code promulgated thereunder, though respondent claimed his

¹ The period covered by the decisions reported in full in the text proper is that of this, the twentieth, volume of the Commission's decisions, namely, Dec. 3, 1934, to June 24, 1935. Decisions directly involving the Commission during the period covered by volumes 1 to 20, i. e., Mar. 16, 1915, to June 24, 1935, are set forth in the "Table of Court Cases", published in the beginning of this volume at pages XXI to XXVII, in which are included a number of *per curiam* decisions, decrees without opinions, consent decrees, and miscellaneous and interlocutory orders, either not heretofore reported in the volumes or only briefly referred to by way of footnotes, as set forth in supplementary memoranda, *infra*, at page 739.

² Reported in 75 F. (2d) 733. The case before the Commission is reported in 10 F. T. C. 135.

activities were directed toward causing prosecution of unethical coal dealers (Federal Trade Commission Act, sec. 5, 15 USCA sec. 45; National Industrial Recovery Act, sec. 1 et seq., 15 USCA sec. 701 et seq.).

ENFORCEMENT PROCEEDINGS—COMPLIANCE FOLLOWING INITIATION OF—AS BAR TO ORDER.

In proceeding to enforce cease and desist order of Federal Trade Commission, where order had not been obeyed and answer failed to assert compliance, enforcement decree *held* justified though respondent asserted he ceased his admitted activities at once when enforcement proceeding was commenced, since abandonment will not be presumed and even though pleaded and presently effective is no bar to entry of enforcement order (Federal Trade Commission Act, sec. 5, 15 USCA sec. 45).

DECREES OF AFFIRMANCE OR MODIFICATION—REQUISITE BREADTH RE RELIEF AND EVASION.

In case of affirmance or modification of cease and desist order of Federal Trade Commission, the enforcement decree should be broad enough to give effective relief and to prevent evasion by respondent.

DECREES OF AFFIRMANCE OR MODIFICATION—REQUISITE BREADTH RE RELIEF AND EVASION—COMMISSION ORDER AGAINST CONCERT OF ACTION—ENFORCEMENT PROCEEDING AGAINST ONE RESPONDENT, AS RESPONSIBLE PARTY—MODIFICATION TO COVER INDIVIDUAL AS SUCH.

Where Federal Trade Commission's order directed respondents, members of a retail coal association, to cease and desist from acting in concert in doing certain acts but only one respondent was selected for enforcement, presumably because he was clothed with full authority to act, and such respondent contended that it was impossible for him alone to act in concert, order was modified by inserting the words "or as individuals" so as to conform to the proofs, give effective relief, and prevent evasion.

(The syllabus, with substituted captions, is taken from
75 F. (2d) 733)

Application for enforcement of order of Commission. Order modified, and, as modified, affirmed, and enforcement decree granted.

Mr. Martin A. Morrison, assistant chief counsel, Federal Trade Commission, of Washington, D. C. (*Mr. W. T. Kelley*, chief counsel, Federal Trade Commission, of Washington, D. C., on the brief), for petitioner.

Mr. William R. Schneider, of St. Louis, Mo., for respondent.

Before **STONE, GARDNER, and VAN VALKENBURGH**, Circuit Judges.

VAN VALKENBURGH, Circuit Judge:

[734] The complaint of the Federal Trade Commission was filed in January 1924 and March 21, 1924, was the date fixed when a hearing would begin. The complaint was based upon Section 5 of the Federal Trade Commission Act (15 USCA sec. 45). It was entitled "In the Matter of Missouri State Retail Coal Merchants' Association, also known as the Mid-West Retail Coal Association, its officers and members", and nineteen of such officers and directors were named as respondents in both their individual and official capac-

ities. In the complaint various acts constituting methods of unfair competition in commerce were charged. It is stated that the above named association was composed of retail dealers in coal, having their respective places of business in the States of Missouri, Arkansas, and Illinois. It was incorporated under the laws of Missouri and its headquarters was in St. Louis in said State. Its constitution adopted the following definition of qualification for membership:

Any individual, firm or corporation regularly engaged in the business of selling coal, coke, or other fuel with facilities and stock sufficient to meet the reasonable demand of the public in his community.

Only retail dealers qualified under this definition were eligible to become, or be received as, members, and such were designated by respondents to the complaint as regular or legitimate dealers. All dealers or other persons, including individuals, firms, corporations, farm clubs, cooperative societies, church organizations, etc., who sell coal at retail, and who do not fulfill all the qualifications and requirements of said definition, are by these respondents denominated irregular or illegitimate dealers and are refused membership in said association.

All dealers contemplated both regular and so-called irregular, located in the States aforesaid, purchase their coal from producers and wholesalers of coal, many of whom have their mines and places of business in States other than those in which the dealer-purchasers are located; and the coal so purchased is shipped by the producers and wholesalers from their respective locations through other States of the United States to the locations of the purchasers in said States of Missouri, Arkansas, and Illinois. It was charged that such respondent dealers had cooperated together to prevent so-called irregular dealers from obtaining coal from producers or wholesale dealers. This was accomplished by obtaining the names of such so-called irregular dealers doing business in the communities in which member dealers were located, and in publishing their names in a monthly trade journal of said association which circulates among association members and the producers and wholesalers, who supply such members with coal. By articles and editorials in this trade journal and otherwise the association and its members sought to prevent producers and wholesalers from selling coal to so-called irregular dealers, threatening to boycott such producers and wholesalers unless they restricted their sales to association members, publishing and circulating comment derogatory to such so-called irregular dealers and to their credit, and applying to them denunciatory and abusive terms.

[735] Inasmuch as the association members are large purchasers of coal at wholesale in their respective communities, it was charged that

their threats and practices of boycott and intimidation had resulted in coercing and compelling many of such vendors of coal at wholesale to refuse to supply so-called irregular dealers with coal, with the result that competition in the distribution and sale of coal in said trade territory had been and then was unduly obstructed and hindered, and "consumers therein had been and are deprived of the advantages in price and otherwise which they would obtain from the natural flow of commerce in coal under conditions of free competition."

The foregoing statement of allegations, in some instances taken bodily from the complaint, is deemed sufficiently ample to disclose the nature of the charge brought by the Federal Trade Commission empowered and directed by the Federal Trade Commission Act "to prevent persons, partnerships, or corporations, except banks and common carriers subject to the acts to regulate commerce, from using unfair methods of competition in commerce."

After an extended hearing the Commission, May 15, 1926, made detailed findings of fact in writing which fully supported and confirmed the charges laid in the complaint, and on the same day issued and caused to be served an order requiring the persons therein named to cease and desist from using such methods of competition. It was thereby ordered that the respondents named, their agents, representatives, and employees do:

Cease and desist from undertaking and cooperating together and acting in concert in hindering and preventing, or attempting to hinder and to prevent, directly or indirectly, the purchase and sale of coal in interstate commerce by and between producers, jobbers, and wholesale dealers therein, and individuals, firms, corporations, farm clubs, cooperative societies, church, organizations or others, consumers of coal or dealers therein, by the following methods:

1. Arbitrarily classifying sellers and purchasers of coal and shipments thereof as "Snowbird" shippers, "Snowbirds", and "Snowbird" shipments, respectively, or by any similar or other terms because of or according to the extent or degree of equipment owned by the said purchasers or employed by them in the sale, movement, or distribution of coal, or causing any such classification to be published in any trade paper, or other publication, or to be communicated to others or among themselves, in that or any other manner.

2. Designating or causing to be designated, in articles or editorials in any trade paper or other publication, or in any other manner, or by any other means, any individual, firm, corporation, or association, or groups thereof, as the vendor or purchaser of coal, or their shipments of coal by using or causing to be used denunciatory, scurrilous, abusive, or derogatory language of and concerning them or either of them.

3. Soliciting or receiving between or among themselves or with others and/or circulating between and among themselves or with others communications or reports, either printed, written, or verbal, having the purpose, tendency or the effect of inducing, coercing, or compelling producers, jobbers, or wholesale dealers in coal, their agents or their brokers, directly or indirectly, to refuse to deal with or to sell coal to any person, firm, corporation, or association.

4. Threatening with loss of patronage or custom, any producer, jobber, or wholesale dealer in coal, or his agent or broker, for selling or agreeing to sell to any person, firm, corporation, or association, or from persuading any such producer, jobber, or wholesale dealer in coal not to sell coal to any person, firm, corporation, or association.

The Commission has applied to this court for the enforcement of this order.

In their answers filed to the complaint the respondents, with the exception of E. J. Wallace, in general disclaimed any personal participation in the activities of the Mid-West Retail Coal Association, but stated that the affairs of the organization were under the guidance of Mr. Wallace, their commissioner, who was given unlimited authority to use his own judgment in all matters. In view of the intimation in the answer and application of respondent Wallace to set aside and have denied the Commission's application for the enforcement of its cease and desist order, that the Mid-West Retail Coal Association has been dissolved, and that its activities and those of its directors have ceased, the order of enforcement is now asked against Wallace as sole respondent in this proceeding.

In his said answer respondent Wallace does not deny that the findings are supported by substantial evidence, nor the allegation in the Commission's petition that he has [736] failed and neglected to obey the cease and desist order. He seeks rather to justify the activities charged and found, and to challenge the sufficiency of the findings to support the cease and desist order. The specifications of his challenge are in substance the following:

1. That the activities of the respondent and his co-respondents, prior to the filing of the complaint by the Commission, were directed solely toward the protection of the coal consuming public and the established legitimate coal dealers.

2. That the activities of the respondent and his corespondents are in accord with the coal code established under the National Industrial Recovery Act; and that the present proceeding is in conflict therewith.

3. Respondent is not, and has not been, doing unlawful acts nor threatening so to do.

4. The respondent cannot alone "cooperate and act in concert" in violation of the language of the cease and desist order.

It will be seen that this answer of the respondent Wallace does not traverse the findings of the Commission. It amounts rather to a demurrer to those findings, their sufficiency to support the conclusion reached, and the propriety and effectiveness of the cease and desist order as a result of such findings and conclusion. In such case we have no occasion to review the evidence, and the findings must be

accepted as conclusive. It will be presumed that they are supported by substantial testimony. *Arkansas Wholesale Grocers' Association v. Federal Trade Commission*, (C. C. A. 8) 18 F. (2d) 866; *Federal Trade Commission v. Inecto, Inc.* (C. C. A. 2) 70 F. (2d) 370; *Federal Trade Commission v. Pacific States Paper Trade Association*, 273 U. S. 52, 63.

In the brief of respondent the points specified to be argued are:

1. Do the admitted activities of the respondent and his former associates constitute unfair competition as the courts interpret that term under the Federal Trade Commission Act?

2. Is it possible for the respondent alone to cooperate and act in concert, and if not should this court order him to cease doing the impossible?

3. The order sought to be enforced is, in substantial part, in conflict with the National Industrial Recovery Act.

There can be little doubt that a combination among retail dealers to prevent competitors from engaging in business, and from procuring the commodities essential to the conduct of such business, by means of threats and intimidation, is a violation of the letter and spirit of Section 5 of the Federal Trade Commission Act, provided interstate commerce is thereby affected. *Arkansas Wholesale Grocers' Association v. Federal Trade Commission*, supra; *National Harness Mfrs. Association v. Federal Trade Commission*, (C. C. A. 6) 268 F. 705, 712; *Wholesale Grocers' Association v. Federal Trade Commission*, (C. C. A. 5) 277 F. 657; *Southern Hardware Jobbers' Association v. Federal Trade Commission*, (C. C. A. 5) 290 F. 773, 779; *Eastern States Lumber Association v. United States*, 234 U. S. 600, 614.

Interstate Commerce is affected because purchases are made largely from producers and wholesalers in such commerce. *Crenshaw v. Arkansas*, 227 U. S. 389, 401; *Stewart v. People of State of Michigan*, 232 U. S. 665, 669; *Dahnke-Walker Co. v. Bondurant*, 257 U. S. 282, 291; *Weeks v. United States*, 245 U. S. 618, 622. Such practices restrain competition and tend to monopoly, and, as such, are in violation of Section 5 of the Act. *Eastern States Lumber Association v. United States*, supra.

It is as unlawful to prevent a person from engaging in business as to drive a person out of business.

Thomsen v. Union Castle Mail S. S. Co. (C. C. A. 2) 166 F. 251, 253; *United States v. Patterson* (C. C.) 59 F. 280, 283; *Federal Trade Commission v. Klesner*, 280 U. S. 19, 28.

It is enough that there be present or potential substantial competition, which is "shown by proof, or appears by necessary inference

to have been injured, or to be clearly threatened with injury, to a substantial extent, by the use of unfair methods complained of." *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643, 646, 647. Such methods are unfair if they "tend to the substantial injury of the public by restricting competition in interstate trade and 'the common liberty to engage therein.'" *Federal Trade Commission v. Raladam Co.*, *supra*.

[737] In paragraphs numbered 1 and 2 of his answer respondent Wallace claims that his activities and those of his correspondents were directed toward bringing about prosecution of coal dealers who sell at short weight, misrepresent their coal, and overcharge consumers; and that these activities are in harmony and cooperation with the National Industrial Recovery Act and the Coal Code established under it. He has filed as an exhibit a copy of that code. It is, perhaps, sufficient to point out that if any dealers, so-called regular or irregular, have been guilty of the practices intimated, sufficient provisions exist under the general law, if not under the code itself, to abate such practices without exclusion from business of all operators who do not conform to the definition of eligibility to regular membership prescribed by respondent and his associates. It is not a prerogative of private parties to act as self-constituted censors of business ethics, to install themselves as judges and guardians of the public welfare, and to enforce by drastic and restrictive measures their conceptions thus formed.

In the consideration of this case we have examined the code exhibited by respondent, and we find in it nothing to support his contention that the action of the Federal Trade Commission upon the facts found is in conflict with the aims and purposes of the National Industrial Recovery Act. Respondent does not and could not claim to act under the authority of that code. Such powers purport to be exercised, if at all, by the National and Divisional Code Authorities created under the National Recovery Act. In the terms of the letter transmitting this code to the President for his approval, it is expressly stated: "Said code is well designed to promote the policies and purposes of Title I of the National Industrial Recovery Act, including removal of obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof", and "is not designed to and will not permit monopolies or monopolistic practices. The code is not designed to and will not eliminate or oppress small enterprises, and will not operate to discriminate against them".

For the purposes of facilitating administration, members of the Retail Solid Fuel Industry are defined and classified as follows:

(a) An equipped retailer shall mean a person regularly engaged in the retail solid fuel industry who maintains properly equipped unloading storage, and service facilities reasonably commensurate with the nature of the business, equipped with and using wagon or truck scale of sufficient size and capacity and maintained in condition accurately to weigh the maximum gross load for which it is utilized, maintaining an office accessible to the public with a competent person on duty and who carries a sufficient stock of solid fuel at all times for the purpose of retailing and not for his own consumption to supply the general requirements of the community; provided however, that in any retail trade area where solid fuel mines, docks, coke or briquetting plants, or wholesale yards are located so as to insure a continuous supply, a member of the industry dependent upon and using such facilities exclusively shall be included in this definition notwithstanding the fact that such member does not maintain his own storage, loading and scale facilities provided his facilities conform in every other respect to the requirements above.

(b) An unequipped retailer shall mean all other persons engaged in the retail solid fuel industry not meeting the requirements of an equipped retailer.

It thus appears that the code recognizes as an unequipped retailer those defined by respondent and his associates as illegitimate dealers. It goes still farther and provides that "any member of the industry, not maintaining premises in the retail trade area served by such member, shall post prices, terms and conditions of sale on each vehicle." Such dealers are legitimate competitors in the trade, although maintaining no such formal establishment and equipment upon which respondent insists. Under the title "Unfair Practices" we find this:

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade or quality of their goods, with the tendency and capacity to mislead or deceive purchasers or prospective purchasers, is a violation of this Code.

Finally Article VIII under the heading "Monopolistic Practices" reads thus:

No provision of this Code shall be so applied as to permit monopolies or monopolistic practices, or to eliminate, oppress, or discriminate against small enterprises.

It would be difficult to frame language more descriptive of the practices condemned [738] by the Federal Trade Commission in the order sought to be enforced. Respondent receives no support in his appeal to the National Industrial Recovery Act. Nor do we find any impairment of the Federal Trade Commission Act under which the Commission is seeking to prevent any obstruction, through unfair methods of competition, to the free and natural flow of trade in the channels of interstate commerce. Respondent says that he ceased his "admitted Activities" at once when this cause was filed. Aban-

donment will not be presumed and even though pleaded and presently effective, is no bar to the entry of an enforcement order. A bill not specifically denied is a basis for a decree limited to future acts. There is no guaranty that the acts complained of will not be renewed if the relief prayed is denied. *Arkansas Wholesale Grocers' Association v. Federal Trade Commission, supra; Swift & Company v. United States*, 276 U. S. 311; *Local 167, International Brotherhood of Teamsters, etc. v. United States*, 291 U. S. 293, 299. If, as here, it is fairly apparent that the order has not been obeyed, and the answer of the respondent fails to assert compliance, a decree of enforcement is justified. *Federal Trade Commission v. Morrissey*, (C.C.A. 7) 47 F. (2d) 101.

The Commission has elected to ask a decree of enforcement only against Wallace of the respondents made parties in the complaint. He contends that it is impossible for him alone to act in concert, and, therefore, to respond to the decree if entered. In this he misconceives the scope of the enforcement decree prayed. It orders that "the respondent Wallace, his agents, representatives, and employees, do cease and desist from undertaking and cooperating with his correspondents herein or with another or others in hindering and preventing, or attempting to hinder and to prevent, directly or indirectly, the purchase and sale of coal in interstate commerce by and between producers, jobbers and wholesale dealers therein, and individuals, firms, corporations, farm clubs, cooperative societies, church organizations or others, consumers of coal or dealers therein, by the following methods":

Then follows a recital of the methods employed as set out in the cease and desist order. Wallace was thus selected presumably because, from the record generally and from his own answer and those of his associates, he was clothed with full authority to act for himself and the others in accordance with his own judgment. It was he who caused to be done the acts of which the Commission complains. It seems clear, therefore, that the result aimed at in this proceeding will be attained if this respondent is prohibited from acting not only as an individual, but also in concert with his former associates or with others in employing the unfair methods recited.

The act requires this court, upon application for enforcement, to enter a decree affirming, modifying, or setting aside the order as the situation may warrant. In case of affirmance or modification that decree should be broad enough to give effective relief and to prevent evasion. *Local 167, International Brotherhood of Teamsters, etc. v. United States*, 291 U. S. 293, 299.

The respondent was made a party individually and as a commissioner of the Midwest Retail Coal Association. Accordingly to con-

form to the proofs, to give effective relief, and to prevent evasion, the order to cease and desist will be modified by inserting the words "or as individuals" in the opening clause thereof, which will then read as follows: "Cease and desist from undertaking and cooperating together and acting in concert, or as individuals, in hindering and preventing", etc.

The order to cease and desist issued by the Federal Trade Commission under date of May 15, 1926, as thus modified is affirmed, and a decree of enforcement will be entered in accordance with the terms thereof. It is so ordered.

FEDERAL TRADE COMMISSION *v.* INECTO, INC.¹

No. 12811

(Circuit Court of Appeals, Second Circuit. February 18, 1935)

Final decree affirming in its entirety the Commission's order in the case of *Inecto, Inc.*, Docket 1452, 16 F.T.C. 198, 224, prohibiting respondent from using the word "Notox" and from making various other misrepresentations, as to the safety and other qualities or properties of the hair dye sold by it under the designation "Inecto Rapid Notox" (or of any substantially similar preparation), and from misleading use of testimonial advertising, as in said order specified in detail; but subject to added qualification permitting representations that such product may be used with reasonable assurance of safety by certain classes of people, as therein specified, and subject to a certain warning notice as to classes who may not use such preparation with safety.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, assistant chief counsel, and *Mr. Henry Miller*, special attorney, of Washington, D. C., for petitioner.

¹ The principal case is not reported in the Federal Reporter.

Since preceding case reported herein, Court of Appeals for the Eighth Circuit, on March 20, and April 10, 1935, pursuant to joint petition or motion of the parties, respectively dismissed without prejudice Commission's applications to enforce its orders against L. A. Crancer, et al., and George H. Lee Co. (See 76 F (2d) 1008.)

Order against Crancer, et al., doing business as Mid-Valley Steel Co., General Machine & Foundry Co., etc., prohibited respondents from (1) employing trade names simulating those of existing business organizations, (2) misrepresenting themselves as manufacturers of the articles dealt in, (3) dealing direct with purchasers at consequent saving, (4) representing themselves as separate competitive business entities, (5) representing falsely through stationery, etc., signatures, or otherwise that any person, real or fictitious, is an officer, agent, etc., of respondents, (6) holding out any office, place of business, or address falsely as that of respondents, or (7) offering or selling certain old products as new or products made from old material as made from new material. (See 14 F.T.C. 245.)

Order against George H. Lee Co. prohibited respondent from misrepresenting the qualities or properties of certain poultry remedies or preparations dealt in by it. (See 17 F.T.C. 188.)

Mr. Murray Hulbert, Mr. Francis X. Gallagher and Mr. Stanley H. Udy, of New York City, and Honorable Clarence N. Goodwin, of Washington, D. C., for respondent.

FINAL DECREE

This cause having come on for hearing, and heretofore and pursuant to the provisions of Section 5 of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 717, 719), the Federal Trade Commission having filed herein its application for affirmance and enforcement of its order to cease and desist issued against the respondent, Inecto, Inc., in a proceeding before said Commission under said act of Congress; and said Commission having certified and filed in this court, with such application, a transcript of the entire record in said proceeding, including the pleadings, the evidence taken and the report, findings as to the facts and said order of the Commission; and said application having been duly served upon respondent and due notice of the filing of said transcript and application having been given respondent; and this court having jurisdiction of the proceeding and of the questions determined herein, pursuant to the provisions of said act of Congress; and the parties hereto having, on the 14th day of February 1935 entered into a stipulation, which has been filed in this cause, whereby it has been stipulated by and between the parties hereto that there may be entered in this cause by consent of the parties, without further notice, hearing or further intervening procedure, an order and final decree in the form annexed to such stipulation, and in which stipulation the parties hereto have further stipulated that under date of August 16, 1932, respondent filed its certificate of compliance with the petitioner in which it reported that it was then complying with petitioner's cease and desist order of June 20, 1932, in all respects except as to the use of the word "Notox", which petitioner, under date of September 20, 1932, accepted except as to the word "Notox"; and in which stipulation it is recited that respondent states that up to December 4, 1934, it did not comply with the aforesaid order so far as such order related to the word "Notox", but that, as it has now, as a matter of business policy, substituted the word "Inecto" as the sole designation of the product heretofore known under the names "Inecto Rapid Notox", "Inecto Rapid", "Inecto Notox", "Notox" and "Inecto", it has no objection to the entry of said decree in the form thereto annexed; and respondent appearing herein generally by its attorneys and consenting to the entry of this order and final decree in this

cause without further notice, hearing or further intervening procedure: Now, on consideration whereof and on motion of the petitioner, it is, by the court—

Ordered, adjudged, and decreed as follows:

First. That the said order to cease and desist of the Federal Trade Commission, issued June 20, 1932, be and the same is hereby affirmed.

Second. That, in the course of the sale or distribution in interstate commerce of the hair dye or hair coloring product heretofore sold by respondent under the designation "Inecto Rapid Notox"—also referred to as "Notox", "Inecto" or "Inecto Rapid"—or of any other hair coloring product of substantially the same composition, the respondent Inecto, Inc., its officers, directors, agents, representatives, servants, and employees cease and desist:

(a) From directly or indirectly causing to be used or made any representations, statements or assertions, in advertisements, trade promotional literature or in any other manner, to the effect that the said hair dye or other hair coloring product of substantially the same composition is safe or harmless to use, or is nontoxic or nonpoisonous, or does not contain any toxic, poisonous or deleterious ingredients or properties.

(b) From directly or indirectly using or causing to be used the word "Notox" as, or in, the designation of said hair dye or of said other hair coloring product upon the commercial containers thereof; and from designating, describing or representing any of the said products with such word "Notox" in advertising matter or trade promotional literature used in promoting the sale or use thereof.

Third. That respondent Inecto, Inc., its officers, directors, agents, representatives, servants, and employees cease and desist:

(1) From directly or indirectly causing a hair dye or hair coloring product of any other composition, name or description to be represented, advertised or described—when sold or distributed in interstate commerce—by any word, phrase, statements, representations or assertions, used in the course of such sale or distribution, to the effect that such hair dye or hair coloring product is nontoxic, or nonpoisonous, or safe, or harmless, or contains no toxic, poisonous or deleterious ingredient or properties, if and when such is not true in fact.

(2) From directly or indirectly causing to be advertised or otherwise used, in the course of the sale or distribution in interstate commerce of said so-called "Inecto Rapid Notox" hair dye or of any other kind of hair dye or hair coloring product, any testimonials or indorsements by users or consumers thereof which imply—in the circumstances of such use—or which have the capacity and

tendency to lead the public to believe, that such testimonials or indorsements are genuine or are unsolicited indorsements or testimonials concerning such product, or are letters or indorsements of the same by, or which have been received by respondent from, users or consumers thereof, if or when, however, such is not true in fact.

Fourth. That nothing in this decree, however, shall be construed as prohibiting the respondent from representing, with respect to the product heretofore sold under the name "Notox", that such product may be used with reasonable assurance of safety by those who are in good health and have no scratch or abrasion on the scalp and show no unfavorable reaction to the "behind-the-ear" test for toxic reaction or skin irritation and have no idiosyncrasy or susceptibility to dyes of this character, provided that in connection with such statement respondent shall also set forth in distinct, unequivocal, prominent and conspicuous language, a notice cautioning and warning the public of the fact that the product is harmful and injurious in its effects upon various persons and that, before using, the "behind-the-ear" test for toxic reaction and skin irritation should be made in determining whether it might be safe for the individual to use the product on her hair. (By "behind-the-ear test" is meant a test approved as adequate by competent and reputable medical authority.)

FEDERAL TRADE COMMISSION v. MAISEL TRADING
POST, INC.¹

No. 976

(Circuit Court of Appeals, Tenth Circuit. May 1, 1935)

APPLICATIONS TO ENFORCE—FINDINGS OF COMMISSION—RESPONDENT'S BURDEN.
On application by Federal Trade Commission for enforcement of order directing respondent to cease unfair competition, respondent must carry a very substantial burden, in view of statute making Commission's findings conclusive if supported by testimony.

CEASE AND DESIST ORDERS—VALIDITY—CRITERIA FOR COURT—UNFAIRNESS—INTERSTATE COMMERCE—PUBLIC INTEREST.

In determining validity of Federal Trade Commission's order directing cessation of unfair methods of competition, court must consider whether methods are unfair and are methods of competition in interstate commerce, and whether proceeding by Commission to prevent use thereof appears to be in public interest.

SECONDARY MEANING—UNFAIR COMPETITION.

Principle of attaching secondary meaning to common word or phrase is well established by courts in determining questions of unfair competition, as regards enforcement of cease and desist order of Federal Trade Commission.

¹There is included as a matter of convenience, the court's decision on Aug. 28, 1935, on rehearing for modification of judgment. The opinion and decision on May 1, 1935, are reported in 77 F. (2d) 246; that on Aug. 28, 1935, in 79 F. (2d) 127. The case before the Commission is reported in 18 F. T. C. 30.

SECONDARY MEANING — UNFAIR COMPETITION — “INDIAN” OR “INDIAN-MADE” JEWELRY—WHERE MODERN MACHINERY MADE USE OF.

Use of terms “Indian” or “Indian-made” in connection with jewelry, if not manufactured in consonance with generally understood meaning of such terms, would constitute unfair method of competition in sale of jewelry, justifying cease and desist order of Federal Trade Commission.

SECONDARY MEANING—UNFAIR COMPETITION—“INDIAN” OR “INDIAN-MADE” JEWELRY—CEASE AND DESIST ORDER—MODIFICATION TO COVER FULLY MACHINE USE AND INDIAN MANUFACTURE.

Where testimony supported Federal Trade Commission's theory that use of terms “Indian” and “Indian-made” in sale of jewelry signified manufacture thereof by Indians by hand or with primitive tools, and that public desired to purchase jewelry so manufactured, Commission's order requiring seller to represent that jewelry had been rolled, pressed, or partly ornamented by machine held arbitrary in disregarding use of certain other machines, such as buffing wheel, and hence should be modified so as to require seller to represent that process of manufacture was performed by Indians, and to specify steps in which modern machinery was used. (Federal Trade Commission Act 1914, sec. 5, as amended, 15 USCA sec. 45.)

(The syllabus, with substituted captions, is taken from
77 F. (2d) 246)

Application by Commission for enforcement of its order directing the Maisel Trading Post, Inc., to desist from certain unfair methods of competition. Order modified and affirmed.

Mr. Eugene W. Burr, Mr. William T. Kelley, chief counsel, and *Mr. Martin A. Morrison*, assistant chief counsel, all of Washington, D. C., for Federal Trade Commission.

Mr. John F. Simms, of Albuquerque, N. Mex. (*Mr. Donald M. Bushnell*, of Albuquerque, N. Mex., on the brief), for respondent.

Mr. Harris K. Lyle, of Gallup, N. Mex., for Indian Traders' Association, *amicus curiae*.

Mr. Harry W. Blair, Assistant Attorney General, *Mr. Charles E. Collett*, Attorney, and *Mr. William C. Lewis*, United States District Attorney for the Department of Justice, as *amici curiae* acting for the Secretary of the Interior, were on the motion and argument for rehearing.

[247] Before LEWIS and McDERMOTT, Circuit Judges, and KENNEDY, District Judge.

KENNEDY, District Judge:

This proceeding was instituted by the Federal Trade Commission under the Federal Trade Commission Act, as set out in 15 USCA sec. 45. The proceeding was originally commenced by a complaint filed in May 1932, in which the Commission charged in substance that the respondent while engaged in interstate commerce, by the use of misleading and deceptive terms in connection with the sale of certain types of Indian jewelry, indulged in unfair methods of

competition which were prejudicial and injurious to the public, involving practices which tended to divert trade from and otherwise prejudice and injure respondent's competitors. The respondent joined issue by answer and a hearing was had before a trial examiner of the Commission resulting in findings adverse to the respondent and an order directing the respondent to desist from its unfair practices and directing it in connection with its advertisements, catalogs, labels, stamps, etc., to add certain descriptive terms with reference to the jewelry advertised and handled for sale by the respondent. The respondent refused to comply with the terms of the order and in accordance with the statute above cited, the Commission before this court seeks a decree enforcing its order upon the respondent.

In approaching a discussion of the matter at hand, we observe that the respondent at the outset has a very substantial burden to carry. This grows out of the very nature of the act itself, indicated in two particulars: (1) The Commission itself institutes the proceeding and as the complainant, becomes the prosecutor of the charges contained in the complaint before itself as the judicial determining body; and (2) the act provides that "the findings of the Commission as to facts, if supported by testimony, shall be conclusive." However, we take the act as we find it and as it has been construed by the highest courts in attempting to solve the problems presented by the record.

There are three elements to be considered in determining the validity of the Commission's order. In *Federal Trade Commission v. Royal Milling Co.*, 288 U. S. 212, at page 216, the rule is laid down definitely in the following language:

To sustain the orders of the Commission, three requisites must exist: (1) that the methods used are unfair; (2) that they are methods of competition in interstate commerce; and (3) that a proceeding by the commission to prevent the use of methods appears to be in the interest of the public.

The second element above mentioned, involving interstate commerce, appears to be eliminated in the case at bar for the reason that the respondent admits that its trade is carried on in interstate commerce. The other two elements remain for consideration, to wit: Whether the methods used are unfair and if so, whether the public has an interest in those methods.

The first question revolves around the point of determining whether the terms "Indian" and "Indian-made" in connection with jewelry advertised and sold by the respondent implies a distinct meaning and if this is determined in the affirmative, then as to whether the general public is deceived or misled in the use of these terms. The terms "Indian" and "Indian-made" are words in common use and their significance in a restricted sense with the setting here fur-

nished, must result if at all, from a secondary meaning which has become attached to them.

The principle of attaching a secondary meaning to a common word or phrase is well established by the courts. *Elgin Nat. Watch Co. v. Illinois Watch Case Co.*, 179 U. S. 665; *Herring-Hall-Marvin Safe Co. v. Hall's Safe Co.*, 208 U. S. 554; *L. E. Waterman Co. v. Modern Pen Co.*, 235 U. S. 88; *R. H. Macy & Co. v. Colorado Clothing Mfg. Co.*, 68 F. (2d) 690 (C. C. A. 10). No doubt this doctrine in connection with trade marks and trade names has been somewhat extended under the administration of the Federal Trade Commission Act.

In examining the record upon this first point there appears to be substantial evidence to sustain the theory of the Commission, that the terms "Indian" and "Indian-made" carry the significance in the public mind when used in connection with jewelry, that such jewelry has been made by Indians by hand exclusively or with the aid of primitive tools, as distinguished from its manufacture with the use of modern machinery which lessens the time of labor of the Indian in accomplishing his ultimate aim in turning out jewelry products. In scanning the record it becomes apparent [248] that the evidence when considered broadly, is made up of the testimony of anthropologists and Indian traders, the latter of whom are associated together in a voluntary organization for their own protection with their pecuniary interests strongly manifested against the trade practices of the respondent. The scope of the testimony as to its source is therefore somewhat restricted, but otherwise there seems to be no impeachment of it. The use of the terms or either of them in connection with jewelry advertised for sale would constitute an unfair method of competition, if such jewelry were not manufactured in consonance with the generally understood meaning of the terms. With the rule in mind that the evidence of the Commission as to facts, if supported by testimony, shall be conclusive, its findings upon this point manifestly cannot be disturbed.

Upon the second point, as to whether or not the public generally has an interest in the purchase of Indian jewelry as to its method of manufacture, there is some conflict in the testimony. Witnesses for the Commission offered extended testimony toward proof of the theory that the constantly increasing tourist traffic is of a friendly and kindly disposition toward the Indian tribes of the southwestern portion of the United States as well as having an interest in the traditions of their early and continuous practice in the art of making jewelry from silver. They further testified that this interest is based largely upon the desire to purchase jewelry made by the Indians, with the same methods as used by their forefathers, and when it becomes known by the prospective purchaser that it is not

manufactured with the use of primitive tools and methods, the purchaser loses interest and refuses to purchase.

On the other hand, the respondent has submitted evidence tending to show that the great rank and file of prospective purchasers of Indian jewelry are chiefly concerned in ascertaining the fact as to whether or not the article has been made by Indians, independent of what kind of tools or machinery may have been employed in the process of manufacture. In the mental processes of the ordinary individual, the use of machinery by the Indian to shorten his labor as being an element which enters into the saleability of the article which he produces, is somewhat hazy and suggests an approach to the psychic. It would logically seem that the great body of purchasers would be concerned with the genuineness of the materials of which the article is manufactured, coupled with the fact that it is actually made by those belonging to the Indian tribes.

Again, we are confronted with the somewhat anomalous situation of the Government establishing Indian schools so that its ward may perfect himself in the arts and sciences to more efficiently compete with his white brother through the use of modern methods and machinery; while the practical operation of the Commission's order would seem to penalize the Indian silversmith in a sense, by compelling him to stick to the primitive, laborious, and time-consuming methods of his ancestors. Yet under the broad scope of the act making the findings of fact of the Commission conclusive, coupled with the extensive and substantial testimony that the general public, interested in the purchase of Indian-made articles recognizes a difference in the desirability between those articles manufactured by primitive methods and those manufactured with the aid of modern machinery, it would be difficult, if not impossible, for a reviewing court to say that those findings are not sustained.

It remains to consider the order of the Commission in the attempt to eliminate the unfair practices and methods in competition. This order in its entirety reads as follows:

This proceeding having been considered by the Federal Trade Commission upon the pleadings, the evidence received, and the oral and written argument, and the Commission having made its findings as to the facts and the conclusion that respondent, Maisel Trading Post, Inc., has violated the provisions of an act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is now ordered that respondent, its agents, representatives, and employees, shall cease and desist from designating, describing, or offering any of its silver jewelry products, made partly by machinery, for sale in interstate commerce by label, stamp, catalog, advertisement, or otherwise, as "Indian" or "Indian-made", either with or without the addition of the word "jewelry" or the addition of a word or words for the class of article, as "bracelet", "ring", "concha belt", or the like, unless the label, stamp, catalog, or advertising shall

clearly and expressly state, in immediate context with the said descriptive terms in conspicuous lettering at least three-quarters as high and [249] three-quarters as wide as the lettering of said descriptive terms, either that the jewelry so designated, described or offered—

(a) Has been rolled by machine, or

(b) Has been pressed by machine, or

(c) Has been partly ornamented by machine, or

(d) That there has been used in its production a combination of rolling, pressing, and/or partial ornamentation by machine, as may have been respectively the method of the manufacture of respondent's various products as designated, described, or offered for sale: *Provided, however,* That the use of hand tools or nonmechanical equipment of whatsoever kind in production, and further that the use of buffing wheels for the polishing of fully fashioned pieces of jewelry, shall not preclude the use by respondent of the terms "Indian" or "Indian-made" for any hand-made product, without the making of any explanatory statement.

It is further ordered that respondent shall, within 60 days after the service upon it of a copy of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with and conformed to the order to cease and desist hereinabove set forth,

The record discloses that the Indian is not a producer of silver from its deposits in the earth nor has he ever indulged in any refining process. In his original operations as a silversmith the elementary basis of the manufactured article was the silver Mexican peso, which after being softened by a heat process, with the use of a primitive charcoal fire, was pounded into the required shape by the use of a hammer, likewise the product of the white man. Male and female dies or matrices of various types of the Indian's own manufacture, were used in making the desired impressions. The article was usually manufactured in the Indian's own hogan or home. The product was of an extraordinary solid, heavy type, which was used almost exclusively by the Indians themselves for personal adornment. As the public began to take more interest in Indian jewelry it was found that there was no great demand for this heavy type of jewelry, and in seeking to attract the commercial trade the process of making a much lighter article was developed. The plan of using the Mexican peso as the basic element was largely eliminated through the difficulty in securing this coin and its otherwise undesirability, and a plan was adopted of using refined silver in so-called "slugs" which were secured through various and sundry commercial white dealers. The slugs consisted of refined silver rolled by machinery at a factory to a thickness of one-eighth to one quarter of an inch and then cut into one to two inch squares, which were likewise pounded into the desired shape.

With the passing of the primitive charcoal method of heating, came the modern blowtorch which was much more effective and rapid in the annealing process and the silver slug when annealed was then pounded into the thickness and shape desired. The prim-

itive tools used by the Indian for adorning the article were again discarded in favor of the dies and matrices of any required design manufactured by the white man. The Indian bracelet and ring is usually adorned with the predominating choice Indian stone of the Southwest, the turquoise. The Indian has never mined this precious stone and except in rare instances has he ever prepared and polished it for use in connection with a bracelet or ring. The stone is purchased in quantities from dealers ready for attachment to the bracelet or ring. After the article was made into the desired shape the ornaments were attached, such filings were made as seemed necessary and the finished article after being oxidized, was first polished by hand, which operation was later superceded by the use of the more modern instrument of white-man manufacture, the buffing wheel.

Such was the method in vogue for the manufacture of Indian jewelry up to the time when the machines of which the petitioner complains were brought into the picture. The respondent installed modern machinery for rolling silver to the desired thickness and cutting the sheets so rolled or those which were purchased from dealers, by stamping into desired forms. Dies of various kinds and types were likewise operated by machinery. The remaining process was the same as before. Respondent employed a substantial number of Indians in connection with the manufacturing plant in the rear of his retail establishment at Albuquerque. No attempt was made upon the part of the respondent to conceal the method by which the manufacture of the articles was taking place. Visitors and customers were permitted to go and were even conducted through the manufacturing plant. The only functions of the proprietor and his white employees with the system of manufacture were in keeping the Indians' time and in giving them orders for [250] an article in connection with a demand for the same, but allowing him to use his own fancy and ingenuity of design. By the use of machinery in rolling and stamping or pressing, the saving of time in the manufacture of one bracelet over the method of pounding the silver into the desired shape, is approximately one hour and thirty-five minutes.

The complaint of the Commission as demonstrated by its findings and order, is substantially confined to the elimination, except with notice to the public, of the pounding process for which the rolling and pressing machines have been substituted, together with the operation of the dies or matrices by machine. As a corollary to this proposition it must follow that the adjudged deceit of the public is on account of the Indian not having spent the one hour and thirty-five minutes additional time in pounding the basic silver into the desired shape and thickness. It seems to be the theory of several of the witnesses testifying in behalf of the Commission, prin-

cially the anthropologists, that through the pounding process the Indian has put something of himself into the article which he manufactures. The testimony of no Indian supports this theory and it is a fair conjecture that so far as the Indian is concerned, the shortest route to the desired remuneration is his chief objective. Nevertheless, the theory of the anthropologists must be sustained, if supported by substantial evidence.

It will be noted that the findings and order of the Commission attempt to straighten out the situation by requiring the display of Indian jewelry for sale by label, stamp, catalog, advertisement, or otherwise, to specify that a machine has been used in rolling, pressing, or ornamenting the Indian-made article, but it is silent as to the use of rolled silver in the initial slugs and the modern blowtorch in the annealing process, and specifically permits the use of hand tools however manufactured as well as the buffing wheel. There appears to be nothing in the order which requires the representation that the manufacturing operation must be performed exclusively by Indians.

We believe that the Commission has been arbitrary in selecting for partial consideration the methods of machine use entering into the manufacture of Indian-made jewelry, in that it specifically eliminates certain machines without notice given of their use and exempts other equally modern machines in regard to which no notice is required. This is not in a true sense a safeguard to the purchasing public. If the public is entitled to be advised along the line of distinguishing articles made through primitive methods and those manufactured through more modern methods, the field should be covered thoroughly. While we believe in a technical sense that the evidence is sufficient to support and sustain the order of the Commission in its general purpose and intent, yet surely it should be modified in such a way as to show, through label, stamp, catalog, or advertisement, that the process of manufacture is performed by Indians and to specify the steps in which there is a use of modern machinery as distinguished from the primitive methods. This may be accomplished by extending the specifications which must be included in the catalog, label, stamp, or advertisement, or such other device as may be used.

By the order of the Commission obviously a standard for the commercial handling of jewelry made by Indians of the Southwestern United States is set up. It must in the nature of things be a rule which binds not only the respondent, but other Indian traders and dealers, as well as the Indian himself if he deals with the public. The plan to be proposed will operate with fairness and equality upon the Indian, the respondent, other traders, and the public, so that it may be known exactly what type of article, as to the process

of manufacture, is being offered for sale. In this way those who desire to purchase Indian jewelry manufactured by primitive methods can be fully advised by the advertised inducement that perhaps the Indian silversmith has become modernized in his methods and may avoid his handiwork if it does not appeal to their esthetic tastes.

The order of the Commission should accordingly be modified.

Beginning with the second paragraph of the Commission's order, it will be modified so as to read as follows:

It is now ordered that respondents, its agents, representatives, and employees, shall cease and desist from designating, describing, or offering any of its silver jewelry products, made partly by machinery, for sale in interstate commerce by label, stamp, catalog, advertisement, or otherwise, as "Indian" or "Indian-made", either with or without the addition of the word "jewelry" or the addition of a word or words for the class of article, as "bracelet", "ring", "concha belt", or the like, unless the label, stamp, catalog or advertising shall clearly and expressly [251] state, in immediate context with the said descriptive terms in conspicuous lettering at least three-quarters as high and three-quarters as wide as the lettering of said descriptive terms, that the jewelry so designated, described or offered—

(a) Has been made by Indians.

(b) Has been manufactured from silver slugs made from machine-rolled silver.

(c) Has been manufactured from machine-rolled sheet silver.

(d) Has been ornamented with turquois (or other stones) not made by Indians.

(e) In the manufacture, a rolling machine has been used.

(f) In the manufacture, a pressing machine has been used.

(g) In the manufacture, dies or matrices made by white men have been used.

(h) In the manufacture, dies or matrices made by white men and propelled by machines have been used.

(i) In the manufacture, a buffing wheel for polishing has been used.

That only so many of the specifications above enumerated shall be set forth as to correctly state the process of manufacture of the article.

A decree will issue in due course affirming the order of the Commission as so modified, each party to pay its own costs.

ON REHEARING FOR MODIFICATION OF JUDGMENT¹

August 28, 1935

PER CURIAM:²

Briefs and argument on rehearing have clarified the dispute and narrowed the issues. Petitioner now expressly asserts that machinery used in manufacturing the raw material—the slugs or blanks—with which the Indian starts his artistry is outside the scope of the hearing or the order; that the order is not concerned with the

¹ Reported in 79 F. (2d) 127.

² Before Lewis and McDermott, Circuit Judges, and Kennedy, District Judge.

dimensions of the raw material; that the order is designed to confine the term "Indian-made" to those who heat and hammer the slug or blank before ornamentation, and that the order does not define the amount of such heating or hammering. So construed, the order is applicable only to so much of respondent's jewelry, if any, as is not heated and hammered at all before ornamentation.

Both sides complain of the complexity and the difficulty of complying with our modification of petitioner's order; petitioner's order is complex and has already given rise to much misunderstanding. The second paragraph of petitioner's order will be modified to read as follows:

It is now ordered that respondent, its agents, representatives, and employees, shall cease and desist from designating, describing, or offering any of its silver jewelry products for sale in interstate commerce as "Indian" or "Indian-made" jewelry, where in substantial part machinery (other than hand tools, or nonmechanical equipment, or buffing wheels for polishing) shall be substituted for hand-hammering, shaping, or ornamenting the same, unless the label, stamp, catalog, or advertising shall clearly, expressly and legibly state the method of such manufacture in immediate context with the descriptive terms.

A decree will be entered vacating our former modification of the Commission's order, affirming the order of the Commission as now modified, each party to pay its own costs.

**E. GRIFFITHS HUGHES, INC. v. FEDERAL TRADE
COMMISSION¹**

No. 5

(Circuit Court of Appeals, Second Circuit, June 3, 1935.)

CEASE AND DESIST ORDERS—SALTS FALSELY OFFERED AS OBESITY REMEDY—COMMISSION FINDINGS.

Finding of Federal Trade Commission that salts sold in interstate commerce would not reduce fat or act as a remedy for obesity as represented, and consequent order that representations to contrary be stopped *held* sustained by evidence (Federal Trade Commission Act, Sec. 5, as amended; 15 USCA sec. 45).

CEASE AND DESIST ORDERS—WHERE EVIDENCE SUSTAINS—COURT'S LIMITATIONS.

Cease and desist order of Federal Trade Commission in respect of misrepresentations concerning goods sold in interstate commerce is binding on courts where sustained by evidence.

COMMISSION FINDINGS—COMPETITION—SALTS FALSELY ADVERTISED AS OBESITY CURE.

Finding of Federal Trade Commission that salts falsely advertised as reducing fat and as cure for obesity was in competition with salts advertised as saline laxatives *held* sustained by evidence.

¹ Reported in 77 F. (2d) 886. Petition for certiorari denied on October 14, 1935. The case before the Commission is reported in 18 F. T. C. 1.

PUBLIC INTEREST—CEASE AND DESIST ORDERS—SALTS FALSELY ADVERTISED AS OBESITY CURE.

Public interest justified Federal Trade Commission in restraining false advertising of salts as fat reducer and remedy for obesity.

COMMISSION FINDINGS—SALTS FALSELY OFFERED AS HAVING THERAPEUTIC QUALITIES, AND IMPORTED—COMPETITION.

Finding of Federal Trade Commission that contrary to advertisements salts had no medical value when used in bath; that great quantities of oxygen were not released when salts were so used; that such use at home did not combine properties of world-famous spas, or produce effect of treatment at such places; and that salts were not imported from England, and that such salts were in competition with other salts sold as saline laxatives in interstate commerce *held* sustained by evidence.

SECTION 5 PROCEEDINGS—EVIDENCE BEFORE COMMISSION—EXAMINER'S RULINGS—TESTS OF PRODUCT INVOLVED—EXCLUSION FOR LACK OF PROBATIVE VALUE—WHERE RESPONDENT DILATORY IN OFFERING.

Exclusion of evidence by examiner in proceeding before Federal Trade Commission relating to false advertising on ground that tests were not scientifically conducted or controlled and that evidence offered was entitled to but little weight, *held* not abuse of discretion where evidence was not offered until some seven months after close of commission's original case and three separate hearings had been held for receipt of petitioner's evidence, though petitioner had had ample time to plan its defense and offer evidence prior to first date when it started to introduce its evidence.

PUBLIC INTEREST—CEASE AND DESIST ORDERS—MISREPRESENTATION TO SELL GOODS IN INTERSTATE COMMERCE—INJURY TO COMPETITORS.

Selling in interstate commerce goods by means of false and misleading statements necessarily injures or tends to injure seller's competitors and affects the public interest and thereby justifies cease and desist order by Federal Trade Commission.

(The syllabus, with substituted captions, is taken from
77 F. (2d) 886)

Petition to review order of Commission directing that petitioner cease and desist from misrepresenting salts sold by it in interstate commerce. Order affirmed.

Mr. Albert Edward Maves, of New York City, for petitioner.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, assistant chief counsel, *Mr. Harry D. Michael*, trial attorney, and *Mr. James W. Nichol*, special attorney, all of Washington, D. C., for respondent.

Before MANTON, SWAN, and CHASE, Circuit Judges.

PER CURIAM:

The order here sought to be reviewed directs the petitioner, in the distribution in interstate commerce of "Kruschen Salts" and "Radox Bath Salts", to cease and desist from representing, directly or indirectly (1) that "Kruschen Salts" constitutes a cure or remedy for obesity or that it will of itself reduce excessive fat; (2) that

"Radox Bath Salts" has therapeutic value when used in a bath; that it releases great quantities of oxygen when so used, and that its use at home combines the properties of world famous spas or produces the effect of treatment at such places; that it stimulates or energizes the body; or that it is imported from England.

As to the Kruschen Salts and its qualities as a cure or remedy for obesity or that it will reduce excess fats, there was a conflict of evidence before the Commission. The evidence sufficiently supports the finding that it would not reduce fat or act as a remedy for obesity. While there was testimony of physicians in general practice, who testified to good results in reducing fat, the Commission did not accept such testimony but, on the contrary, accepted that offered on behalf of the Commission. This finding, having evidence to support it, is binding upon the courts. *Fed. Trade Comm. v. Algoma Lumber Co.*, 291 U. S. 67, 73; *Fed. Trade Comm. v. Balme*, 23 F. (2d) 615, 619 (C. C. A. 2); *Harriet Hubbard Ayer, Inc. v. Fed. Trade Comm.*, 15 F. (2d) 274 (C. C. A. 2).

There was testimony of competition, in interstate commerce, of the Kruschen Salts with products of other manufacturers having a saline laxative. The evidence sufficiently supported the finding of the Commission. The list of products so in competition was sufficiently large in number to justify the order entered. Petitioner used the same advertising as to reduction of excess fat while in competition with products sold by competitors.

The public had an interest because of false advertising and misstatements as to the qualities and the results of the use of these salts. Such practice may be restrained. *Fed. Trade Comm. v. Winsted Hosiery Co.*, 258 U. S. 483, 493; *Fed. Trade Comm. v. Raladam Co.*, 283 U. S. 643. Such unfair methods of competition justify the order entered when the public has an interest in its prevention.

The order against the Radox Bath Salts is supported by evidence showing misrepresentations contained in magazine advertisements. There was testimony that no medical effect is to be derived from the use of this preparation in a bath. It is shown that when put in water a small amount of oxygen is released, but there was no warrant for the exaggerated statement that "it radiates great quantities of oxygen", or the implication that it has therapeutic effect and that the use of Radox at home would produce results equal to treatment at spas. The latter statement was found to be erroneous, since treatment at spas contemplated dieting, purgation, exercise, and a regulatory routine of existence in addition to the baths. The implication that Radox is imported from England was likewise found to be erroneous. It is prepared and packaged in

this country. All bath salts were found to be in competition. This evidence is sufficient to support the findings.

Complaint is made of the refusal of the trial examiner to admit certain medical evidence offered. The Commission found that the tests made were "not scientifically conducted or controlled", and that the evidence in regard thereto was entitled to but little weight. This evidence was offered at a hearing for the receipt of surrebuttal evi[888]dence held October 27, 1932. The tests were made in June, 1932, after the completion of the Commission's original case, which was closed April 15, 1932, and after three separate hearings had been held for the receipt of petitioner's evidence. The petitioner had ample time to plan its defense and offer evidence, and to make these tests prior to the first date when the petitioner started to introduce its testimony. The examiner's discretionary ruling as made, offers no justification for reversal.

Petitioner's methods have been found to be unfair in that its representations in regard to its products are misstatements of fact and are misleading. The products are sold in interstate commerce and in competition with the products of other manufacturers. Selling by the use of false and misleading statements necessarily injures or tends to injure petitioner's competitors. *Fed. Trade Comm. v. Winsted Hosiery Co., supra; Fed. Trade Comm. v. Artloom Corp.* (C. C. A.), 69 F. (2d) 36. Such injury to competitors or tendency to injure, fully establishes the public interest. Therefore, there was jurisdiction under Section 5 of the Federal Trade Commission Act, as amended by act February 13, 1925, 15 USCA sec. 45.

Order affirmed.

J. G. DODSON AND MRS. C. M. DODSON, COPARTNERS
TRADING AS THE IRONIZED YEAST CO. v. FEDERAL
TRADE COMMISSION¹

No. 6886

(Circuit Court of Appeals, Sixth Circuit. June 3, 1935)

Order affirming the Commission's order in Docket 1972, 19 F. T. C. 128, prohibiting respondent from falsely representing that use of its Ironized Yeast will cause certain specified ailments to disappear, or will transform underdeveloped into well developed attractive people, except as the foregoing conditions may be due to deficiencies in vitamin B or iron, or both, or that combination of iron and yeast in said preparation produces more effective results than through the two ingredients used separately.

¹ Not reported in the Federal Reporter. Petition for certiorari denied October 14, 1935.

Petition to review an order of the Federal Trade Commission. Order affirmed.

Davies, Beebe, Busick & Richardson, of Washington, D. C., for petitioners.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission. *Mr. Martin A. Morrison*, assistant chief counsel, Federal Trade Commission, and *Mr. James M. Brinson*, of Washington, D. C., for respondent.

ORDER

Before MOORMAN, HICKS and SIMONS, Circuit Judges.

It appearing to the court, upon a consideration of the record in this proceeding, that the findings of fact made by the respondent, Federal Trade Commission, are amply supported by evidence, and that they are legally sufficient to authorize the respondent to issue the order to cease and desist here complained of;

It is ordered that the order of the respondent be and the same is hereby affirmed.

MEMORANDA

There follows an enumeration of certain *per curiam* decisions, decrees without opinions, consent decrees and miscellaneous and interlocutory orders included in the "Table of Court Cases" of decisions directly involving the Commission during the period covered by volumes 1 to 20, i. e., March 16, 1915, to June 24, 1935 (see pages XXI to XXVII at beginning of this volume), either not heretofore reported in the volumes, or referred to therein only by way of footnotes.

A number of such proceedings, disposing by *per curiam* decision, decrees without opinion, or consent decrees of applications by the Commission to enforce its orders or petitions to review the same (as distinguished from miscellaneous and interlocutory proceedings, separately set forth below) follow, reference to reports in Commission publication entitled "Statutes and Decision" being indicated by the abbreviation "S. & D."

Cox, S. E. J., et al. In proceeding by Commission to enforce its order in 5 F. T. C. 38, directing respondents to cease and desist making misrepresentations in connection with the sale of so-called blue sky stocks or securities in oil development schemes, Circuit Court of Appeals for Fifth Circuit on June 18, 1923, entered its decree directing respondent Cox, his agents, etc., until further order of the court, to cease and desist from making misrepresentations as therein set forth in connection with the subject matter of the order, which decree, as set forth in an account of various proceedings in the matter in S. & D. at pages 329-331, is "apparently still in effect."

Advance Paint Co. Commission's application to enforce its order in a commercial bribery case in which the order was not limited to the indulgence in the practices in question secretly and without the knowledge or consent of the employer, although Commission's complaint and findings of fact were to the effect that the practices had been thus followed, was denied on February 2, 1926, without prejudice to Commission's right to enter a new order in the matter, which order issued on July 9, 1926, duly limiting the scope thereof as hereinabove indicated (see 10 F. T. C. 279), following which no further action was taken (S. & D. 478, 479).

Hammond Lumber Co., 11 F. T. C. 313; *Kirschmann Hardwood Co.*, 11 F. T. C. 293; *Robert Dollar Co.*, 11 F. T. C. 313, and *Thos. E. Powe Lumber Co.*, 10 F. T. C. 280 and 11 F. T. C. 248. Following decision in an agreed test case, namely, that of the *Indiana Quartered*

Oak Co., 26 F. (2d) 340, 12 F. T. C. 721 (case before Commission in 10 F. T. C. 300 and 11 F. T. C. 271), the Circuit Court of Appeals for the Ninth Circuit entered, without opinion, on June 17, 1929, consent decrees affirming and directing compliance with the three first named aforesaid Commission orders, and Circuit Court of Appeals for the Eighth Circuit in the *Powe* case on June 28, 1929, entered similar decree (reported in 35 F. (2d) 1017). For further history of this matter, see further court decision in principal case, 58 F. (2d) 182 or 15 F. T. C. 683.

James B. Hall, Jr., Inc., and Edwin Cigar Co., Inc. Court of Appeals for Second Circuit on December 13, 1933, entered its decrees affirming Commission's orders, reported in 8 F. T. C. at 136 and 142, respectively, relating to misrepresentations in connection with the sale of cigars through use of the word "Havana", etc. Said decrees, which are reported in 67 F. (2d) 993, and which, except for the names of the respondents, appear to be substantially identical, after the usual formal recitals, directed the respondents, their agents, etc., in connection with the sale or offer of cigars in interstate and foreign commerce, to cease and desist from: "(1) Using the word 'Havana' as descriptive of cigars unless such cigars be made entirely from tobacco grown in the Island of Cuba; (2) Representing in any manner that cigars other than those manufactured entirely from tobacco grown in the Island of Cuba, are Havana cigars; (3) Advertising or representing in any manner whatsoever that any of the tobacco going into the manufacture of cigars manufactured by it was grown upon a plantation or plantations in the Island of Cuba owned by it, when such is not the fact"; and to file with the Commission within sixty days, and with the clerk of the court, after service upon them of copies of the decrees, reports showing compliance with the decrees.

Miscellaneous proceedings of one sort and another, such as to enjoin the Commission from proceeding, etc., but excluding from the enumeration those of an interlocutory nature, dealt with hereafter, follow:

Nulomoline Co. Court of Appeals for Second Circuit on Aug. 16, 1918, declined to interfere with the taking of testimony by the Commission in a proceeding against said company under Section 5, on the ground, per curiam, that the application was regarded as premature and, therefore, denied without prejudice, as was motion for a stay, for the same reason. Contention apparently was that validity of patent was involved and that under the act the application fell within the jurisdiction of the court. See 254 Fed. 988, and, for case before Commission, 1 F. T. C. 400. See also 4 F. T. C. 542, footnote.

M. H. Sowles. The United States District Court for the District of Utah, on Nov. 13, 1920, upon petition of the Commission, issued a ruling against said individual, vice-president of a Salt Lake City bank, to show cause why order should not be made requiring him to obey a subpoena

duces tecum issued and served upon him by the Commission in connection with the Commission's proceeding against the Utah-Idaho Sugar Co. (see 22 F. (2d) 122 or 11 F. T. C. 692, and, for case before Commission, 6 F. T. C. 390). Court, on Nov. 27, 1920, for the reasons set forth, as reported in S. & D. in the footnote at pages 638-640, indicated his view, for the reasons there set forth, that he should not grant an order as broad as that asked by the Commission, but that, through testimony of the nature indicated, the matter should be further developed and that, if necessary, he would enter a formal order denying the relief prayed, with the understanding that in further proceedings had before the Commission, and with the proper foundation laid, if the witness appeared contumacious or refused to answer, upon application, he would grant the relief prayed, following which defendant Sowles, on Nov. 29, was recalled and testified as a witness before the Commission's Examiner, with no further action taken in the District Court.

Beechnut Packing Co. Order of Court of Appeals for the Second Circuit on Feb. 7, 1922, on mandate of the Supreme Court in the resale price maintenance case of Federal Trade Commission v. Beechnut Packing Co., 257 U. S. 441 (4 F. T. C. 583), recites receipt of said mandate, orders that same be and is filed, and that the judgment of the Supreme Court is made the judgment of such Circuit Court, and orders that, in accordance with the provisions of said mandate, the Beechnut Packing Company "cease and desist from carrying into effect its so-called Beechnut policy by cooperative methods in which the petitioner and its distributors, customers, and agents undertake to prevent others from obtaining the company's products at less than the prices designated by it", etc., reciting verbatim the five practices as set forth in the next to the last paragraph of the opinion and decision of the Supreme Court (see pp. 455, 456 thereof, or 4 F. T. C. 592, 593), and concluding by awarding Commission costs as taxed in the Supreme Court, with execution therefor. Said mandate is reported in full in S. & D. 189.

Claire Furnace Co., et al. Final decree of the Supreme Court of the District of Columbia on March 10, 1922, enjoining the Commission from enforcing compliance with requests for certain information sought by questionnaires sent said company and other petitioners, including the Bethlehem Steel Company and Republic Iron & Steel Company, is reported in S. & D. at pp. 190-193 (see also footnote in 3 F. T. C. at 542 et seq.).

Douglas Fir Exploitation & Export Co. Supreme Court of the District of Columbia on April 3, 1922, dismissed petitioner's bill to enjoin the Commission from issuing a complaint against it under Section 5, on the ground (among others set out in Commission's motion to dismiss), that petitioner or complainant had not stated

such a case as to entitle it to equitable relief (see S. & D. at pp. 197, 198, and footnote in 4 F. T. C. 539).

Royal Baking Powder Co. Supreme Court of the District of Columbia in this matter, in which it theretofore, on Nov. 7, 1927 (S. & D. 650), declined to interfere with the Commission's reopening of the case in question on the ground that, as therein set forth, the Commission had not exhausted its jurisdiction over such case, and granted Commission's motion to dismiss the bill or complaint, on Nov. 15, 1927, declined to grant a supersedeas to operate as an injunction against the Commission pending the appeal, without deciding whether or not it was vested with discretion to do so, for the reasons therein set forth, and holding that it should not do indirectly that which it had directly held it had no right or jurisdiction to do directly (see S. & D. 651-653 for memorandum and final decree).

Maynard Coal Co. Order of Supreme Court of District of Columbia on Dec. 14, 1927, on mandate from the Court of Appeals of the District of Columbia (see 22 F. (2d) 873 or 11 F. T. C. 698), reversing said lower court's decree for complainant in its bill to enjoin Commission from enforcing an order issued against said company requiring it to furnish monthly reports and other information in relation to its business, is set forth in S. & D. (footnote) at page 650.

Royal Baking Powder Co. Order of Supreme Court of District of Columbia on May 17, 1929, denying company's petition for writ of mandamus to require the Commission to pass upon and announce their decision on certain affidavits and motions directed to having the Commission disqualify Commissioner Humphrey on the ground of prejudice from participating further in the certain proceedings in question before the Commission, in which said company "is a party or has an interest." Order discharging the rule to show cause, etc., in response to said petition, is set forth, together with explanatory comment relative to the proceeding, in S. & D. at 703, 704.

MacFadden Publications, Inc. Order of the Supreme Court of the District of Columbia on May 17, 1929, on petition for writ of mandamus to require the commission to issue subpoenas duces tecum on behalf of petitioner requiring production of certain desired documents in Commission proceeding under Section 5, discharging the rule to show cause, etc., is set forth, together with explanatory comment, in S. & D. at 704, 705, the decision of the Court of Appeals for the District of Columbia, affirming said action of the District Supreme Court being reported in 37 F. (2d) 822 or 13 F. T. C. 605.

Interlocutory orders in various Commission court matters are set forth in the Commission publication "Statutes and Decisions" (1914-1929), as follows:

Winsted Hosiery Co. Commission motion to remand, to take further evidence in proceeding to review its order, granted on April

13, 1921 (p. 715). See decisions on merits in 272 Fed. 957 (3 F. T. C. 618) and 258 U. S. 483 (4 F. T. C. 610).

Royal Baking Powder Co. et al. Commission motion for order requiring petitioners to make more specific one of its assignments of reasons, granted on Feb. 27, 1922 (p. 715). See final decision in 281 Fed. 744 or 4 F. T. C. 614.

The Mennen Co. Commission motion in proceeding to review, to make more specific, as above set forth, granted and case decided on Mar. 13, 1923 (p. 715). See final decision in 288 Fed. 774 or 6 F. T. C. 579.

B. S. Pearsall Butter Co. Commission motion in proceeding to review, for order to make more specific certain parts of the petition, overruled and case finally decided on July 19, 1923 (p. 716). See final decision in 292 Fed. 720 or 6 F. T. C. 605.

National Biscuit Co. Commission motion in proceeding to review, to strike from the petition the examiner's report, exceptions thereto and proposed additions, denied Feb. 18, 1924 (p. 716). See final decision in 299 Fed. 733 or 7 F. T. C. 603.

John C. Winston Co. Commission motion in proceeding to review for order to require petitioner to amend or enlarge its petition, as in the order specified, granted, as in the court order set forth, on Dec. 2, 1924 (p. 716). See final decision in 3 F. (2d) 961 or 8 F. T. C. 625.

The Butterick Co. et al. Commission motion to require petitioners to amend their petition for review as therein specified, withdrawn after petitioners' voluntary amendment of their petition in accordance with the motion (p. 716). See final decision in 4 F. (2d) 910 or 8 F. T. C. 602.

Oppenheim, Oberndorf & Co., Inc. (Sealpac Co.). Commission motion for order requiring petitioner to amend or enlarge its petition as therein specified, granted by order made on Nov. 22, 1924, as therein set forth (p. 717). See final decision in 5 F. (2d) 574 or 9 F. T. C. 629.

Toledo Pipe Threading Machine Co. Commission motion for order requiring petitioner to file amended petition, particularizing in certain respects, granted by order entered on May 12, 1925, said order also providing that upon the filing of the specifications by petitioner the record be printed, omitting therefrom the exhibits, said exhibits to be printed, insofar as relied upon, in the briefs of the parties so relying, which order, upon Commission motion for the vacating thereof so as to require the printing of the exhibits, was modified so as to require petitioner to print such a reasonable number of selected and typical exhibits as it might think necessary to present fairly the questions involved, with the Commission printing in its brief such further exhibits as it considers especially important. (See p. 718, and, on phase of matter dealing with printing the record and the

exhibits, also report of case in 6 F. (2d) 876, or 9 F. T. C. 652.) See final decision in 11 F. (2d) 337 or 10 F. T. C. 664.

John Moir et al., doing business as Chase & Sanborn. Commission motion for order requiring petitioners to be more specific and to strike from the petition the trial examiner's report upon the facts, petitioners' exceptions thereto, and certain matter relating thereto, and petitioners' motion for order directing Commission to add to its certified copy of the proceedings such report with their exceptions, granted as respects Commission's motion and denied as respects petitioners', by order entered Oct. 14, 1925 (p. 718). See final decision in 12 F. (2d) 22 or 10 F. T. C. 674.

The Q. R. S. Music Co. Commission motion for order to make more specific in said proceeding to review, and petitioner's motion for order requiring Commission to add to its certified transcript of record trial examiners' reports upon the facts and petitioner's exceptions thereto, and its request for proposed findings and for order to dismiss, were both denied on Oct. 14, 1924, and latter's motion to strike from record Commission's answer, in nature of cross-bill, and supporting affidavits, in which latter prayed for affirmance and enforcement of its cease and desist order, was also denied (p. 719). See final decision in 12 F. (2d) 730 or 10 F. T. C. 683.

Chamber of Commerce of Minneapolis et al. Petitioners' motion to dispense with printing the record and to require Commission to certify certain evidence offered by them but not received by the Commission, was, on Oct. 13, 1924, denied as to the former, as therein specified and excepting a certain exhibit, and granted as to the latter (p. 719). See final decision in 13 F. (2d) 673 or 10 F. T. C. 687.

Cream of Wheat Co. Commission's motion praying that petitioner's motion for adoption of certain affirmative propositions, report to Commission, and bulletin to customers be stricken from its petition for review, and that it specify what findings are not supported by or are contrary to evidence, etc., was denied Nov. 9, 1925, in this resale price maintenance case (p. 720). See final decision in 14 F. (2d) 40 or 10 F. T. C. 724.

Harriet Hubbard Ayer, Inc. Commission's motion for order to require petitioner to file more specific amended petition, as therein prayed, granted in part and denied in part on Feb. 4, 1926 (p. 720). See final decision in 15 F. (2d) 274 or 10 F. T. C. 754.

Ostermoor & Co., Inc., et al. Petitioners' motion for order directing Commission to file complete transcript of application and file, etc., as therein specified, leading to issuance of Commission complaint, denied Nov. 15, 1926 (p. 720). See final decision in 16 F. (2d) 962 or 11 F. T. C. 642.

Louis Leavitt. Commission motion that court remand case, in petition to review, to introduce evidence to show interstate commerce

as charged in complaint, denied on July 8, 1926 (p. 721). See final decision in 16 F. (2d) 1019 or 11 F. T. C. 635.

J. W. Kobi. Petitioner's motion for order directing Commission to certify as part of record report of trial examiner and its exceptions thereto, denied on June 13, 1927 (p. 721). See final decision in 23 F. (2d) 41 or 11 F. T. C. 713.

Armour & Co. Petitioner's application for leave to introduce additional evidence in proceeding in question under Section 7 of Clayton Act, in which Commission had entered an order to divest, etc., and application of Spokane Chamber of Commerce to intervene, were acted upon by order entered by the court on Oct. 9, 1923, by the denial of said application to intervene on the ground that said Chamber was not a proper party to the application and the making of provision for the taking of certain specified additional evidence, subject to the provision that the parties might stipulate as therein specified (p. 722). Commission thereafter, in view of decision of Supreme Court in *Swift & Co. v. F. T. C.*, 272 U. S. 554 (see 11 F. T. C. 629), rescinded its order in the matter (see 4 F. T. C. 457).

International Shoe Co. Petitioner's motion to have court adjudge Commission's complaint insufficient in law was denied on June 28, 1928 (p. 722). See final decision in 29 F. (2d) 518 or 12 F. T. C. 732; 280 U. S. 291 or 13 F. T. C. 593.

Samuel Breakstone. Commission motion asking court to modify its routine order relating to service of petition, etc., by excluding therefrom the required inclusion of the trial examiner's report as part of the record, was acted upon by the court on Dec. 3, 1928, through accepting a copy thereof attached to the motion, for action thereon as specified in the court's memorandum decision (p. 723). Subsequently, on Dec. 16, 1929, on motion of Commission, case was dismissed for want of prosecution (see, for case before Commission, 12 F. T. C. 215).

James S. Kirk & Co. Commission's motion (1) for the exclusion from the record filed by it of the trial examiner's report upon the facts and the exceptions thereto filed with it, denied without prejudice, and (2) to require arrangement of the condensation of the record in narrative form, called for by the court, to be in the same order as the record, denied for the reasons set forth by the court in its memorandum and order disposing of such motions, the court further indicating the manner of the preparation of the condensed narrative statement called for, specifying that indexes as therein set forth were to accompany such record, and denying the Commission's motion to strike from the petition certain parts thereof (p. 723). See final decision in 59 F. (2d) 179 or 16 F. T. C. 671.

The Ohio Leather Co. Application by petitioner to court for order directing Commission to file a certified copy of the trial examiner's

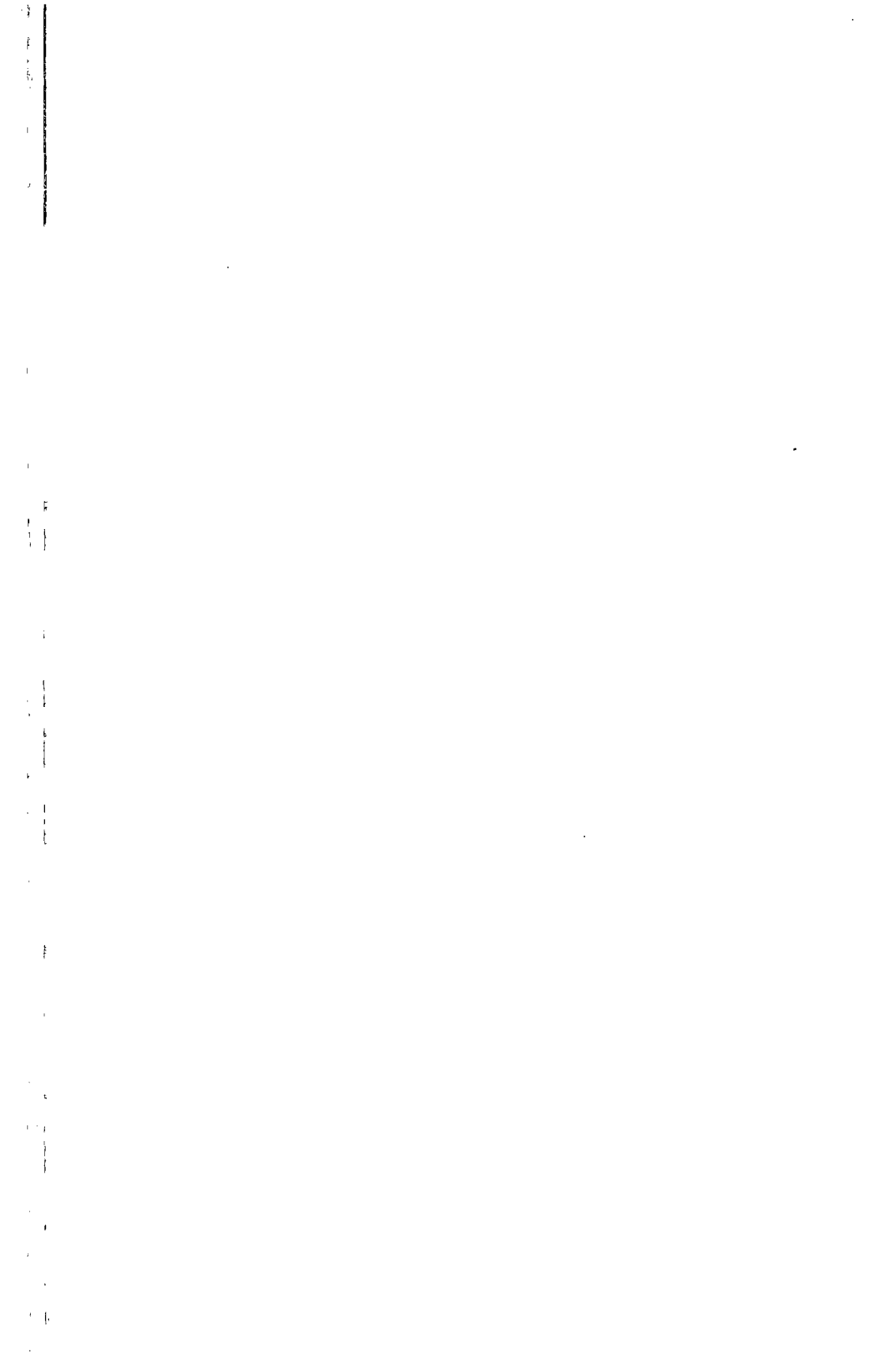
report and exceptions thereto as part of the transcript, was denied on June 5, 1929 (p. 724). See final decision in 45 F. (2d) 39 or 14 F. T. C. 699.

Grand Rapids Varnish Co. Motion to dismiss application of Commission for enforcement of its modified order to cease and desist in a commercial bribery proceeding on the grounds, among others, that the Commission had failed to observe the statutory procedure required, the modified order was invalid because the subject of the original order, to wit, "commercial bribery", did not constitute an unfair method of competition, and for failure to allege any violations or that respondent was engaged in interstate commerce, was, after being held in abeyance, overruled on June 4, 1929, and respondent given to the beginning of the October 1929 term of court to answer the application; the matter being finally disposed of on Oct. 8, 1929, by consent decree affirming the Commission's order and requiring compliance therewith (p. 725). See final decision in 41 F. (2d) 996 or 13 F. T. C. 580.

APPENDIX

FEDERAL TRADE COMMISSION ACT
CLAYTON ACT
EXPORT TRADE ACT
SHERMAN ANTITRUST ACT
NATIONAL RECOVERY ACT
EXECUTIVE ORDER OF JANUARY 20, 1934¹
RULES OF PRACTICE

¹Relating to N. R. A. cases before the Commission.



FEDERAL TRADE COMMISSION ACT¹

[Approved Sept. 26, 1914]

[PUBLIC—No. 203—63D CONGRESS]

[H.R. 15613]

AN ACT To create a Federal Trade Commission, to define its powers and duties, and for other purposes

Sec. 1. CREATION AND ESTABLISHMENT OF THE COMMISSION. (38 Stat. 717; 15 U.S.C.A., sec. 41.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a commission is hereby created and established, to be known as the Federal Trade Commission (hereinafter referred to as the commission), which shall be composed of five commissioners, who shall be

¹ Reported decisions of the courts for the period covered by this volume (Dec. 3, 1934, to June 24, 1935, inclusive), and arising under this act, are printed in full at p. 713 et seq. Previously decisions have been published, as handed down from time to time, in the different volumes of the Commission's Decisions. Such court decisions handed down prior to Jan. 1, 1930, may also be found compiled and indexed in the Commission publication entitled "Statutes and Decisions—Federal Trade Commission—1914—1929", subsequent decisions being reported in volume 13 and later volumes, of the Commission's decisions.

Note should also be made of the case of *Crowell v. Benson*, Feb. 23, 1932, 285 U.S. 22, in which the Supreme Court gave extensive consideration to questions involved in judicial review of fact-finding bodies.

It should be noted that the jurisdiction of the Commission is limited by the Packers and Stockyards Act, 1921, approved Aug. 15, 1921, ch. 64, 42 Stat. 159, sec. 406 (7 U.S.C.A. 227) of said Act providing that "on and after the enactment of this Act and so long as it remains in effect the Federal Trade Commission shall have no power or jurisdiction so far as relating to any matter which by this Act is made subject to the jurisdiction of the Secretary [of Agriculture] except in cases in which, before the enactment of this Act, complaint has been served under sec. 5 of the act entitled 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes', approved Sept. 26, 1914, or under sec. 11 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved Oct. 15, 1914, and except when the Secretary of Agriculture, in the exercise of his duties hereunder, shall request of the said Federal Trade Commission that it make investigations and report in any case."

For legislation establishing certain exceptions, as respects the operation of the antitrust laws, see footnote on p. 764 dealing with certain provisions relating to shipping and other carriers, and to agricultural and fisheries associations.

In connection with the history in Congress of the Federal Trade Commission Act, see address of President Wilson delivered at a joint session on Jan. 20, 1914 (Congressional Record, vol. 51, pt. 2, pp. 1962—1964, 63d Cong., 2d sess.); report of Senator Cummins, from the Committee on Interstate Commerce, on control of corporations, persons, and firms

Five commissioners. Appointed by President, by and with, etc. Not more than three from same political party.

appointed by the President, by and with the advice and consent of the Senate. Not more than three of the commissioners shall be members of the same political party. The first commissioners appointed shall continue in office

engaged in interstate commerce (Feb. 26, 1913, 62d Cong., 3d sess., Rept. No. 1326); Hearings on Interstate Trade Commission before Committee on Interstate and Foreign Commerce of the House, Jan. 30 to Feb. 16, 1914, 63d Cong., 2d sess.; Interstate Trade, Hearings on Bills relating to Trust Legislation before Senate Committee on Interstate Commerce, 2 vols., 63d Cong., 2d sess.; report of Mr. Covington, from the House Committee on Interstate and Foreign Commerce, on Interstate Trade Commission (Apr. 14, 1914, 63d Cong., 2d sess., Rept. No. 533); also parts 2 and 3 of said report, presenting the minority views, respectively, of Messrs. Stevens and Lafferty; report of Senator Newlands, from the Committee on Interstate Commerce, on Federal Trade Commission (June 13, 1914, 63d Cong., 2d sess., Rept. No. 597) and debates and speeches, among others, of Congressman Covington for (references to Congressional Record, 63d Cong., 2d sess., vol. 51), part 9, pp. 8840-8849, 9068, 14925-14933 (part 15); Dickinson for, part 9, pp. 9189-9190; Mann against, part 15, pp. 14939-14940; Morgan, part 9, 8854-8857, 9063-9064, 14941-14943 (part 15); Sims for, 14940-14941; Stevens of N.H. for, 9063 (part 9); 14941 (part 15); Stevens of Minn. for, 8849-8853 (part 9); 14933-14939 (part 15); and of Senators Borah against, 11186-11189 (part 11); 11232-11237; 11298-11302, 11600-11601 (part 12); Brandegee against, 12217-12218, 12220-12222, 12261-12262, 12410-12411, 12792-12804 (part 13), 13103-13105, 13299-13301, Clapp against, 11872-11873 (part 12), 13061-13065 (part 13), 13143-13146; 13301-13302; Cummins for, 11102-11106 (part 11), 11379-11389, 11447-11458 (part 12), 11528-11539, 12873-12875 (part 13), 12912-12924, 12987-12992, 13045-13052, 14768-14770 (part 15); Hollis for, 11177-11180 (part 11), 12141-12149 (part 12), 12151-12152; Kenyon for, 13155-13160 (part 13); Lewis for, 11302-11307 (part 11), 12924-12933 (part 13); Lippitt against, 11111-11112 (part 11), 13210-13219 (part 13); Newlands for, 9930 (part 10), 10376-10378 (part 11), 11081-11101, 11106-11116, 11594-11597 (part 12); Pomerene for, 12870-12873 (part 13), 12993-12996, 13102-13103; Reed against, 11112-11116 (part 11), 11874-11876 (part 12), 12022-12029, 12150-12151, 12539-12551 (part 13), 12933-12939, 13224-13234, 14787-14791 (part 15); Robinson for, 11107 (part 11), 11228-11232; Saulsbury for, 11185, 11591-11594 (part 2); Shields against, 13056-13061 (part 13), 13146-13148; Sutherland against, 11601-11604 (part 12), 12805-12817 (part 13), 12855-12862, 12980-12986, 13055-13056, 13109-13111; Thomas against, 11181-11185 (part 11), 11598-11600 (part 12), 12862-12869 (part 13), 12978-12980; Townsend against, 11870-11872 (part 12); and Walsh for, 13052-13054 (part 13).

See also Letters from the Interstate Commerce Commission to the chairman of the Committee on Interstate Commerce, submitting certain suggestions to the bill creating an Interstate Trade Commission, the first being a letter from Hon. C. A. Prouty, dated Apr. 9, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); letter from the Commissioner of Corporations to the chairman of the Committee on Interstate Commerce, transmitting certain suggestions relative to the bill (H.R. 15613) to create a Federal Trade Commission, first letter dated July 8, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); brief by the Bureau of Corporations, relative to sec. 5 of the bill (H.R. 15613) to create a Federal Trade Commission, dated Aug. 20, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); brief by George Rublee relative to the court review in the bill (H.R. 15613) to create a Federal Trade Commission, dated Aug. 25, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); and dissenting opinion of Justice Brandeis in *Federal Trade Commission v. Gratz*, 253 U. S. 421, 429-442. (See case also in vol. II of Commission's decisions, p. 564 at pp. 570-579, and in Statutes and Decisions, etc., 69, 74-81.)

for terms of three, four, five, six, and seven years, respectively, from the date of the taking effect of this Act, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed. The commission shall choose a chairman from its own membership. No commissioner shall engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the commission shall not impair the right of the remaining commissioners to exercise all the powers of the commission.

Term, seven years.

Chairman to be chosen by commission.

Pursuit other business prohibited. Removal by President.

Vacancy not to impair exercise of power by remaining commissioners.

The commission shall have an official seal, which shall be judicially noticed.

Seal judicially noticed.

Sec. 2. SALARIES. SECRETARY. OTHER EMPLOYEES. EXPENSES OF THE COMMISSION. OFFICERS. (38 Stat. 718; 15 U.S.C.A., sec. 42.)

SEC. 2. That each commissioner shall receive a salary of \$10,000 a year, payable in the same manner as the salaries of the judges of the courts of the United States. The commission shall appoint a secretary, who shall receive a salary of \$5,000 a year, payable in like manner, and it shall have authority to employ and fix the compensation of such attorneys, special experts, examiners, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.

Commissioner's salary, \$10,000.

Appointment of secretary. Salary, \$5,000.

Other employees. Salaries fixed by Commission.

With the exception of the secretary, a clerk to each commissioner, the attorneys, and such special experts and examiners as the commission may from time to time find necessary for the conduct of its work, all employees of the commission shall be a part of the classified civil service, and shall enter the service under such rules and regulations as may be prescribed by the commission and by the Civil Service Commission.

Except for secretary, commissioners' clerks, and such special experts and examiners as Commission may find necessary, all employees part of classified service.

All of the expenses of the commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be

Expenses of commission allowed and paid on presentation of itemized approved vouchers.

allowed and paid on the presentation of itemized vouchers therefor approved by the commission.

Commission may rent suitable offices.

Until otherwise provided by law, the commission may rent suitable offices for its use.

Auditing of accounts.

The Auditor for the State and Other Departments shall receive and examine all accounts of expenditures of the commission.

Sec. 3. BUREAU OF CORPORATIONS, OFFICE OF THE COMMISSION. PROSECUTION OF INQUIRIES. (38 Stat. 718; 15 U.S.C.A., sec. 43.)

Bureau of Corporations absorbed by Commission.

SEC. 3. That upon the organization of the commission and election of its chairman, the Bureau of Corporations and the offices of Commissioner and Deputy Commissioner of Corporations shall cease to exist; and all pending investigations and proceedings of the Bureau of Corporations shall be continued by the commission.

Clerks, employees, records, papers, property, appropriations transferred to Commission.

All clerks and employees of the said bureau shall be transferred to and become clerks and employees of the commission at their present grades and salaries. All records, papers, and property of the said bureau shall become records, papers, and property of the commission, and all unexpended funds and appropriations for the use and maintenance of the said bureau, including any allotment already made to it by the Secretary of Commerce from the contingent appropriation for the Department of Commerce for the fiscal year nineteen hundred and fifteen, or from the departmental printing fund for the fiscal year nineteen hundred and fifteen, shall become funds and appropriations available to be expended by the commission in the exercise of the powers, authority, and duties conferred on it by this Act.

Principal office in Washington, but Commission may meet elsewhere.

[719] The principal office of the commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The commission may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

May prosecute any inquiry anywhere in United States.

Sec. 4. DEFINITIONS. (38 Stat. 719; 15 U.S.C.A., sec. 44.)

SEC. 4. That the words defined in this section shall have the following meaning when found in this Act, to wit:

"Commerce."

"Commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between

any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

“Corporation” means any company or association “Corporation.” incorporated or unincorporated, which is organized to carry on business for profit and has shares of capital or capital stock, and any company or association, incorporated or unincorporated, without shares of capital or capital stock, except partnerships, which is organized to carry on business for its own profit or that of its members.

“Documentary evidence” means all documents, papers, “Documentary evidence.” and correspondence in existence at and after the passage of this Act.

“Acts to regulate commerce” means the Act entitled “Acts to regulate commerce.”

“An Act to regulate commerce”, approved February fourteenth, eighteen hundred and eighty-seven, and all Acts amendatory thereof and supplementary thereto.

“Antitrust acts” means the Act entitled “Antitrust acts.” “An Act to protect trade and commerce against unlawful restraints and monopolies”, approved July second, eighteen hundred and ninety;² also the sections seventy-three to seventy-seven, inclusive, of an Act entitled “An Act to reduce taxation, to provide revenue for the Government, and for other purposes”, approved August twenty-seventh, eighteen hundred and ninety-four; and also the Act entitled “An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled ‘An Act to reduce taxation, to provide revenue for the Government, and for other purposes’”, approved February twelfth, nineteen hundred and thirteen.

Sec. 5. UNFAIR COMPETITION. COMPLAINTS, FINDINGS, AND ORDERS OF COMMISSION. APPEALS. SERVICE. (38 Stat. 719; 15 U.S.C.A., sec. 45.)

SEC. 5. That unfair methods of competition in commerce Unfair methods unlawful. are hereby declared unlawful.

The commission is hereby empowered and directed to Commission to prevent. Banks and common carriers excepted. prevent persons, partnerships, or corporations, except

¹ For text of Sherman Act, see p. 795.

² Jurisdiction of Commission under this section limited by sec. 406 of the “Packers and Stockyards Act, 1921,” approved Aug. 15, 1921, ch. 64, 42 Stat. 159. See third paragraph of footnote on p. 749.

Provisions against unfair methods of competition extended by Export Trade Act (see sec. 4, p. 791) to include such methods, used in export trade against competitors.

banks, and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce.

Commission to issue complaint when unfair method used and to public interest.

To serve same on respondent with notice of hearing.

Respondent to have right to appear and show cause, etc.

Intervention allowed on application and good cause.

Testimony to be reduced to writing and filed.

If method prohibited, Commission to make written report stating findings, and to issue and serve order to cease and desist on respondent.

Modification or setting aside by the Commission of its order.

Disobedience of order. Application to Circuit Court of Appeals by Commission.

Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the commission, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall [720] be of the opinion that the method of competition in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply to the cir-

cuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person, partnership, or corporation and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section two hundred and forty of the Judicial Code.

Action by Court. Notice to respondent. Decree affirming, modifying, or setting aside Commission's order.

Commission's findings. Conclusive if supported by testimony.

Introduction of additional evidence, if reasonable grounds for failure to adduce theretofore.

May be taken before Commission.

Commission may make new or modified findings by reason thereof.

Judgment and decree subject to review upon certiorari, but otherwise final.

Petition by respondent to review order to cease and desist.

Any party required by such order of the commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission be set aside. A copy of

To be served on Commission.

such petition shall be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission as in the case of an application by the commission for the enforcement of its order, and the findings of the commission as to the facts, if supported by testimony, shall in like manner be conclusive.

Jurisdiction of Court of Appeals same as on application by Commission, and Commission's findings similarly conclusive.

Jurisdiction of Court exclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission shall be exclusive.

Proceedings to have precedence over other cases.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every [721] way expedited. No order of the commission or judgment of the court to enforce the same shall in any wise relieve or absolve any person, partnership, or corporation from any liability under the anti-trust acts.*

Liability under antitrust acts not affected.

Service of Commission's complaints, orders, and other processes.

Complaints, orders, and other processes of the commission under this section may be served by anyone duly authorized by the commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person, partnership, or corporation; or (c) by registering and mailing a copy thereof addressed to such person, partnership, or corporation at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

Personal; or

At office or place of business; or

By registered mail.

Verified return by person serving, and return post-office receipt, proof of service.

*For text of Sherman Act, see p. 795. As enumerated in last paragraph of sec. 4 of this act, see p. 753.

Sec. 6. FURTHER POWERS,* (38 Stat. 721; 15 U.S.C.A., sec. 46.)

SEC. 6. That the commission shall also have power—

(a) To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers subject to the act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships.

To gather and compile information, and to investigate with reference to organization, business, etc., of corporations, except banks and common carriers.

(b) To require, by general or special orders, corporations engaged in commerce, excepting banks, and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the commission in such form as the commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the commission may prescribe, and shall be filed with the commission within such reasonable period as the commission may prescribe, unless additional time be granted in any case by the commission.

To require annual or special reports from corporations, except banks and common carriers.

Such reports to be under oath, or otherwise, and filed within such reasonable period as Commission may prescribe.

(c) Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the antitrust Acts, to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney General, it shall be its duty to make such inves-

To investigate, either on own initiative or application of Attorney General, observance of final decree entered under antitrust acts.

* Public, No. 78, 73d Cong., approved June 16, 1933, making appropriations for the fiscal year ending June 30, 1934, for the "Executive Office and sundry independent executive bureaus, boards, commissions", etc., made the appropriation for the Commission contingent upon the provision (48 Stat. 291; 15 U.S.C.A., sec. 46a) that "hereafter no new investigations shall be initiated by the Commission as the result of a legislative resolution, except the same be a concurrent resolution of the two Houses of Congress."

Provisions and penalties of secs. 6, 8, 9, and 10 of this act made applicable to the jurisdiction, powers, and duties conferred and imposed upon the Secretary of Agriculture by sec. 402 of the Packers and Stockyards Act, 1921, approved Aug. 15, 1921, ch. 64, 42 Stat. 159 (7 U.S.C.A. 222).

To transmit findings and recommendations to Attorney General.

tigation. It shall transmit to the Attorney General a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public in the discretion of the commission.

To investigate on direction of President or either House, alleged violations of antitrust acts.

(d) Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust Acts by any corporation.

To investigate, and make recommendations, on application of Attorney General, for readjustment of business of alleged violator of antitrust acts.

(e) Upon the application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust Acts in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.

To make public, as it deems expedient, portions of information obtained.

(f) To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest; and to make annual and special reports to the Congress and to submit therewith [722] recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

To make reports to Congress, together with recommendations for new legislation.

To classify corporations, and make rules and regulations incidental to administration of Act.

(g) From time to time to classify corporations and to make rules and regulations for the purpose of carrying out the provisions of this Act.

To investigate foreign trade conditions involving foreign trade of United States, reporting to Congress with recommendations deemed advisable.

(h) To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

Sec. 7. SUITS IN EQUITY UNDER ANTITRUST ACTS. COMMISSION AS MASTER IN CHANCERY. (38 Stat. 722; 15 U.S.C.A., sec. 47.)

Court may refer suit to Commission.

SEC. 7. That in any suit in equity brought by or under the direction of the Attorney General as provided in the antitrust Acts, the court may, upon the conclusion of the testimony therein, if it shall be then of opinion that the complainant is entitled to relief, refer said suit to the commission, as a master in chancery, to ascertain and report an appropriate form of decree therein. The commission shall proceed upon such notice to the parties and under such rules of procedure as the court may prescribe,

To ascertain and report an appropriate form of decree. Commission to proceed on notice to parties and as prescribed by court.

and upon the coming in of such report such exceptions may be filed and such proceedings had in relation thereto as upon the report of a master in other equity causes, but the court may adopt or reject such report, in whole or in part, and enter such decree as the nature of the case may in its judgment require.

Exceptions, Proceedings as in other equity causes.

Court may adopt or reject report in whole or in part.

Sec. 8. COOPERATION OF OTHER DEPARTMENTS AND BUREAUS. (38 Stat. 722; 15 U.S.C.A., sec. 48.)

SEC. 8. That the several departments and bureaus of the Government when directed by the President shall furnish the commission, upon its request, all records, papers, and information in their possession relating to any corporation subject to any of the provisions of this Act, and shall detail from time to time such officials and employees to the commission as he may direct.

To furnish, when directed by President, records, papers, and information, and to detail officials and employees.

Sec. 9. EVIDENCE. WITNESSES. TESTIMONY. MANDAMUS TO ENFORCE OBEDIENCE TO ACT. (38 Stat. 722; 15 U.S.C.A., sec. 49.)

SEC. 9. That for the purposes of this Act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpoenas, and members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

Commission to have access to documentary evidence and right to copy same.

May require attendance of witnesses and production of evidence.

Subpoenas, oaths, affirmations, examination of witnesses. Reception of evidence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Witnesses and evidence may be required from any place in United States.

Disobedience to a subpoena. Commission may invoke aid of any United States court.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the

In case of contumacy or disobedience of subpoena, any district court in jurisdiction involved may order obedience.

Disobedience thereafter punishable as contempt.

commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Mandamus from district courts on application of Attorney General to enforce compliance with Act.

Upon the application of the Attorney General of the United States, at the request of the commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the commission made in pursuance thereof.

Commission may order depositions at any stage.

The commission may order testimony to be taken by deposition in any proceeding or investigation pending under this Act at any [723] stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent.

May be taken before person designated by Commission. Testimony to be reduced to writing, etc.

Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided.

Appearance, testimony, and production of evidence may be compelled as in proceeding before Commission.

Witness fees same as paid for like services in United States courts.

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

Incriminating testimony or evidence no excuse for failure to testify or produce.

No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpoena of the commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the commission in obedience to a subpoena issued by it: *Provided*, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

But natural person shall not be prosecuted with respect to matters involved.

Perjury excepted.

Sec. 10. PENALTIES. (38 Stat. 723; 15 U.S.C.A., sec. 50.)

SEC. 10. That any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than \$1,000 nor more than \$5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Failure to testify or to produce documentary evidence.

False entries, to fine or imprisonment, or both.

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Act, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to this Act, or who shall willfully neglect or fail to make, or cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall willfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence, of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than \$1,000 nor more than \$5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

False entries, statements, or tampering with accounts, records, or other documentary evidence, or willful failure to make entries, etc.; or

Willful refusal to submit documentary evidence to Commission.

Offender subject to fine or imprisonment, or both.

If any corporation required by this Act to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It [724] shall be the duty of the various district attorneys, under the direction of the Attorney Gen-

Failure of corporation to file required report.

Forfeiture for each day's continued failure.

Recoverable in civil suit in district where corporation has principal office, or does business. Various district attorneys to prosecute for recovery.

eral of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Unauthorized divulgence of information by employee of Commission punishable by fine or imprisonment or both.

Any officer or employee of the commission who shall make public any information obtained by the commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

Sec. 11. ANTITRUST ACTS AND ACT TO REGULATE COMMERCE. (38 Stat. 724; 15 U.S.C.A., sec. 51.)

Not affected by this act.

SEC. 11. Nothing contained in this Act shall be construed to prevent or interfere with the enforcement of the provisions of the antitrust Acts or the Acts to regulate commerce, nor shall anything contained in the Act be construed to alter, modify, or repeal the said antitrust Acts or the Acts to regulate commerce or any part or parts thereof.

Approved, September 26, 1914.

CLAYTON ACT¹

[Approved Oct. 15, 1914]

[PUBLIC—No. 212—63D CONGRESS]

[H.R. 15657]

AN ACT TO supplement existing laws against unlawful restraints and monopolies, and for other purposes

Sec. 1. DEFINITIONS. (38 Stat. 730; 15 U.S.C.A., sec. 12.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That "antitrust laws", as used herein, includes the ^{"Antitrust laws."}

¹ COURT DECISIONS

Reported decisions of the courts for the period covered by volumes I—XIII, inclusive, of the Commission's decisions (Mar. 16, 1915, to May 4, 1930, inclusive), and bearing on the provisions of this act affecting the Commission, may be found, with a few exceptions to be noted, reported in whole or in part in the Commission publication entitled "Statutes and Decisions—Federal Trade Commission—1914—1929."

Decisions in which the Commission was a party and which were handed down during the period above referred to may also be found reported in their chronological order in the different volumes of the Commission's decisions.

Exceptions above referred to follow: *Parker v. New England Oil Corporation*, 8 F. (2d) 392, 418; *Radio Corporation of America v. United Radio & Electric Corporation et al.*, 50 F. (2d) 206; *Swift & Co. v. United States*, 276 U.S. 311, 319; *United States v. Bates Valve Bag Corporation et al.*, 39 F. (2d) 162; *Sidney Morris & Co. v. National Association of Stationers, etc.*, 40 F. (2d) 620 (C.C.A.).

Decisions handed down subsequent to aforesaid period and during period covered by volumes 14—20, i. e., May 5, 1930, to June 24, 1935, include the following: *Pittsburgh & W.Va. Ry. v. U.S.*, 281 U.S. 479, 483, 484, 488; *American Can Co. v. Ladoga*, 44 F. (2d) 763; *Radio Corporation of America v. DeForest Radio Co.*, 47 F. (2d) 606; *Carbice Corporation of America v. American Patents Development Corporation et al.*, 283 U.S. 27; *Quiterman v. Penn. R.R. Co. et al.*, 48 F. (2d) 851; *Radio Corp. of America v. DeForest Radio Co.*, 283 U.S. 847 (denying certiorari); *U.S. Navigation Co. v. Cunard S.S. Co.*, 50 F. (2d) 83, 284 U.S. 474; *Peterson v. Borden Co.*, 50 F. (2d) 644;

Temple Anthracite Coal Co. v. F.T.C., 51 F. (2d) 656 (see also 15 F.T.C. 616); *Hand v. Kansas City So. Ry. Co.*, 55 F. (2d) 712; *V. Vivaudou, Inc., v. F.T.C.*, 54 F. (2d) 273 (see also 15 F.T.C. 631); *Atwater v. Wheeling & L. E. Ry. Co.*, 56 F. (2d) 720, 722;

F.T.C. v. Paramount Famous Lasky Corp. et al., 57 F. (2d) 152 (see also 16 F.T.C. 660); *Gibson Canning Co. v. American Can Co.*, 1 F. Supp. 242; *Alemite Corp. v. Lubrair Corp.*, 62 F. (2d) 899, 901; *Fleetway v. Public Service Interstate Transp. Co.*, 4 F. Supp. 482;

American Equipment Co. v. Tuthill Bldg. Material Co., 6 F. Supp. 21; *Arrow-Hart & Hegeman Elec. Co. v. F.T.C.*, 63 F. (2d) 108 (see also 17 F.T.C. 658); *United States v. Radio Corp. of America, et al.*, 3 F. Supp. 23; *Clare v. Ice Cream Cabinet Co., Inc.*, 166 At. 722;

Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved

Arrow-Hart & Hegeman Elec. Co. v. F.T.C., 85 F. (2d) 336; *Pa. R. Co. v. I. O. C.*, 68 F. (2d) 87; *Stanley Co. v. A. T. & T. Co.*, 4 F. Supp. 80; *Carbonio Gas Co., etc. v. Pure Carbonio Co., etc.*, 4 F. Supp. 992;

Stanley Co. v. A. T. & T. Co., 5 F. Supp. 380; *Chas. H. Lilly Co. v. I. F. Laucks, Inc.*, 68 F. (2d) 175, 182, 183, 189; *Alemits Corp. v. Rogers*, 5 F. Supp. 940; *American Equipment Co. v. Tuthill*, 69 F. (2d) 406.

Arrow-Hart & Hegeman Elec. Co. v. F.T.C., 291 U. S. 587 (see volume 18 at p. 691); *Pa. R. Co. v. I.O.C.*, 291 U. S. 651, 54 S. Ct. 559; *Boss Mfg. Co. v. Payne Glove Co.*, 71 F. (2d) 768; *Lipson v. Socony-Vacuum Corp.*, 7 F. Supp. 961, 964;

Fleetway, Inc. v. Public Service Interstate Transportation Co., 72 F. (2d) 761; *Vulcan Mfg. Co. v. Maytag Co.*, 73 F. (2d) 136; *Excelsior Motor Mfg. & Supply Co. et al. v. Sound Equipment, Inc.*, 73 F. (2d) 725;

Perelman v. Warner Bros. Pictures, 9 F. Supp. 729; *Lipson v. Socony-Vacuum Corp.*, 76 F. (2d) 213; *United States v. Republic Steel Corp.*, 11 F. Supp. 117.

It should be noted that this law is limited to some extent by certain provisions of other acts, as follows:

SHIPPING BOARD

The so-called "Shipping Board Act" (sec. 15, ch. 451, 64th Cong., 1st sess., 39 Stat. 728, 734; 46 U.S.C.A. 814) provides that "every agreement, modification, or cancellation lawful under this section shall be excepted from the provisions of the act approved July-2, 1890, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies', and amendments and acts supplementary thereto * * *."

PACKERS AND STOCKYARDS ACT

The jurisdiction of the Commission is limited by the Packers and Stockyards Act, 1921, approved Aug. 15, 1921, ch. 64, 42 Stat. 159, sec. 406 of said act (7 U.S.C.A. 227) providing that "on and after the enactment of this act and so long as it remains in effect the Federal Trade Commission shall have no power or jurisdiction so far as relating to any matter which by this act is made subject to the jurisdiction of the Secretary [of Agriculture], except in cases in which, before the enactment of this act, complaint has been served under sec. 5 of the act entitled 'An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes', approved Sept. 26, 1914, or under sec. 11 of the act entitled 'An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved Oct. 15, 1914, and except when the Secretary of Agriculture, in the exercise of his duties hereunder, shall request of the said Federal Trade Commission that it make investigations and report in any case"; and

TRANSPORTATION ACT

By the last paragraph of sec. 407 of the Transportation Act, approved Feb. 28, 1920, ch. 91, 41 Stat. 456 at 482; 49 U.S.C.A. 5 (8) the provisions of the Clayton Act and of all other restraints or prohibitions, State or Federal, are made inapplicable to carriers, insofar as the provisions of the section in question, which relate to division of traffic, acquisitions by a carrier of control of other carriers and consolidations of railroad systems or railroads, are concerned.

AGRICULTURAL AND FISHERY ASSOCIATIONS

Public No. 146, Sixty-seventh Congress, approved Feb. 18, 1922 (42 Stat. 388; 7 U.S.C.A. 291, 292), permits, subject to the provisions set forth, including necessary corrective action by the Secretary of Agriculture for undue price enhancement, associations of producers of agricultural products for the purpose of "preparing for market, handling, and marketing in interstate and foreign commerce such products * * *." See also, in this general connection, the Cooperative Marketing Act, approved July 2, 1926, 44 Stat. 803 (7 U.S.C.A. 455).

July second, eighteen hundred and ninety;* sections seventy-three to seventy-seven, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", of August twenty-seventh, eighteen hundred and ninety-four; an Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes'", approved February twelfth, nineteen hundred and thirteen; and also this Act.

"Commerce", as used herein, means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided*, That nothing in this Act contained shall apply to the Philippine Islands. "Commerce."

The word "person" or "persons" wherever used in this Act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country. "Person" or "persons."

Sec. 2. PRICE DISCRIMINATION.* (38 Stat. 730; 15 U.S.C.A., sec. 13.)

SEC. 2. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly to discriminate in price between different purchasers of commodities, which commodities Unlawful where effect may be to substantially lessen competition or tend to create a monopoly.

Public No. 464, 73d Cong., approved June 25, 1934 (48 Stat. 1213, 15 U.S.C.A., sec. 166-1), permits, subject to provisions set forth, including similar corrective action by the Secretary of Commerce, associations of persons engaged in the fishery industry for the purpose of "collectively catching, producing, preparing for market, processing, handling, and marketing in interstate and foreign commerce, such products of said persons so engaged."

*The Sherman Act (28 Stat 209; 15 U.S.C.A. 1 et seq.), which as a matter of convenience is printed herewith on p. 795 et seq.

*On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on p. 764.

But permissible if based on difference in grade, quality, or quantity, or in selling or transportation cost, or if made to meet competition, and

Vendor may select own customers if not in restraint of trade.

Unlawful where effect may be to substantially lessen competition.

are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce: *Provided*, That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in [731] commerce from selecting their own customers in bona fide transactions and not in restraint of trade.

Sec. 3. TYING OR EXCLUSIVE LEASES, SALES, OR CONTRACTS.⁴ (38 Stat. 731; 15 U.S.C.A., sec. 14.)

SEC. 3. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

⁴ On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on p. 764.

Sec. 4. VIOLATION OF ANTITRUST LAWS—DAMAGES TO PERSON INJURED. (38 Stat. 731; 15 U.S.C.A., sec. 15.)

SEC. 4. That any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws ⁵ may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

May sue in any United States district court, and recover threefold damages, including cost of suit.

Sec. 5. PROCEEDINGS BY OR IN BEHALF OF UNITED STATES UNDER ANTITRUST LAWS. FINAL JUDGMENTS OR DECREES THEREIN AS EVIDENCE IN PRIVATE LITIGATION. INSTITUTION THEREOF AS SUSPENDING STATUTE OF LIMITATIONS. (38 Stat. 731; 15 U.S.C.A., sec. 16.)

SEC. 5. That a final judgment or decree hereafter rendered in any criminal prosecution or in any suit or proceeding in equity brought by or on behalf of the United States under the antitrust laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any suit or proceeding brought by any other party against such defendant under said laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: *Provided*, This section shall not apply to consent judgments or decrees entered before any testimony has been taken: *Provided further*, This section shall not apply to consent judgments or decrees rendered in criminal proceedings or suits in equity, now pending, in which the taking of testimony has been commenced but has not been concluded, provided such judgments or decrees are rendered before any further testimony is taken.

Prima facie evidence against same defendant in private litigation.

Consent judgments or decrees excepted.

Whenever any suit or proceeding in equity or criminal prosecution is instituted by the United States to prevent, restrain or punish violations of any of the antitrust laws, the running of the statute of limitations in respect of each and every private right of action arising under said laws and based in whole or in part on any matter complained of in said suit or proceeding shall be suspended during the pendency thereof.

Running of statute of limitations with respect to private rights suspended pending proceeding by the United States under antitrust laws.

⁵ For text of Sherman Act, see p. 795. As enumerated in Clayton Act, see first paragraph thereof on pp. 763-765.

Sec. 6. LABOR OF HUMAN BEINGS NOT A COMMODITY OR ARTICLE OF COMMERCE. (38 Stat. 731; 15 U.S.C.A., sec. 17.)

Labor, agricultural or horticultural organizations and their members, organized for mutual help and without capital stock, not affected by antitrust laws with respect to their legitimate objects.

SEC. 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

Sec. 7. ACQUISITION BY CORPORATION OF STOCK OR OTHER SHARE CAPITAL OF OTHER CORPORATION OR CORPORATIONS.* (38 Stat. 731; 15 U.S.C.A., sec. 18.)

Of other corporations. Prohibited where effect may be to substantially lessen competition, restrain commerce, or tend to create a monopoly.

SEC. 7. That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition [732] between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

Of two or more other corporations. Prohibited where effect may be to substantially lessen competition, restrain commerce, or tend to create a monopoly.

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

* On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on p. 764.

It should be noted also that corporations for export trade are excepted from the provisions of this section under the Export Trade Act. (See sec. 3, p. 790, *infra*.)

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Purchase solely for investment excepted.

Formation of subsidiary corporations for immediate lawful business also excepted.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other such common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Common carriers excepted with reference to branch or tap lines where no substantial competition.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Existing rights heretofore lawfully acquired not affected.

Sec. 8. INTERLOCKING DIRECTORS, OFFICERS, OR EMPLOYEES OF BANKS, BANKING ASSOCIATIONS, OR TRUST COMPANIES OPERATING UNDER LAWS OF UNITED STATES AND DIRECTORS OF OTHER CORPORATIONS.¹ (33 Stat. 732; 15 U.S.C.A., sec. 19.)

Not to serve more than one bank, banking association, or trust company if deposits, capital, surplus, and undivided profits aggregate over \$5,000,000.

How eligibility determined.

Not to serve more than one bank, banking association or trust company located in city or

SEC. 8. That from and after two years from the date of the approval of this Act no person shall at the same time be a director or other officer or employee of more than one bank, banking association or trust company, organized or operating under the laws of the United States, either of which has deposits, capital, surplus, and undivided profits aggregating more than \$5,000,000; and no private banker or person who is a director in any bank or trust company, organized and operating under the laws of a State, having deposits, capital, surplus, and undivided profits aggregating more than \$5,000,000, shall be eligible to be a director in any bank or banking association organized or operating under the laws of the United States. The eligibility of a director, officer, or employee under the foregoing provisions shall be determined by the average amount of deposits, capital, surplus, and undivided profits as shown in the official statements of such bank, banking association, or trust company filed as provided by law during the fiscal year next preceding the date set for the annual election of directors, and when a director, officer, or employee has been elected or selected in accordance with the provisions of this Act it shall be [733] lawful for him to continue as such for one year thereafter under said election or employment.

No bank, banking association or trust company, organized or operating under the laws of the United States, in any city or incorporated town or village of more than

¹ By the last paragraph of the Act of Sept. 7, 1916, amending the Federal Reserve Act, ch. 461, 39 Stat. 752 at 756 (12 U.S.C.A. 605), it is provided that the provisions of sec. 8 shall not apply to "A director or other officer, agent, or employee of any member bank" who may, "with the approval of the Federal Reserve Board be a director or other officer, agent or employee of any" bank or corporation "chartered or incorporated under the laws of the United States or of any State thereof, and principally engaged in international or foreign banking, or banking in a dependency or insular possession of the United States", in the capital stock of which such member bank may have invested under the conditions and circumstances set forth in the act.

On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on p. 764.

two hundred thousand inhabitants, as shown by the last preceding decennial census of the United States, shall have as a director or other officer or employee any private banker or any director or other officer or employee of any other bank, banking association or trust company located in the same place: *Provided*, That nothing in this section shall apply to mutual savings banks not having a capital stock represented by shares; to joint-stock land banks organized under the provisions of the Federal Farm Loan Act, or to other banking institutions which do no commercial banking business: *Provided further*, That a director or other officer or employee of such bank, banking association, or trust company may be a director or other officer or employee of not more than one other bank or trust company organized under the laws of the United States or any State where the entire capital stock of one is owned by stockholders in the other: *And provided further*, That nothing contained in this section shall forbid a director of class A of a Federal reserve bank, as defined in the Federal Reserve Act, from being an officer or director or both an officer and director in one member bank: *And provided further*, That nothing in this Act shall prohibit any private banker from being an officer, director, or employee of not more than two banks, banking associations, or trust companies, or prohibit any officer, director, or employee of any bank, banking association, or trust company, or any class A director of a Federal reserve bank, from being an officer, director, or employee of not more than two other banks, banking associations, or trust companies, whether organized under the laws of the United States or any State, if in any such case there is in force a permit therefor issued by the Federal Reserve Board; and the Federal Reserve Board is authorized to issue such permit if in its judgment it is not incompatible with the public interest, and to revoke any such permit whenever it finds, after reasonable notice and opportunity to be heard, that the public interest requires its revocation.

The consent of the Federal Reserve Board may be procured before the person applying therefor has been

Incorporated town or village of more than 200,000 inhabitants.

Certain savings banks, land banks, and non-commercial banking institutions excepted.

Where entire stock of one bank, etc., owned by stockholders of other, also excepted.

Class A director of Federal reserve bank excepted, and

Private banker or officer, etc., of member bank, or class A director may serve, with consent of Federal Reserve Board, not more than two other banks, etc., where no substantial competition.

Consent may be secured before applicant elected director.

* That part of the preceding clause beginning with "to joint-stock land banks" added by Act of Mar. 2, 1929, ch. 581.

elected as a class A director of a Federal reserve bank or as a director of any member bank.*

Not to serve two or more presently or previously competing corporations if capital, surplus, and undivided profits aggregate more than \$1,000,000, and elimination of competition by agreement would violate antitrust laws.

That from and after two years from the date of the approval of this Act no person at the same time shall be a director in any two or more corporations, any one of which has capital, surplus, and undivided profits aggregating more than \$1,000,000, engaged in whole or in part in commerce, other than banks, banking associations, trust companies and common carriers subject to the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, if such corporations are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws. The eligibility of a director under the foregoing provision shall be determined by the aggregate amount of the capital, surplus, and undivided profits, exclusive of dividends declared but not paid to stockholders, at the end of the fiscal year of said corporation next preceding the election of directors, and when a director has been elected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter.

How eligibility determined.

Eligibility at time of election or selection not changed for one year.

When any person elected or chosen as a director or officer or selected as an employee of any bank or other corporation subject to the provisions of this Act is eligible at the time of his election or selection to act for such bank or other corporation in such capacity his eligibility to act in such capacity shall not be affected and he shall not become or be deemed amenable to any of the provisions hereof by reason of any change in the affairs of such bank or other corporation from whatsoever cause, whether specifically excepted by any of the provisions hereof or not, until the expiration of one year from the date of his election or employment.

* The part of the section immediately preceding beginning with, "And provided further, That nothing in this Act" to this point, amendments made by act, May 15, 1916, ch. 120, act of May 26, 1920, ch. 206, and act Mar. 9, 1928, ch. 165.

Sec. 8a. DIRECTOR, ETC., OF BANK, BANKING ASSOCIATION OR TRUST COMPANY, UNDER LAWS OF UNITED STATES, AS ALSO DIRECTOR, ETC., OF CORPORATION, OR PARTNER IN CONCERN, LOANING ON STOCK OR BOND COLLATERAL.¹⁰ (48 Stat. 194; 15 U.S.C.A., sec. 19a.)

SEC. 8a. That from and after the 1st day of January 1934, no director, officer, or employee of any bank, banking association, or trust company, organized or operating under the laws of the United States shall be at the same time a director, officer, or employee of a corporation (other than a mutual savings bank) or a member of a partnership organized for any purpose whatsoever which shall make loans secured by stock or bond collateral to any individual, association, partnership, or corporation other than its own subsidiaries.

Prohibited, excepting mutual savings banks and own subsidiaries.

Sec. 9. WILLFUL MISAPPLICATION, EMBEZZLEMENT, ETC., OF MONEYS, FUNDS, ETC., OF COMMON CARRIER A FELONY. (38 Stat. 733; 18 U.S.C.A., sec. 412.)

SEC. 9. Every president, director, officer or manager of any firm, association or corporation engaged in commerce as a common carrier, who embezzles, steals, abstracts or willfully misapplies, or willfully permits to be misapplied, any of the moneys, funds, credits, securities, property or assets of such firm, association or corporation, arising or accruing from, or used in, such commerce, in whole or in part, or willfully or knowingly converts the same to his own use or to the use of another, shall be deemed guilty of a felony and upon conviction shall be fined not less than \$500 or confined in the penitentiary not less than one year nor more than ten years, or both, in the discretion of the court.

Penalty, fine, or imprisonment, or both.

Prosecutions hereunder may be in the district court of the United States for the district wherein the offense may have been committed.

May prosecute in district court of United States for district where offense committed.

[734] That nothing in this section shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof; and a judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution hereunder for the same act or acts.

Jurisdiction of State courts not affected. Their judgments a bar to prosecution hereunder.

¹⁰ Sec. 8a is added by section 33 of the Banking Act of 1933, approved June 16, 1933 (Public, No. 66, 48 Stat. 162, 194).

Sec. 10. LIMITATIONS UPON DEALINGS AND CONTRACTS OF COMMON CARRIERS, WHOSE INTERLOCKING DIRECTORS, ETC. (38 Stat. 734; 15 U.S.C.A., sec. 20.)

Dealings in securities, etc., and contracts for construction or maintenance, aggregating more than \$50,000 a year to be by bid in case director, etc., of common carrier, also director, etc., of other party or has a substantial interest therein.

Bidding to be competitive under regulations prescribed by Interstate Commerce Commission, and to show names and addresses of bidder, officers, etc.

Penalty for preventing or attempting to prevent free and fair competition in bidding.

Carrier to report transactions hereunder to Interstate Commerce Commission.

Commission to report violations, and its own findings to Attorney General.

SEC. 10. That after two years from the approval of this Act no common carrier engaged in commerce shall have any dealings in securities, supplies or other articles of commerce, or shall make or have any contracts for construction or maintenance of any kind, to the amount of more than \$50,000, in the aggregate, in any one year, with another corporation, firm, partnership or association when the said common carrier shall have upon its board of directors or as its president, manager or as its purchasing or selling officer, or agent in the particular transaction, any person who is at the same time a director, manager, or purchasing or selling officer of, or who has any substantial interest in, such other corporation, firm, partnership or association, unless and except such purchases shall be made from, or such dealings shall be with, the bidder whose bid is the most favorable to such common carrier, to be ascertained by competitive bidding under regulations to be prescribed by rule or otherwise by the Interstate Commerce Commission. No bid shall be received unless the name and address of the bidder or the names and addresses of the officers, directors and general managers thereof, if the bidder be a corporation, or of the members, if it be a partnership or firm, be given with the bid.

Any person who shall, directly or indirectly, do or attempt to do anything to prevent anyone from bidding or shall do any act to prevent free and fair competition among the bidders or those desiring to bid shall be punished as prescribed in this section in the case of an officer or director.

Every such common carrier having any such transactions or making any such purchases shall within thirty days after making the same file with the Interstate Commerce Commission a full and detailed statement of the transaction showing the manner of the competitive bidding, who were the bidders, and the names and addresses of the directors and officers of the corporations and the members of the firm or partnership bidding; and whenever the said commission shall, after investigation or hearing, have reason to believe that the law has been violated in and about the said purchases or transactions

it shall transmit all papers and documents and its own views or findings regarding the transaction to the Attorney General.

If any common carrier shall violate this section it shall be fined not exceeding \$25,000; and every such director, agent, manager or officer thereof who shall have knowingly voted for or directed the act constituting such violation or who shall have aided or abetted in such a violation shall be deemed guilty of a misdemeanor and shall be fined not exceeding \$5,000, or confined in jail not exceeding one year, or both, in the discretion of the court.

Misdemeanor for director, etc., to knowingly vote for, direct, aid, etc., in violation of this section.

Penalty.

The effective date on and after which the provisions of section 10 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October fifteenth, nineteen hundred and fourteen, shall become and be effective is hereby deferred and extended to January first, nineteen hundred and twenty-one: *Provided*, That such extension shall not apply in the case of any corporation organized after January twelfth, nineteen hundred and eighteen.¹¹

Effective date extended to Jan. 1, 1921.

Except as to corporations organized after Jan. 12, 1918.

Sec. 11. JURISDICTION TO ENFORCE COMPLIANCE. COMPLAINTS, FINDINGS, AND ORDERS. APPEALS, SERVICE.¹² (38 Stat. 734; 15 U.S.C.A., sec. 21.)

SEC. 11. That authority to enforce compliance with sections two, three, seven and eight of this Act by the persons respectively subject thereto is hereby vested: in the Interstate Commerce Commission where applicable to common carriers subject to the Interstate Commerce Act, as amended; in the Federal Communications Commission where applicable to common carriers engaged in wire or radio communication or radio transmission of energy; in the Federal Reserve Board where applicable to banks, banking associations and trust companies; and in the Federal Trade Commission where applicable to

Jurisdiction as respectively applicable, vested in

Interstate Commerce Commission;

Federal Communications Commission;

Federal Reserve Board; and

Federal Trade Commission.

¹¹ Above paragraph, sec. 501 of the Transportation Act, Feb. 23, 1920, ch. 91, 41 Stat. 456 at 499.

¹² On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on p. 764.

all other character of commerce, to be exercised as follows:¹⁸

¹⁸The foregoing paragraph is published as amended by sec. 602 (d) of the Communications Act of 1934, approved June 19, 1934. (Public No. 416, 73d Cong.), establishing a Federal Communications Commission, to regulate interstate and foreign commerce in communication by wire and radio.

SEC. 212 of said Act, relating in part to "interlocking directorates" provides, as to this, that "after sixty days from the enactment of this Act it shall be unlawful for any person to hold the position of officer or director of more than one carrier subject to this Act, unless such holding shall have been authorized by order of the [said] Commission, upon due showing in form and manner prescribed by the Commission, that neither public nor private interests will be adversely affected thereby."

SEC. 311 directs the said commission to refuse a station license and/or permit to any person whose license has been revoked by a court under Sec. 313 (as set forth below); authorizes the said commission so to do in case of any other person adjudged guilty by a Federal court of unlawfully monopolizing or attempting to monopolize radio communications, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangements, or by any other means, or to have been using unfair methods of competition; and provides that granting of a license shall not estop public or private proceedings for violation of such laws, or corporate dissolution.

SEC. 312 (a) provides, among other things, that a license may be revoked on grounds which would have warranted said commission in refusing to grant a license in the first instance, or for failure to observe the restrictions and the conditions of the Act or regulations of said commission thereunder.

SEC. 313 makes applicable to manufacture and sale of, and trade in, radio apparatus and devices entering into or affecting interstate or foreign commerce, and interstate or foreign radio communications, all laws of the United States relating to unlawful restraints and monopolies, and combinations, contracts or agreements in restraint of trade, and provides further that when a licensee shall be found guilty of violating the provisions of any such laws, or in any proceeding to enforce or review findings of the Federal Trade Commission or other governmental agency in respect of matters entrusted thereto, the court, in addition to other penalties imposed by the laws involved, may "adjudge, order and/or decree" the revocation of the license of such licensee.

SEC. 314 provides that after the effective date of the Act, no person engaged, directly or indirectly in the "business of transmitting and/or receiving for hire, energy, communications or signals by radio in accordance with the terms of the license" issued under the Act, shall, directly or indirectly, by stock acquisition or otherwise, as in detail set forth, acquire an interest in or control of any cable or wire system between any place in any State, or Territory, or possession of the United States, or the District of Columbia, and any place in any foreign country, where the intent and/or effect thereof "may be to substantially lessen competition or to restrain commerce" between such places, or "unlawfully to create monopoly in any line of commerce", and similarly provides that no person, engaged directly or indirectly in the business of transmitting and/or receiving for hire messages by wire in interstate or foreign communication, shall acquire, directly or indirectly, by stock acquisition or otherwise, as in detail set forth, any station or apparatus or system for transmitting and/or receiving radio communications or signals between any place in any State, Territory, or possession of the United States, or the District of Columbia, and any place in any foreign country, where the purpose and/or effect thereof may be to substantially lessen competition or restrain commerce between such places, "or unlawfully to create monopoly in any line of commerce."

Whenever the commission or board vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections two, three, seven and eight of this Act, it shall issue and serve upon such person a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so complained of shall have the right [735] to appear at the place and time so fixed and show cause why an order should not be entered by the commission or board requiring such person to cease and desist from the violation of the law so charged in said complaint. Any person may make application, and upon good cause shown may be allowed by the commission or board, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission or board. If upon such hearing the commission or board, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock held or rid itself of the directors chosen contrary to the provisions of sections seven and eight of this Act, if any there be, in the manner and within the time fixed by said order. Until a transcript of the record in such bearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission or board may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

If such person fails or neglects to obey such order of the commission or board while the same is in effect, the commission or board may apply to the circuit court of appeals of the United States, within any circuit where the violation complained of was or is being committed or where such person resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the

Commission or board to issue complaint if believe secs. 2, 3, 7, or 8 violated, and serve same with notice of hearing on respondent or defendant.

Respondent to have right to appear and show cause, etc.

Intervention may be permitted for good cause.

Transcript of testimony to be filed.

In case of violation commission or board to make written report stating findings, and to issue and serve order to cease and desist, etc., on respondent.

Commission or board may modify or set aside its order until transcript of record filed in Circuit Court of Appeals.

In case of disobedience of its order, commission or board may apply to Circuit Court of Appeals for enforcement of its order, and file transcript of record.

Court to cause notice thereof to be served on respondent and to have power to enter decree affirming, modifying, or setting aside order of commission or board.

Findings of commission or board conclusive if supported by testimony.

Introduction of additional evidence may be permitted on application, and showing of reasonable ground for failure to adduce theretofore.

Commission or board may make new or modified findings by reason thereof.

Judgment and decree subject to review upon certiorari, but otherwise final.

Petition by respondent to review order to cease and desist.

To be served on commission or board which thereupon to certify and file transcript of record in the court.

Jurisdiction of Court of Appeals same as on application by commission or board and com-

proceeding, including all the testimony taken and the report and order of the commission or board. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission or board. The findings of the commission or board as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission or board, the court may order such additional evidence to be taken before the commission or board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission or board may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Any party required by such order of the commission or board to cease and desist from a violation charged may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission or board be set aside. A copy of such petition shall be forthwith served upon the commission or board, and thereupon the commission or board forth[763]with shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission or board as in the case of an application by the commission or board for the enforcement of its order,

and the findings of the commission or board as to the facts, if supported by testimony, shall in like manner be conclusive.

commission's or board's findings similarly conclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission or board shall be exclusive.

Jurisdiction of Court of Appeals exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or board or the judgment of the court to enforce the same shall in any wise relieve or absolve any person from any liability under the antitrust Acts.¹⁴

Proceedings to have precedence over other cases, and to be expedited.

Liability under antitrust acts not affected.

Complaints, orders, and other processes of the commission or board under this section may be served by anyone duly authorized by the commission or board, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person; or (c) by registering and mailing a copy thereof addressed to such person at his principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

Service of commission's or board's complaints, orders, and other processes.

Personal; or

At office or place of business; or

By registered mail.

Verified return of person serving, and return post-office receipt, proof of service.

Sec. 12. PLACE OF PROCEEDINGS UNDER ANTITRUST LAWS, SERVICE OF PROCESS. (33 Stat. 736; 15 U.S.C.A., sec. 22.)

SEC. 12. That any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

Proceeding may be instituted or process served in district of which corporation an inhabitant or wherever it may be found.

¹⁴ For text of Sherman Act, see p. 795. As enumerated in Clayton Act, see first paragraph thereof on pp. 763-765.

Sec. 13. SUBPOENAS FOR WITNESSES IN PROCEEDINGS BY OR ON BEHALF OF THE UNITED STATES UNDER ANTITRUST LAWS. (38 Stat. 736; 15 U.S.C.A., sec. 23.)

SEC. 13. That in any suit, action, or proceeding brought by or on behalf of the United States subpoenas for witnesses who are required to attend a court of the United States in any judicial district in any case, civil or criminal, arising under the antitrust laws may run into any other district: *Provided*, That in civil cases no writ of subpoena shall issue for witnesses living out of the district in which the court is held at a greater distance than one hundred miles from the place of holding the same without the permission of the trial court being first had upon proper application and cause shown.

May run into any district, but permission of trial court necessary in civil cases if witness lives out of district and more than 100 miles distant.

Sec. 14. VIOLATION BY CORPORATION OF PENAL PROVISIONS OF ANTITRUST LAWS. (38 Stat. 736; 15 U.S.C.A., sec. 24.)

SEC. 14. That whenever a corporation shall violate any of the penal provisions of the antitrust laws, such violation shall be deemed to be also that of the individual directors, officers, or agents of such corporation who shall have authorized, ordered, or done any of the acts constituting in whole or in part such violation, and such violation shall be deemed a misdemeanor, and upon conviction therefor of any such director, officer, or agent he shall be punished by a fine of not exceeding \$5,000 or by imprisonment for not exceeding one year, or by both, in the discretion of the court.

Deemed also that of individual directors, officers, etc.

A misdemeanor.

Penalty, fine or imprisonment, or both.

Sec. 15. JURISDICTION OF UNITED STATES DISTRICT COURTS TO PREVENT AND RESTRAIN VIOLATIONS OF THIS ACT. (38 Stat. 736; 15 U.S.C.A., sec. 25.)

SEC. 15. That the several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall

District attorneys, under direction of Attorney General, to institute proceedings. Proceedings may be by way of petition setting forth the case, etc.

have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. Whenever it shall appear to the court before which any such proceeding may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not, and subpoenas to that end may be served in any district by the marshal thereof.

After due notice, Court to proceed to hearing and determination as soon as may be.

Pending petition instituting proceeding Court may make temporary restraining order or prohibition.

Court may summon other parties.

Sec. 16. INJUNCTIVE RELIEF AGAINST THREATENED LOSS BY VIOLATION OF ANTITRUST LAWS. (38 Stat. 737; 15 U.S.C.A., sec. 26.)

SEC. 16. That any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections two, three, seven and eight of this Act, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: *Provided*, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provision of the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission.

Open to any person, firm, etc., on same conditions and principles as other injunctive relief by courts of equity against threatened conduct that will cause loss or damage.

Preliminary injunction may issue upon proper bond and showing.

But United States alone may sue for injunctive relief against common carrier subject to Act to Regulate Commerce.

Sec. 17. PRELIMINARY INJUNCTIONS. TEMPORARY RESTRAINING ORDERS. (38 Stat. 737; first two paragraphs are 28 U.S.C.A., sec. 381.)

SEC. 17. That no preliminary injunction shall be issued without notice to the opposite party.

No preliminary injunction without notice.

No temporary restraining order in absence of a showing of immediate and irreparable injury or loss.

Temporary restraining order, to show date and hour of issue, define injury, etc.

If without notice, issuance of preliminary injunction to be disposed of at earliest possible moment.

Opposite party may move dissolution or modification on two days' notice.

Sec. 263 of Judicial Code repealed.

Sec. 266 not affected.

No temporary restraining order shall be granted without notice to the opposite party unless it shall clearly appear from specific facts shown by affidavit or by the verified bill that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every such temporary restraining order shall be indorsed with the date and hour of issuance, shall be forthwith filed in the clerk's office and entered of record, shall define the injury and state why it is irreparable and why the order was granted without notice, and shall by its terms expire within such time after entry, not to exceed ten days, as the court or judge may fix, unless within the time so fixed the order is extended for a like period for good cause shown, and the reasons for such extension shall be entered of record. In case a temporary restraining order shall be granted without notice in the contingency specified, the matter of the issuance of a preliminary injunction shall be set down for a hearing at the earliest possible time and shall take precedence of all matters except older matters of the same character; and when the same comes up for hearing the party obtaining the temporary restraining order shall proceed with the application for a preliminary injunction, and if he does not do so the court shall dissolve the temporary restraining order. Upon two days' notice to the party obtaining such temporary restraining order the opposite party may appear and move the dissolution or modification of the order, and in that event the court or judge shall proceed to hear and determine the motion as expeditiously as the ends of justice may require.

Section two hundred and sixty-three of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary", approved March third, nineteen hundred and eleven, is hereby repealed.

Nothing in this section contained shall be deemed to alter, repeal, or amend section two hundred and sixty-six of an Act entitled "An [738] Act to codify, revise, and amend the laws relating to the judiciary", approved March third, nineteen hundred and eleven.

Sec. 18. NO RESTRAINING ORDER OR INTERLOCUTORY ORDER OF INJUNCTION WITHOUT GIVING SECURITY. (38 Stat. 733; 28 U.S.C.A., sec. 382.)

SEC. 18. That, except as otherwise provided in section 16 of this Act, no restraining order or interlocutory order of injunction shall issue, except upon the giving of security by the applicant in such sum as the court or judge may deem proper, conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained thereby.

Except as provided in sec. 16 of this act.

Sec. 19. ORDERS OF INJUNCTION OR RESTRAINING ORDERS—REQUIREMENTS. (38 Stat. 738; 28 U.S.C.A., sec. 383.)

SEC. 19. That every order of injunction or restraining order shall set forth the reasons for the issuance of the same, shall be specific in terms, and shall describe in reasonable detail, and not by reference to the bill of complaint or other document, the act or acts sought to be restrained, and shall be binding only upon the parties to the suit, their officers, agents, servants, employees, and attorneys, or those in active concert or participating with them, and who shall, by personal service or otherwise, have received actual notice of the same.

Must set forth reasons, be specific and describe acts to be restrained.

Binding only on parties to suit, their officers, etc.

Sec. 20. RESTRAINING ORDERS OR INJUNCTIONS BETWEEN AN EMPLOYER AND EMPLOYEES, EMPLOYERS AND EMPLOYEES, ETC., INVOLVING OR GROWING OUT OF TERMS OR CONDITIONS OF EMPLOYMENT. (38 Stat. 738; 29 U.S.C.A., sec. 52.)

SEC. 20. That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

Not to issue unless necessary to prevent irreparable injury.

Threatened property or property rights must be described with particularity.

Not to prohibit any person or persons from terminating any relation of employment, recommending others by peaceful means so to do, etc.

Acts specified in this paragraph not to be considered violations of any law of the United States.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

Sec. 21. DISOBEDIENCE OF ANY LAWFUL WRIT, PROCESS, ETC., OF ANY UNITED STATES DISTRICT COURT, OR ANY DISTRICT OF COLUMBIA COURT. (38 Stat. 738; 28 U.S.C.A., sec. 336.)

If act done also a criminal offense under laws of United States or of State in which committed, person to be proceeded against as hereinafter provided.

SEC. 21. That any person who shall willfully disobey any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of the District of Columbia by doing any act or thing therein, or thereby forbidden to be done by him, if the act or thing so done by him be of such character as to constitute also a criminal offense under any statute of the United States, or under the laws of any State in which the act was committed, shall be proceeded against for his said contempt as hereinafter provided.

Sec. 22. RULE TO SHOW CAUSE OR ARREST. TRIAL PENALTIES. (38 Stat. 738; 28 U.S.C.A., sec. 387.)

SEC. 22. That whenever it shall be made to appear to any district court or judge thereof, or to any judge therein sitting, by the return of a proper officer on lawful process, or upon the affidavit of some credible person, or by information filed by any district attorney, that there is reason-

able ground to believe that any person has been guilty of such contempt, the court or judge thereof, or any judge therein sitting, may issue a rule requiring the said person so charged to [739] show cause upon a day certain why he should not be punished therefor, which rule, together with a copy of the affidavit or information, shall be served upon the person charged, with sufficient promptness to enable him to prepare for and make return to the order at the time fixed therein. If upon or by such return, in the judgment of the court, the alleged contempt be not sufficiently purged, a trial shall be directed at a time and place fixed by the court: *Provided, however,* That if the accused, being a natural person, fail or refuse to make return to the rule to show cause, an attachment may issue against his person to compel an answer, and in case of his continued failure or refusal, or if for any reason it be impracticable to dispose of the matter on the return day, he may be required to give reasonable bail for his attendance at the trial and his submission to the final judgment of the court. Where the accused is a body corporate, an attachment for the sequestration of its property may be issued upon like refusal or failure to answer.

Court or judge may issue rule to show cause why person charged should not be punished.

Trial if alleged contempt not sufficiently purged by return.

Failure of natural person to make return. Attachment against person.

If body corporate, attachment for sequestration of its property.

In all cases within the purview of this Act such trial may be by the court, or, upon demand of the accused, by a jury; in which latter event the court may impanel a jury from the jurors then in attendance, or the court or the judge thereof in chambers may cause a sufficient number of jurors to be selected and summoned, as provided by law, to attend at the time and place of trial, at which time a jury shall be selected and impaneled as upon a trial for misdemeanor; and such trial shall conform, as near as may be, to the practice in criminal cases prosecuted by indictment or upon information.

Trial may be by court, or upon demand of accused, by jury.

Trial to conform to practice in criminal cases prosecuted by indictment or upon information.

If the accused be found guilty, judgment shall be entered accordingly, prescribing the punishment, either by fine or imprisonment, or both, in the discretion of the court. Such fine shall be paid to the United States or to the complainant or other party injured by the act constituting the contempt, or may, where more than one is so damaged, be divided or apportioned among them as the court may direct, but in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of \$1,000, nor shall such imprisonment

Penalty, fine or imprisonment, or both.

Fine paid to United States or complainant or other party injured.

If accused natural person, fine to United States not to exceed \$1,000.

Court or judge may dispense with rule and issue attachment for arrest.

Accused to be brought before judge promptly and admitted to bail.

Proceedings thereafter same as if rule had issued.

exceed the term of six months: *Provided*, That in any case the court or a judge thereof may, for good cause shown, by affidavit or proof taken in open court or before such judge and filed with the papers in the case, dispense with the rule to show cause, and may issue an attachment for the arrest of the person charged with contempt; in which event such person, when arrested, shall be brought before such court or a judge thereof without unnecessary delay and shall be admitted to bail in a reasonable penalty for his appearance to answer to the charge or for trial for the contempt; and thereafter the proceedings shall be the same as provided herein in case the rule had issued in the first instance.

Sec. 23. EVIDENCE. APPEALS. (38 Stat. 739; 28 U.S.C.A., sec. 388.)

Evidence may be preserved by bill of exceptions.

Judgment reviewable upon writ of error.

Granting of writ to stay execution, and

Accused to be admitted to bail.

SEC. 23. That the evidence taken upon the trial of any persons so accused may be preserved by bill of exceptions, and any judgment of conviction may be reviewed upon writ of error in all respects as now provided by law in criminal cases, and may be affirmed, reversed, or modified as justice may require. Upon the granting of such writ of error, execution of judgment shall be stayed, and the accused, if thereby sentenced to imprisonment, shall be admitted to bail in such reasonable sum as may be required by the court, or by any justice, or any judge of any district court of the United States or any court of the District of Columbia.

Sec. 24. CASES OF CONTEMPT NOT SPECIFICALLY EMBRACED IN SECTION 21 NOT AFFECTED. (38 Stat. 739; 28 U.S.C.A., sec. 389.)

Committed in or near presence of court, or

In disobedience of any lawful writ or process in suit or action by or in behalf of United States.

And other cases not in sec. 21.

Punished in conformity with prevailing usages, etc.

SEC. 24. That nothing herein contained shall be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States, but the [740] same, and all other cases of contempt not specifically embraced within section twenty-one of this Act, may be punished in conformity to the usages at law and in equity now prevailing.

Sec. 25. PROCEEDINGS FOR CONTEMPT. LIMITATIONS.
(38 Stat. 740; 28 U.S.C.A., sec. 390.)

SEC. 25. That no proceeding for contempt shall be instituted against any person unless begun within one year from the date of the act complained of; nor shall any such proceeding be a bar to any criminal prosecution for the same act or acts; but nothing herein contained shall affect any proceedings in contempt pending at the time of the passage of this Act.

Must be instituted within one year.

Not a bar to criminal prosecution.

Pending proceedings not affected.

Sec. 26. INVALIDITY OF ANY CLAUSE, SENTENCE, ETC., NOT TO IMPAIR REMAINDER OF ACT. (38 Stat. 740; 15 U.S.C.A., sec. 27.)

SEC. 26. If any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

But to be confined to clause, sentence, etc., directly involved.

Approved, October 15, 1914.

EXPORT TRADE ACT¹

[Approved Apr. 10, 1918]

[PUBLIC—No. 126—65TH CONGRESS]

[H.R. 2316]

AN ACT To promote export trade, and for other purposes

Sec. 1. DEFINITIONS. (40 Stat. 516; 15 U.S.C.A., sec. 61.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the words "export trade" wherever used in this Act means solely trade or commerce in goods, wares, or merchandise exported, or in the course of being exported from the United States or any Territory thereof to any foreign nation; but the words "export trade" shall not be deemed to include the production, manufacture, or selling for consumption or for resale, within the United States or any Territory thereof, of [517] such goods, wares, or merchandise, or any act in the course of such production, manufacture, or selling for consumption or for resale. "Export trade."

That the words "trade within the United States" wherever used in this Act mean trade or commerce among the several States or in any Territory of the United "Trade within the United States."

¹In this general connection, i.e., regulation and promotion of export trade, mention should be made of the so-called "antidumping" legislation, prohibiting, penalizing, and affording relief for systematic importation and sale of articles into the United States at prices substantially less than their actual market value or their wholesale price, as in the act specified, where done with the intent of destroying or injuring a domestic industry, preventing the establishment thereof, or of restraining or monopolizing any part of trade and commerce in the articles concerned, in the United States. Act of Sept. 8, 1916, ch. 463, sec. 801, 39 Stat. 798 (15 U.S.C.A. 72).

As regards cases, see reference to act in *United States v. United States Steel Corporation*, 251 U.S. 417 at 453, in *Ex Parte Lamar*, 274 Fed. 160 at 171, and in *American Export Door Corporation v. John A. Gauger Co.*, 283 Pac. 462 (Wash.), in which the court, in a suit by an Export Trade Act association against a member, to enforce the membership contract, held the contract void as a restraint of trade at the common law and violative of the State constitution, the act inoperative to regulate such intrastate matters as therein concerned, as beyond the Federal jurisdiction, and, as regards the exemptions provided by the act, from the anti-trust laws, as not intended to reach such situations as disclosed by the facts of said case. Except as above noted, the Export Trade or Webb Act does not appear to have been involved in reported cases.

States, or in the District of Columbia, or between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or between the District of Columbia and any State or States.

"Association."

That the word "Association" wherever used in this Act means any corporation or combination, by contract or otherwise, of two or more persons, partnerships, or corporations.

Sec. 2. ASSOCIATION FOR OR AGREEMENT OR ACT MADE OR DONE IN COURSE OF EXPORT TRADE—STATUS UNDER SHERMAN ANTITRUST LAW. (40 Stat. 517; 15 U.S.C.A., sec. 62.)

SEC. 2. That nothing contained in the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July second, eighteen hundred and ninety,² shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade and actually engaged solely in such export trade, or an agreement made or act done in the course of export trade by such association, provided such association, agreement, or act is not in restraint of trade within the United States, and is not in restraint of the export trade of any domestic competitor of such association: *And provided further*, That such association does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy, or do any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein.

Association not illegal if organized for and engaged in export trade solely.

Nor agreement nor act,

If not in restraint of trade within the United States, or of the export trade of any domestic competitor, and if such association does not artificially or intentionally enhance or depress prices of, or substantially lessen competition, or restrain trade in commodities of class exported.

Sec. 3. ACQUISITION BY EXPORT TRADE CORPORATION OF STOCK OR CAPITAL OF OTHER CORPORATION. (40 Stat. 517; 15 U.S.C.A., sec. 63.)

SEC. 3. That nothing contained in section seven of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October fifteenth, nineteen hundred and

² For text of Sherman Act, see p. 795.

fourteen,³ shall be construed to forbid the acquisition or ownership by any corporation of the whole or any part of the stock or other capital of any corporation organized solely for the purpose of engaging in export trade, and actually engaged solely in such export trade, unless the effect of such acquisition or ownership may be to restrain trade or substantially lessen competition within the United States.

Lawful under Clayton Act unless effect may be to restrain trade or substantially lessen competition within United States.

Sec. 4. FEDERAL TRADE PROVISIONS EXTENDED TO EXPORT TRADE COMPETITORS. (40 Stat. 517; 15 U.S.C.A., sec. 64.)

SEC. 4. That the prohibition against "unfair methods of competition" and the remedies provided for enforcing said prohibition contained in the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September twenty-sixth, nineteen hundred and fourteen,⁴ shall be construed as extending to unfair methods of competition used in export trade against competitors engaged in export trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States.

Unfair methods prohibited.

Even though acts involved done without territorial jurisdiction of United States.

Sec. 5. OBLIGATIONS OF EXPORT TRADE ASSOCIATIONS UNDER THIS ACT. PENALTIES FOR FAILURE TO COMPLY. DUTIES AND POWERS OF COMMISSION. (40 Stat. 517; 15 U.S.C.A., sec. 65.)

SEC. 5. That every association now engaged solely in export trade, within sixty days after the passage of this Act, and every association entered into hereafter which engages solely in export trade, within thirty days after its creation, shall file with the Federal Trade Commission a verified written statement setting forth the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members, and if a corporation, a copy of its certificate or articles of incorporation and by-laws, and if unincorporated, a copy of its articles or contract of association, and on the first day of January of each year thereafter it shall

Export trade associations or corporations to file statement with Federal Trade Commission showing location of offices, names, and addresses of officers, etc., and also articles of incorporation or contract of association, etc.

³ See *ante*, p. 768.

⁴ See *ante*, p. 753.

make a like statement of the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members and of all amendments to and changes in its articles or certificate of incorporation or in its articles or contract of association. It shall also furnish to the com[518]mission such information as the commission may require as to its organization, business, conduct, practices, management, and relation to other associations, corporations, partnerships, and individuals. Any association which shall fail so to do shall not have the benefit of the provisions of section two and section three of this Act, and it shall also forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the association has its principal office, or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of the forfeiture. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

To furnish also information as to organization, business, etc.

Penalties, loss of benefit of secs. 2 and 3, and fine.

District attorneys to prosecute for recovery of forfeiture.

Federal Trade Commission to investigate restraint of trade, artificial or intentional enhancement or depression of prices or substantial lessening of competition by association.

May recommend readjustment in case of violation.

Whenever the Federal Trade Commission shall have reason to believe that an association or any agreement made or act done by such association is in restraint of trade within the United States or in restraint of the export trade of any domestic competitor of such association, or that an association either in the United States or elsewhere has entered into any agreement, understanding, or conspiracy, or done any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein, it shall summon such association, its officers, and agents to appear before it, and thereafter conduct an investigation into the alleged violations of law. Upon investigation, if it shall conclude that the law has been violated, it may make to such association recommendations for the readjustment of its business, in order that it may thereafter maintain its organization and management and conduct

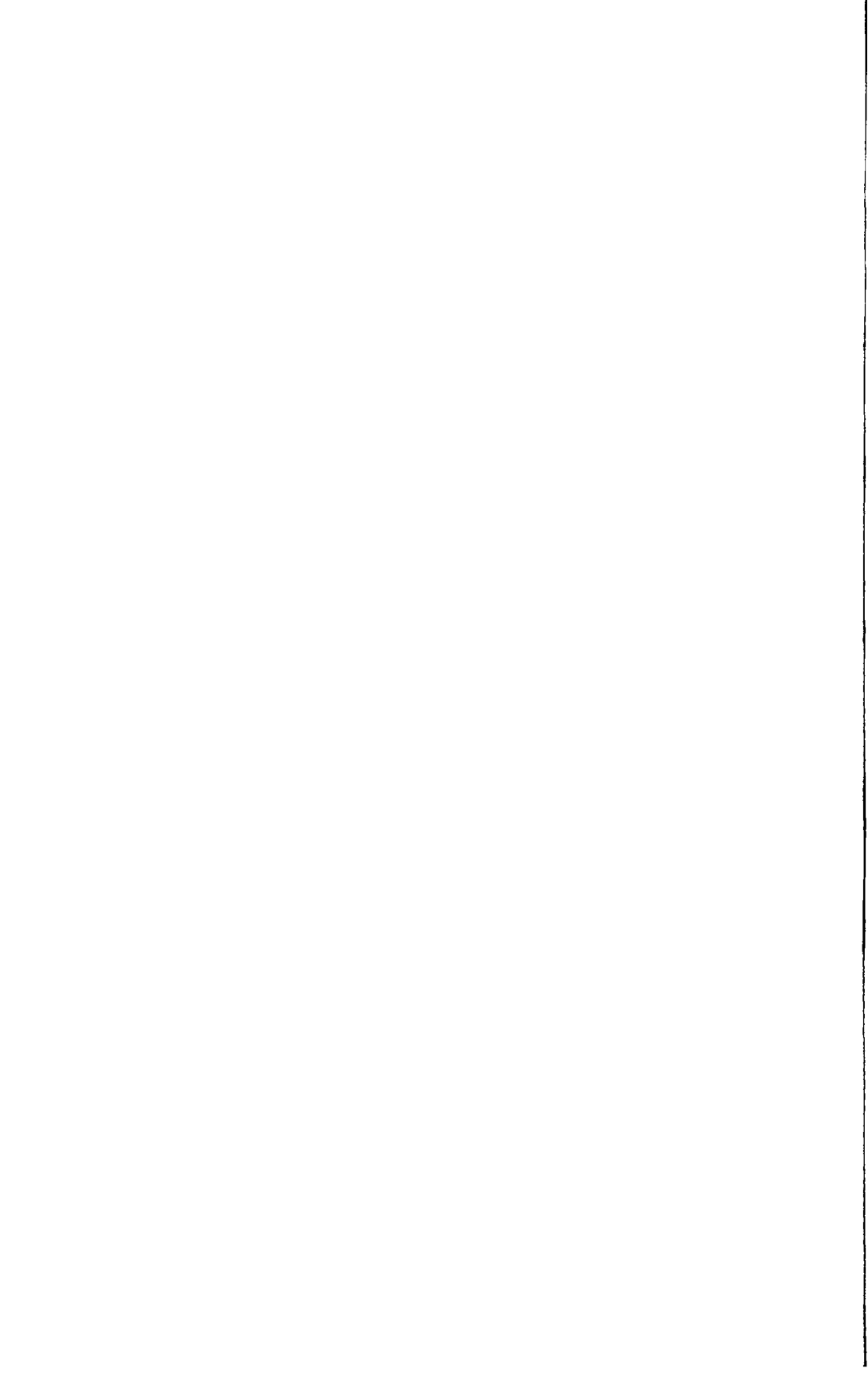
its business in accordance with law. If such association fails to comply with the recommendations of the Federal Trade Commission, said commission shall refer its findings and recommendations to the Attorney General of the United States for such action thereon as he may deem proper.

For the purpose of enforcing these provisions the Federal Trade Commission shall have all the powers, so far as applicable, given it in "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

To refer findings and recommendations to Attorney General if association fails to comply with recommendation.

Commission given same powers as under Federal Trade Commission Act so far as applicable.

Approved, April 10, 1918.



SHERMAN ANTITRUST ACT

Sec. 1. CONTRACTS, COMBINATIONS, ETC., IN RESTRAINT OF TRADE ILLEGAL—PENALTY. (26 Stat. 209; 15 U.S.C.A., sec. 1.)

SECTION 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Misdemeanor ;
penalty—fine,
imprisonment,
or both.

Sec. 2. PERSONS MONOPOLIZING TRADE GUILTY OF MISDEMEANOR—PENALTY. (26 Stat. 209; 15 U.S.C.A., sec. 2.)

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Sec. 3. CONTRACTS, ETC., AFFECTING TERRITORIES OR DISTRICT OF COLUMBIA ILLEGAL—PENALTY. (26 Stat. 209; 15 U.S.C.A., sec. 3.)

SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any

such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Sec. 4. ENFORCEMENT. (26 Stat. 209; 15 U.S.C.A., sec. 4.)

Jurisdiction;
circuit courts.

SEC. 4. The several circuit courts¹ of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determi[210]nation of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

Procedure; by
way of petition.

Sec. 5. ADDITIONAL PARTIES. (26 Stat. 210; 15 U.S.C.A., sec. 5.)

SEC. 5. Whenever it shall appear to the court before which any proceeding under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

¹ Act of Mar. 8, 1911, c. 231, 36 Stat. 1187, abolishes the courts referred to, and confers their powers upon the district courts.

Sec. 6. FORFEITURE OF PROPERTY. (28 Stat. 210; 15 U.S.C.A., sec. 6.)

SEC. 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law. Procedure.

Sec. 7. SUITS—RECOVERY. (28 Stat. 210.)

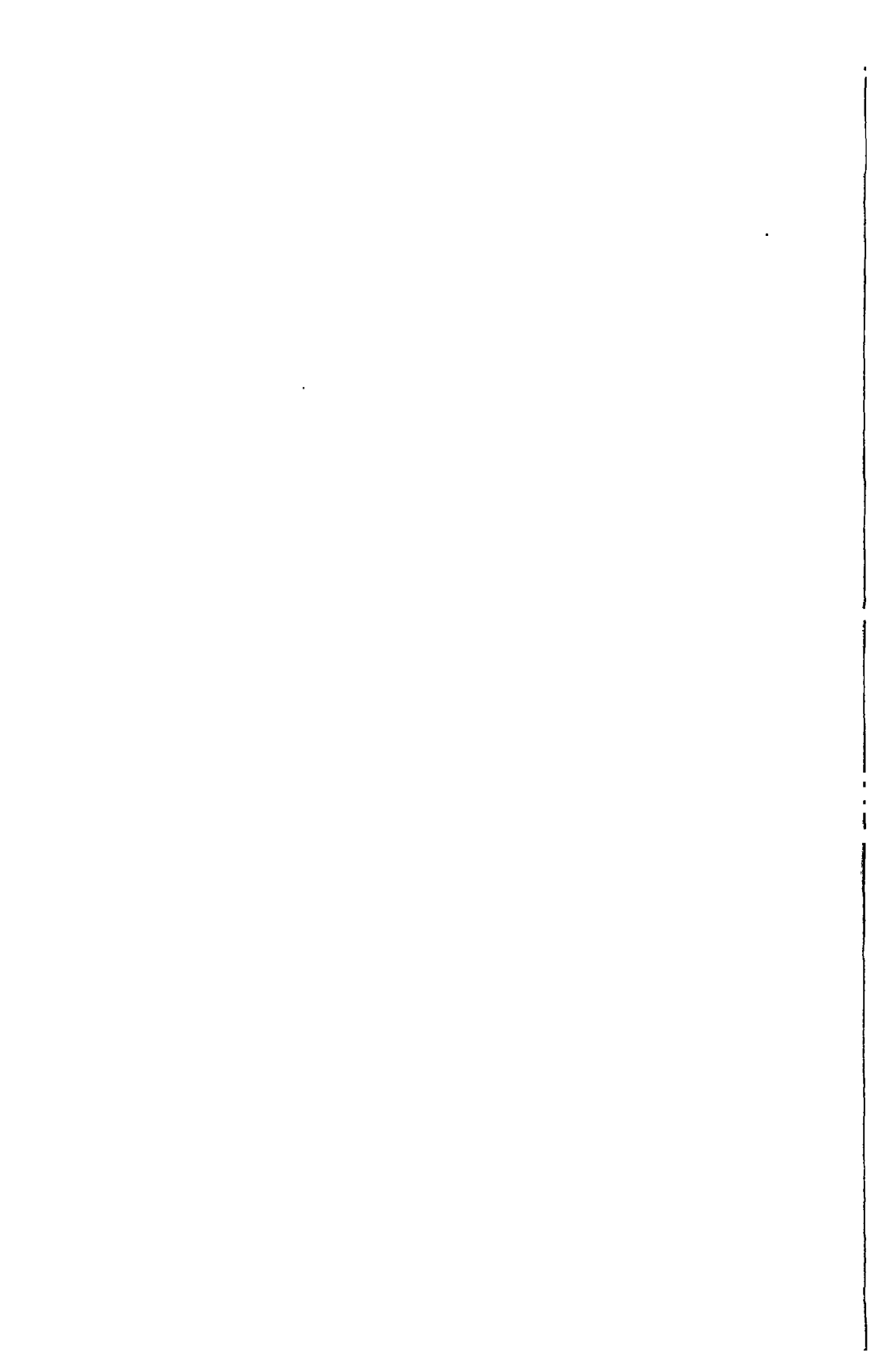
SEC. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court ² of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee. Threefold damages and costs.

Sec. 8. "PERSON" OR "PERSONS" DEFINED. (28 Stat. 210; 15 U.S.C.A., sec. 7.)

SEC. 8. That the word "person", or "persons", whenever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country. Corporations and associations under laws of United States, etc.

Approved, July 2, 1890.

² See footnote on p. 796.



NATIONAL RECOVERY ACT¹

[Approved June 16, 1933]

[PUBLIC—No. 67—73D CONGRESS]

[H.R. 5755]

AN ACT To encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes.

TITLE I—INDUSTRIAL RECOVERY

Sec. 1. DECLARATION OF POLICY. (48 Stat. 195; 15 U.S.C.A., sec. 701.)

SECTION 1. A national emergency productive of wide-spread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to

National emergency.

Removal of obstructions to commerce.

Promotion of cooperative action among trade groups.

¹ Title I only is published herewith, as of particular interest in connection with the subject matter of this volume. The act has three titles—Title II dealing with "Public Works and Construction Projects", and Title III dealing with "Amendments to Emergency Relief and Construction Act and Miscellaneous Provisions."

In the case of *A. L. A. Schechter Poultry Corp., et al. v. U. S.* 295 U. S. 495, the Supreme Court on May 27, 1935, held the code provisions of the National Industrial Recovery Act unconstitutional, as in said decision set forth.

Hereafter all the provisions of Title I of said Act delegating power to the President to approve or prescribe codes of fair competition and providing for the enforcement thereof, were repealed by joint resolution approved June 14, 1935 (Public Res. No. 26), 49 Stat. 375, the provisions of section 5 of said title relating to agreements thereunder and exemptions from the provisions of the antitrust laws, limited as therein specified to minimum wages, maximum hours, prohibition of child labor and prohibition of unfair competitive practices "which offend against existing law, including the antitrust laws, or which constitute unfair methods of competition under the Federal Trade Commission Act", and the date for the termination of said Title I extended and fixed as of April 1, 1936.

Elimination of unfair competition.

eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources.

Increase of purchasing power, etc.

Sec. 2. ADMINISTRATIVE AGENCIES. (48 Stat. 195; 15 U.S.C.A., sec. 702, a, b, and c.)

President may establish agencies, utilize Federal and State officers and employees, etc.

SEC. 2. (a) To effectuate the policy of this title, the President is hereby authorized to establish such agencies, to accept and utilize such voluntary and uncompensated services, to appoint, without regard to the provisions of the civil service laws, such officers and employees, and to utilize such Federal officers and employees, and, with the consent of the State, such State and local officers and employees, as he may find necessary, to prescribe their authorities, duties, responsibilities, and tenure, and, without regard to the Classification Act of 1923, as amended, to fix the compensation of any officers and employees so appointed.

May delegate functions and powers.

(b) The President may delegate any of his functions and powers under this title to such officers, agents, and employees as he may designate or appoint, and may establish an industrial planning and research agency to aid in carrying out his functions under this title.

May establish industrial planning and research agency.

Duration of title.

[196] (c) This title shall cease to be in effect and any agencies established hereunder shall cease to exist at the expiration of two years after the date of enactment of this Act,² or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section 1 has ended.

Sec. 3. CODES OF FAIR COMPETITION. (48 Stat. 196; 15 U.S.C.A., sec. 703, a to f, incl.)

May approve codes.

SEC. 3. (a) Upon the application to the President by one or more trade or industrial associations or groups, the President may approve a code or codes of fair competition for the trade or industry or subdivision thereof, represented by the applicant or applicants, if the Presi-

If no unfair restrictions.

² The Act was approved June 16, 1933.

dent finds (1) that such associations or groups impose no inequitable restrictions on admission to membership therein and are truly representative of such trades or industries or subdivisions thereof, and (2) that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of this title: *Provided*, That such code or codes shall not permit monopolies or monopolistic practices: *Provided further*, That where such code or codes affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section shall deprive such persons of the right to be heard prior to approval by the President of such code or codes. The President may, as a condition of his approval of any such code, impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code, as the President in his discretion deems necessary to effectuate the policy herein declared.

And truly representative.

And not oppressive, etc.

And do not permit monopolies, etc.

Rights of others affected.

May impose conditions, provide exceptions, etc.

(b) After the President shall have approved any such code, the provisions of such code shall be the standards of fair competition for such trade or industry or subdivision thereof. Any violation of such standards in any transaction in or affecting interstate or foreign commerce shall be deemed an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act, as amended; but nothing in this title shall be construed to impair the powers of the Federal Trade Commission under such Act, as amended.

Code as standard of fair competition.

Violation, unfair method of competition.

(c) The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of any code of fair competition approved under this title; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations.

Jurisdiction in U.S. district courts.

District attorneys to institute proceedings.

(d) Upon his own motion, or if complaint is made to the President that abuses inimical to the public interest and contrary to the policy herein declared are prevalent

President may prescribe and approve code, on own motion, etc.

in any trade or industry or subdivision thereof, and if no code of fair competition therefor has theretofore been approved by the President, the President, after such public notice and hearing as he shall specify, may prescribe and approve a code of fair competition for such trade or industry or subdivision thereof, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of this section.

May cause Tariff Commission investigation when imports threaten success of code or agreement.

(e) On his own motion, or if any labor organization, or any trade or industrial organization, association, or group, which has complied with the provisions of this title, shall make complaint to the President [197] that any article or articles are being imported into the United States in substantial quantities or increasing ratio to domestic production of any competitive article or articles and on such terms or under such conditions as to render ineffective or seriously to endanger the maintenance of any code or agreement under this title, the President may cause an immediate investigation to be made by the United States Tariff Commission, which shall give precedence to investigations under this subsection, and if, after such investigation and such public notice and hearing as he shall specify, the President shall find the existence of such facts, he shall, in order to effectuate the policy of this title, direct that the article or articles concerned shall be permitted entry into the United States only upon such terms and conditions and subject to the payment of such fees and to such limitations in the total quantity which may be imported (in the course of any specified period or periods) as he shall find it necessary to prescribe in order that the entry thereof shall not render or tend to render ineffective any code or agreement made under this title. In order to enforce any limitations imposed on the total quantity of imports, in any specified period or periods, of any article or articles under this subsection, the President may forbid the importation of such article or articles unless the importer shall have first obtained from the Secretary of the Treasury a license pursuant to such regulations as the President may prescribe. Upon information of any action by the President under this subsection the Secretary of the Treasury shall, through the proper officers, permit entry of the article or articles specified only upon such terms and conditions and subject to such fees, to such limitations in the quantity which

Limitations upon imports involved.

Licensing of importers.

Action by Secretary of Treasury.

may be imported, and to such requirements of license, as the President shall have directed. The decision of the President as to facts shall be conclusive. Any condition or limitation of entry under this subsection shall continue in effect until the President shall find and inform the Secretary of the Treasury that the conditions which led to the imposition of such condition or limitation upon entry no longer exists.

President's decision conclusive.

Duration of limitations.

(f) When a code of fair competition has been approved or prescribed by the President under this title, any violation of any provision thereof in any transaction in or affecting interstate or foreign commerce shall be a misdemeanor and upon conviction thereof an offender shall be fined not more than \$500 for each offense, and each day such violation continues shall be deemed a separate offense.

Penalties.

Secs. 4 and 5. AGREEMENTS AND LICENSES. (48 Stat. 197, 198; 15 U.S.C.A., sec. 704, a and b, sec. 705.)

SEC. 4. (a) The President is authorized to enter into agreements with, and to approve voluntary agreements between and among, persons engaged in a trade or industry, labor organizations, and trade or industrial organizations, associations, or groups, relating to any trade or industry, if in his judgment such agreements will aid in effectuating the policy of this title with respect to transactions in or affecting interstate or foreign commerce, and will be consistent with the requirements of clause (2) of subsection (a) of section 3 for a code of fair competition.

President may enter into and approve agreements with persons, groups, etc.

(b) Whenever the President shall find that destructive wage or price cutting or other activities contrary to the policy of this title are being practiced in any trade or industry or any subdivision thereof, and, after such public notice and hearing as he shall specify, shall find it essential to license business enterprises in order to make effective a code of fair competition or an agreement under this title or otherwise to effectuate the policy of this title, and shall publicly [198] so announce, no person shall, after a date fixed in such announcement, engage in or carry on any business, in or affecting interstate or foreign commerce, specified in such announcement, unless he shall have first obtained a license issued pursuant to such regulations as the President shall prescribe. The President may suspend or revoke any such license, after due notice

May license business when destructive wage or price cutting or other activities prejudicial to policy herein.

Suspension or revocation of license.

Penalties.

and opportunity for hearing, for violations of the terms or conditions thereof. Any order of the President suspending or revoking any such license shall be final if in accordance with law. Any person who, without such a license or in violation of any condition thereof, carries on any such business for which a license is so required, shall, upon conviction thereof, be fined not more than \$500, or imprisoned not more than six months, or both, and each day such violation continues shall be deemed a separate offense. Notwithstanding the provisions of section 2 (c), this subsection shall cease to be in effect at the expiration of one year after the date of enactment of this Act or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section 1 has ended.

Duration of licensing provisions.

Antitrust law exemptions.

SEC. 5. While this title is in effect (or in the case of a license, while section 4 (a) is in effect) and for sixty days thereafter, any code, agreement, or license approved, prescribed, or issued and in effect under this title, and any action complying with the provisions thereof taken during such period, shall be exempt from the provisions of the antitrust laws of the United States.

Manual labor, products thereof, and farm produce excepted.

Nothing in this Act, and no regulation thereunder, shall prevent an individual from pursuing the vocation of manual labor and selling or trading the products thereof; nor shall anything in this Act, or regulation thereunder, prevent anyone from marketing or trading the produce of his farm.

Secs. 6 and 7. LIMITATIONS UPON APPLICATION OF TITLE. (48 Stat. 198; 15 U.S.C.A., sec. 706; sec. 707, a to d.)

Statement to secure benefit of this title.

SEC. 6. (a) No trade or industrial association or group shall be eligible to receive the benefit of the provisions of this title until it files with the President a statement containing such information relating to the activities of the association or group as the President shall by regulation prescribe.

President may prescribe rules and regulations to secure representative character of organization coming under.

(b) The President is authorized to prescribe rules and regulations designed to insure that any organization availing itself of the benefits of this title shall be truly representative of the trade or industry or subdivision thereof represented by such organization. Any organization violating any such rule or regulation shall cease to be entitled to the benefits of this title.

(c) Upon the request of the President, the Federal Trade Commission shall make such investigations as may be necessary to enable the President to carry out the provisions of this title, and for such purposes the Commission shall have all the powers vested in it with respect of investigations under the Federal Trade Commission Act, as amended.

May require commission to investigate.

SEC. 7. (a) Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any [199] company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.³

Conditions of code, agreement, or license.

Right of employees to organize and act collectively.

No condition restraining freedom of action.

Employers to observe maximum hours, minimum rates, etc.

(b) The President shall, so far as practicable, afford every opportunity to employers and employees in any trade or industry or subdivision thereof with respect to which the conditions referred to in clauses (1) and (2) of subsection (a) prevail, to establish by mutual agreement, the standards as to the maximum hours of labor, minimum rates of pay, and such other conditions of employment as may be necessary in such trade or industry or subdivision thereof to effectuate the policy of this title; and the standards established in such agreements, when approved by the President, shall have the same effect as a code of fair competition, approved by the President under subsection (a) of section 3.

To afford opportunity for mutual establishment of maximum hours, minimum rates, etc.

Effect when approved as code of fair competition.

(c) Where no such mutual agreement has been approved by the President, he may investigate the labor practices, policies, wages, hours of labor, and conditions

May investigate when no mutual agreement approved, labor practices, etc.

³ Public Resolution No. 44, 73d Congress, approved June 19, authorizes President to establish a board or boards to investigate issues of employers or employees in controversies arising under sec. 7 (a), burdening or threatening to burden free flow of interstate commerce,

of employment in such trade or industry or subdivision thereof; and upon the basis of such investigations, and after such hearings as the President finds advisable, he is authorized to prescribe a limited code of fair competition fixing such maximum hours of labor, minimum rates of pay, and other conditions of employment in the trade or industry or subdivision thereof investigated as he finds to be necessary to effectuate the policy of this title, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of section 3. The President may differentiate according to experience and skill of the employees affected and according to the locality of employment; but no attempt shall be made to introduce any classification according to the nature of the work involved which might tend to set a maximum as well as a minimum wage.

May prescribe code fixing maximum hours, etc.

President may differentiate for skill, etc., but no maximum wage.

"Person" defined.

"Interstate and foreign commerce."

(d) As used in this title, the term "person" includes any individual, partnership, association, trust, or corporation; and the terms "interstate and foreign commerce" and "interstate or foreign commerce" include, except where otherwise indicated, trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States.

Sec. 8. APPLICATION TO AGRICULTURAL ADJUSTMENT ACT. (48 Stat. 199; 15 U.S.C.A., sec. 708.)

Not to repeal or modify.

SEC. 8. (a) This title shall not be construed to repeal or modify any of the provisions of title I of the Act entitled "An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes", approved May 12, 1933; and such title I of said Act approved May 12, 1933, may for all

purposes be hereafter referred to as the "Agricultural Adjustment Act."

(b) The President may, in his discretion, in order to avoid conflicts in the administration of the Agricultural Adjustment Act and this title, delegate any of his functions and powers under this title [200] with respect to trades, industries, or subdivisions thereof which are engaged in the handling of any agricultural commodity or product thereof, or of any competing commodity or product thereof, to the Secretary of Agriculture.

May delegate functions or powers, to avoid conflict, to Secretary of Agriculture.

Sec. 9. OIL REGULATION. (48 Stat. 200; 15 U.S.C.A., sec. 709.)⁴

SEC. 9. (a) The President is further authorized to initiate before the Interstate Commerce Commission proceedings necessary to prescribe regulations to control the operations of oil pipe lines and to fix reasonable, compensatory rates for the transportation of petroleum and its products by pipe lines, and the Interstate Commerce Commission shall grant preference to the hearings and determination of such cases.

May initiate proceedings before I.C.C. for pipe-line regulation.

(b) The President is authorized to institute proceedings to divorce from any holding company any pipe-line company controlled by such holding company which pipe-line company by unfair practices or by exorbitant rates in the transportation of petroleum or its products tends to create a monopoly.

May institute proceedings for divorcement of holding from pipe-line companies where unfair practices, etc.

(c) The President is authorized to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State. Any violation of any order of the President issued under the provisions of this subsection shall be punishable by a fine of not to exceed \$1,000, or imprisonment for not to exceed six months, or both.

May prohibit transportation of petroleum products where withdrawal in violation of State regulation.

Penalties.

Sec. 10. RULES AND REGULATIONS. (48 Stat. 200; 15 U.S.C.A., sec. 710.)

SEC. 10. (a) The President is authorized to prescribe such rules and regulations as may be necessary to carry out the purposes of this title, and fees for licenses and

May prescribe, and fees, to carry out title.

⁴ Sec. 9 (c) was declared unconstitutional by the Supreme Court in the case of *Panama Refining Co. v. Ryan*, Jan. 7, 1935, 298 U. S. 388.

for filing codes of fair competition and agreements, and any violation of any such rule or regulation shall be punishable by fine of not to exceed \$500, or imprisonment for not to exceed six months, or both.

Penalties.

May cancel or modify any order, etc.

Each agreement, etc., so to provide.

(b) The President may from time to time cancel or modify any order, approval, license, rule, or regulation issued under this title; and each agreement, code of fair competition, or license approved, prescribed, or issued under this title shall contain an express provision to that effect.

EXECUTIVE ORDER OF JANUARY 20, 1934

RELATING TO N. R. A. CASES BEFORE THE FEDERAL TRADE COMMISSION

In order to effectuate the policy of Title I of the National Industrial Recovery Act, approved June 16, 1933,¹ I, Franklin D. Roosevelt, President of the United States, pursuant to the authority thereby vested in me and in accordance with the provisions of said act and the provisions of an act to create a Federal Trade Commission approved September 26, 1914, do hereby direct that:

1. Whenever any complainant shall be dissatisfied with the disposition by any Federal agency, except the Department of Justice, of any complaint charging that any person, partnership, corporation, or other association, or form of enterprise, is engaged in any monopolistic practice, or practice permitting or promoting a monopoly, or tending to eliminate, oppress, or discriminate against small enterprises, which is allegedly in violation of the provisions of any code of fair competition approved under the National Industrial Recovery Act, or allegedly sanctioned by the provisions of such code but allegedly in violation of Section 3 (a) of said National Industrial Recovery Act, such complaint shall be transferred to the Federal Trade Commission by such agency upon request of the complainant.

2. The Federal Trade Commission may, in accordance with the provisions of the National Industrial Recovery Act and the provisions of an act to create a Federal Trade Commission, approved September 26, 1914, upon the receipt of any such complaint transmitted to it, institute a proceeding against such persons, partnerships, corporations, or other associations or form of enterprise as it may have reason to believe are engaged in the practices aforesaid, whenever it shall

¹ See text, ante, p. 799.

In the case of *A. L. A. Schechter Poultry Corp., et al. v. U. S.*, 295 U. S. 495, the Supreme Court on May 27, 1935, held the code provisions of the National Industrial Recovery Act unconstitutional, as in said decision set forth.

Thereafter all the provisions of Title I of said Act delegating power to the President to approve or prescribe codes of fair competition and providing for the enforcement thereof, were repealed by joint resolution approved June 14, 1935 (Public Res. No. 26), 49 Stat. 375, the provisions of section 5 of said title relating to agreements thereunder and exemptions from the provisions of the antitrust laws, limited as therein specified to minimum wages, maximum hours, prohibition of child labor and prohibition of unfair competitive practices "which offend against existing law, including the antitrust laws, or which constitute unfair methods of competition under the Federal Trade Commission Act", and the date for the termination of said Title I extended and fixed as of April 1, 1936.

appear to the Federal Trade Commission that a proceeding by it in respect thereof would be to the interest of the public: *Provided*, That if in any case the Federal Trade Commission shall determine that any such practice is not contrary to the provisions of Section 5 of the Federal Trade Commission Act or of Sections 2, 3, or 7 of the act of October 15, 1914, commonly called the "Clayton Act", it shall instead of instituting such proceeding, transfer the complaint, with the evidence and other information pertaining to the matter, to the Department of Justice.

3. The power herein conferred upon the Federal Trade Commission shall not be construed as being in derogation of any of the powers of said Commission under existing law.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
January 20, 1934.

RULES OF PRACTICE

RULE I

SESSIONS

(a) The principal office of the Commission at Wash-^{Principal office.} ington, D.C., is open on each business day, excepting Saturdays, from 9 a.m. to 4:30 p.m., and on Saturdays from 9 a.m. to 1:00 p.m. The Commission may meet and exercise all its powers at any other place, and may, by one ^{Commission may exercise power elsewhere.} or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States. Branch offices are main-^{Branch offices.} tained at New York, Chicago, San Francisco, and Seattle.

(b) Sessions of the Commission for hearings will be ^{Hearings as ordered.} held as ordered by the Commission.

(c) Sessions of the Commission for the purpose of making orders and for the transaction of other business, ^{Sessions for orders and other business.} unless otherwise ordered, will be held at the office of the Commission at Washington, D.C., on each business day at 10:00 a.m. A majority of the membership of the Com-^{Quorum.} mission shall constitute a quorum for the transaction of business.

(d) All orders of the Commission shall be signed by ^{Orders signed by secretary.} the secretary.

RULE II

APPEARANCE

(a) Any individual or member of a partnership which ^{Person or partnership.} is a party to any proceeding before the Commission may appear for himself or such partnership upon adequate identification, and a corporation or association may be ^{Corporation or association.} represented by a bona fide officer of such corporation or association.

(b) A party may also appear by an attorney at law ^{By attorney at law, etc.} admitted to practice before the Commission. Upon application and for good cause shown, the Commission, in its discretion, may permit a party to be represented by any other person having the requisite qualifications to represent others.

RULE III

PRACTICE BEFORE COMMISSION

Attorneys:
Qualifications.

(a) Attorneys at law who are admitted to practice before the Supreme Court of the United States, or the highest court of any State or Territory of the United States, or the Court of Appeals or the Supreme Court of the District of Columbia, may be admitted to practice before the Commission. No register of admitted attorneys is maintained.

Denial of admission; suspension, or disbarment: Grounds.

(b) The Commission may, in its discretion, deny admission, suspend or disbar from practice before it, any person, who, it finds, does not possess the requisite qualifications to represent others, or is lacking in character, integrity, or is guilty of unprofessional conduct. Any person who has been admitted to practice before the Commission may be disbarred or suspended from practice for good cause shown but only after he has been afforded an opportunity to be heard.

RULE IV

COMPLAINTS

Who may ask
complaint.

(a) Any person, partnership, corporation, or association may apply to the Commission to institute a proceeding in respect to any violation of law over which the Commission has jurisdiction.

Form of application.

(b) Such application shall be in writing, signed by or in behalf of the applicant, and shall contain a short and simple statement of the facts constituting the alleged violation of law and the name and address of the applicant and of the party complained of.

Commission to investigate.

(c) The Commission shall investigate the matters complained of in such application, and if upon investigation the Commission shall have reason to believe that there is a violation of law over which the Commission has jurisdiction, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, the Commission shall issue and serve upon the party complained of a complaint stating its charges and containing a notice of a hearing upon a day and at a place therein fixed, at least 30 days after the service of said complaint.

Issuance and service of complaint.

RULE V

ANSWERS

(a) In case of desire to contest the proceeding the respondent shall, within 20 days from the service of the complaint, file with the Commission an answer to the complaint. Such answer shall contain a short and simple statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state, such statement operating as a denial. Any allegation of the complaint not specifically denied in the answer, unless respondent shall state in the answer that respondent is without knowledge, shall be deemed to be admitted to be true and may be so found by the Commission.

Time allowed for answer.

Form of answer.

Failure to deny any allegation.

(b) In case respondent desires to waive hearing on the charges set forth in the complaint and not to contest the proceeding, the answer may consist of a statement that respondent refrains from contesting the proceeding or that respondent consents that the Commission may make, enter, and serve upon respondent an order to cease and desist from the violations of the law alleged in the complaint, or that respondent admits all the allegations of the complaint to be true. Any such answer shall be deemed to be an admission of all the allegations of the complaint, to waive a hearing thereon, and to authorize the Commission, without a trial, without evidence, and without findings as to the facts or other intervening procedure, to make, enter, issue, and serve upon respondent:

If respondent desires to waive hearing.—

(c) In cases arising under section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (the Federal Trade Commission Act), or under sections 2 and 3 of the act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (the Clayton Act), an order to cease and desist from the violations of law charged in the complaint;

In cases under sec. 5 of Federal Trade Commission Act, or sec. 2 and 3 of Clayton Act;

(d) In cases arising under section 7 of the said act of Congress approved October 15, 1914 (the Clayton Act),

In cases under sec. 7 of Clayton Act; and

an order to cease and desist from the violations of law charged in the complaint and to divest itself of the stock alleged in the complaint to be held contrary to the provisions of said section 7 of said Clayton Act;

In cases under sec. 8 of Clayton Act.

(e) In cases arising under section 8 of the said act of Congress approved October 15, 1914 (the Clayton Act), an order to cease and desist from the violation of law charged in the complaint and to rid itself of the directors alleged in the complaint to have been chosen contrary to the provisions of said section 8 of said Clayton Act.

Failure to answer.

(f) Failure of the respondent to appear or to file answer within the time as above provided for shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

Number of copies, signing, etc.

(g) Three copies of answers are required to be furnished. All answers are required to be signed in ink by the respondent or by his attorney at law, or by a duly authorized agent with appropriate power of attorney affixed, and are required to show the office and post-office address of the signer. All answers are required to be typewritten or printed. If typewritten, they are required to be on paper not more than 8½ inches wide and not more than 11 inches long. If printed, they are required to be on paper 8 inches wide by 10½ inches long.

RULE VI

SERVICE

By secretary, any one duly authorized, or any examiner.

Complaints, orders, and other processes of the Commission may be served by the Commission's secretary, by registered mail (except whenever otherwise specifically ordered by the Commission), and in those instances where service cannot be made by such method, service may be made by anyone duly authorized by the Commission, or by any examiner of the Commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer, or a director of the corporation or association to be served; or (b) by leaving a copy thereof at the principal office or place of

Personal.

By leaving copy.

business of such person, partnership, corporation, association; or (c) by registering and mailing a copy thereof addressed to such person, partnership, corporation, or association, at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process, setting forth the manner of said service, shall be proof of the same, and the return post-office receipt for said complaint, order, or other process, registered and mailed, as aforesaid, shall be proof of the service of the same.

By registered mail.

Return.

RULE VII

INTERVENTION

(a) Any person, partnership, corporation, or association desiring to intervene in a contested proceeding shall make application in writing, setting out the grounds on which he or it claims to be interested. The Commission may, by order, permit intervention by counsel or in person to such extent and upon such terms as it shall deem just.

Form of application.

Permitted by order.

(b) Applications to intervene are required to be on one side of the paper only, on paper not more than 8½ inches wide and not more than 11 inches long, and weighing not less than 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margin not less than 1½ inches wide, or they may be printed in 10- or 12-point type on good unglazed paper 8 inches wide by 10½ inches long, with inside margins not less than 1 inch wide.

Size of paper, margin, etc., used on application.

RULE VIII

WITNESSES AND SUBPENAS

(a) Witnesses shall be examined orally, except that for good and exceptional cause for departing from the general rule the Commission may permit their testimony to be taken by deposition.

Examination ordinarily oral.

(b) Subpenas requiring the attendance of witnesses from any place in the United States at any designated place of hearing may be issued by any member of the Commission.

Subpenas for witnesses.

(c) Subpenas for the production of documentary evidence (unless directed to issue by a commissioner upon his own motion) will issue only upon application in writing, which must be verified and must specify, as near as may

Subpenas for production of documentary evidence.

be, the documents desired and the facts to be proved by them.

Witness fees
and mileage.

(d) Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear.

RULE IX

TIME FOR TAKING TESTIMONY

Examination of
witnesses to pro-
ceed as fast as
practicable.

Upon the joining of issue in a proceeding by the Commission the examination of witnesses therein shall proceed with all reasonable diligence and with the least practicable delay. Not less than 5 days' notice shall be given by the Commission to counsel or parties of the time and place of examination of witnesses before the Commission, a commissioner, or an examiner.

Notice to
counsel.

RULE X

OBJECTIONS TO EVIDENCE

To state
grounds of
objection, etc.

Objections to the evidence before the Commission, a commissioner, or an examiner shall, in any proceeding, be in short form, stating the grounds of objections relied upon, and no transcript filed shall include argument or debate.

RULE XI

MOTIONS

To briefly state
nature of order
applied for,
etc.

A motion in a proceeding by the Commission shall briefly state the nature of the order applied for, and all affidavits, records, and other papers upon which the same is founded, except such as have been previously filed or served in the same proceeding, shall be filed with such motion and plainly referred to therein.

RULE XII

HEARINGS ON INVESTIGATIONS

When referred to
single commis-
sioner, or
examiner.

(a) When a matter for investigation is referred to a single commissioner, or examiner, for examination or report, such commissioner, or examiner, may conduct or hold conferences or hearings thereon, either alone or with other commissioners who may sit with him, and reason-

able notice of the time and place of such hearings shall be given to parties in interest and posted.

(b) The chief counsel, or such attorney as shall be designated by him, or by the commissioner, or by the Commission, shall attend such hearings and prosecute the investigation, which hearings shall be public, unless otherwise ordered by the Commission.

Chief counsel or attorney to prosecute.

RULE XIII

HEARINGS BEFORE TRIAL EXAMINERS

(a) Where evidence is to be taken in a proceeding upon complaint issued by the Commission, a trial examiner shall be designated by the Commission for that purpose. It shall be the duty of the trial examiner to complete the taking of evidence with all due dispatch and he shall state the place, day, and hour to which the taking of evidence may from time to time be adjourned.

Examiner to take evidence.

(b) All hearings before the Commission or trial examiners on complaints issued by the Commission shall be public, unless otherwise ordered by the Commission.

On complaints; public, unless otherwise ordered

(c) The trial examiner shall, within 15 days after the receipt of the stenographic report of the testimony, make his report on the facts, and shall forthwith serve copy of the same on the parties or their attorneys, who, within 10 days after the receipt of same, shall file in writing their exceptions, if any, and said exceptions shall specify the particular part or parts of the report to which exception is made, and said exceptions shall include any additional facts which either party may think proper. Seven copies of exceptions shall be filed for the use of the Commission. Citations to the record shall be made in support of such exceptions. Where briefs are filed, the same shall contain a copy of such exceptions. If exceptions are to be argued, they shall be argued at the final argument on the merits.

Examiner to make and serve his report on the facts.

Exceptions by parties.

Briefs and argument on exceptions.

(d) The report of the trial examiner is not a decision, finding or ruling of the Commission, and is not a part of the record in the proceeding. The Commission's findings as to the facts are based upon the record.

Trial examiner's report not part of record.

(e) When, in the opinion of the trial examiner engaged in taking evidence in any formal proceeding, the size of the transcript or complication or importance of the issues involved warrants it, he may of his own motion or at the request of counsel, at the close of the taking of

Examiner under certain circumstances to receive from each side statement of its contentions after evidence and before his report.

evidence, announce to the attorney for the respondent and for the Commission that the examiner will receive, at any time before he has completed the drawing of the trial examiner's report upon the facts, a statement in writing (one for either side) in terse outline setting forth the contentions of each as to the facts proved in the proceeding.

Not to be exchanged or argued.

(f) These statements are not to be exchanged between counsel and are not to be argued before the trial examiner.

Time allowed for such statements.

(g) Any such statement submitted by either side shall be submitted within 5 days after the closing of the taking of evidence and not later, which time shall not be extended.

RULE XIV

DEPOSITIONS

Commission may order.

(a) The Commission may order evidence to be taken by deposition in any proceeding or investigation pending at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commission and having power to administer oaths.

Before person designated, etc.

Application for depositions.

(b) Any party desiring to take the deposition of a witness shall make application in writing, setting out the reasons why such deposition should be taken, and stating the time when, the place where, and the name and post-office address of the person before whom it is desired the deposition be taken, the name and post-office address of the witness, and the subject matter or matters concerning which the witness is expected to testify. If good cause be shown, the Commission will make and serve upon the parties, or their attorneys, an order wherein the Commission shall name the witness whose deposition is to be taken and specify the time when, the place where, and the person before whom the witness is to testify, but such time and place, and the person before whom the deposition is to be taken, so specified in the Commission's order, may or may not be the same as those named in said application to the Commission.

Testimony of witness.

(c) The testimony of the witness shall be reduced to writing by the officer before whom the deposition is taken, or under his direction, after which the deposition shall be subscribed by the witness and certified in usual form by the officer. After the deposition has been so certified it shall, together with a copy thereof made by such officer or under his direction, be forwarded by such officer

under seal in an envelope addressed to the Commission at its office in Washington, D.C. Such deposition, unless otherwise ordered by the Commission for good cause shown, shall be filed in the record in said proceeding and a copy thereof supplied to the party upon whose application said deposition was taken, or his attorney.

Deposition to be forwarded.

And filed. Copy to applicant or his attorney.

Size of paper, etc.

(d) Such depositions shall be typewritten on one side only of the paper, which shall be not more than 8½ inches wide and not more than 11 inches long and weighing not less than 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margin not less than 1½ inches wide.

(e) Unless notice be waived, no deposition shall be taken except after at least 6 days' notice to the parties, and where the deposition is taken in a foreign country, such notice shall be at least 15 days.

Notice.

RULE XV

DOCUMENTARY EVIDENCE

Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant and not intended to be put in evidence, such immaterial or irrelevant parts shall be excluded, and shall be segregated insofar as practicable.

Relevant and material matter only to be filed.

RULE XVI

BRIEFS

(a) All briefs must be filed with the secretary of the Commission, and briefs on behalf of the Commission must be accompanied by proof of the service of the same as hereinafter provided, or the mailing of same by registered mail to the respondent or its attorney at the proper address. Twenty copies of each brief shall be furnished for the use of the Commission unless otherwise ordered. The exceptions, if any, to the trial examiner's report must be incorporated in the brief. Every brief, except the reply brief on behalf of the Commission, hereinafter mentioned, shall contain in the order here stated:

Filed with secretary.

Proof of service.

Number.

To contain exceptions to trial examiner's report. Form.

(b) A concise abstract or statement of the case.

Abstract of case.

(c) A brief of the argument, exhibiting a clear statement of the points of fact or law to be discussed, with the reference to the pages of the record and the authorities relied upon in support of each point.

Brief of argument.

- Index.** (d) Every brief of more than 10 pages shall contain on its top fly leaves a subject index with page references, the subject index to be supplemented by a list of all cases referred to, alphabetically arranged, together with references to pages where the cases are cited.
- Printing.** (e) Briefs are required to be printed in 10- or 12-point type on good unglazed paper 8 by 10½ inches, with inside margins not less than 1 inch wide, and with double-leaded text and single-leaded citations.
- Reply brief.** (f) The reply brief on the part of the Commission shall be strictly in answer to respondent's brief.
- Time for briefs.** (g) The opening brief in support of the complaint shall be filed within 20 days of the date of the service upon the trial attorney of the Commission of the trial examiner's report. The brief on behalf of the respondent shall be filed within 20 days from the service upon the respondent or his attorney of the brief in support of the complaint. A reply brief in support of the complaint shall be filed only when recommended by the chief counsel and then within 10 days after the filing of respondent's brief. A reply brief on behalf of respondent will not be permitted to be filed. Appearance of additional counsel in a case shall not constitute grounds for extending the time for filing brief or for final hearing.
- Briefs not filed in time.** (h) Briefs not filed with the Commission on or before the dates fixed therefor will not be received except by special permission of the Commission.
- Service of Commission brief.** (i) Briefs on behalf of the Commission may be served by delivering a copy thereof to the respondent's attorney or to the respondent in case respondent be not represented by attorney, or by registering and mailing a copy thereof addressed to the respondent's attorney or to the respondent in case respondent be not represented by attorney, at the proper post-office address. Written acknowledgment of service, or the verified return of the party making the service, shall constitute proof of personal service as hereinbefore provided, and the return post-office receipt aforesaid for said brief when registered and mailed shall constitute proof of the service of the same.
- Oral arguments.** (j) Oral arguments may be had only as ordered by the Commission on written application of the chief counsel or of respondent filed not later than 5 days after expiration of time allowed for filing of reply brief of counsel for the Commission.

RULE XVII

FILING MOTIONS, ANSWERS, ETC.

All matter required to be filed with the Commission, ^{Filed with secretary.} shall be filed with the secretary.

RULE XVIII

REPORTS SHOWING COMPLIANCE WITH ORDERS

In every case where an order is issued by the Commission for the purpose of preventing violations of law the respondent or respondents therein named shall file with the Commission, within the time specified in said order, a report in writing setting forth in detail the manner and form in which the said order of the Commission has been complied with. ^{Within time specified and in writing.}

RULE XIX

REOPENING PROCEEDINGS

In any case where an order to cease and desist, an order dismissing a complaint, or other order disposing of a proceeding is issued the Commission may, at any time within 90 days after the entry of such order, for good cause shown in writing and on notice to the parties, reopen the case for such further proceedings as to the Commission may seem proper. ^{Within 90 days and for good cause.}

RULE XX

CONTINUANCES, AND EXTENSIONS OF TIME

The Commission may, in its discretion, grant continuances, or, on good cause shown in writing and prior to the expiration of the time fixed, extend the time fixed in these rules. ^{In discretion of Commission, on good cause, etc.}

RULE XXI

ADDRESS OF THE COMMISSION

All communications to the Commission must be addressed to Federal Trade Commission, Washington, D.C., ^{Washington, D.C.} unless otherwise specifically directed.

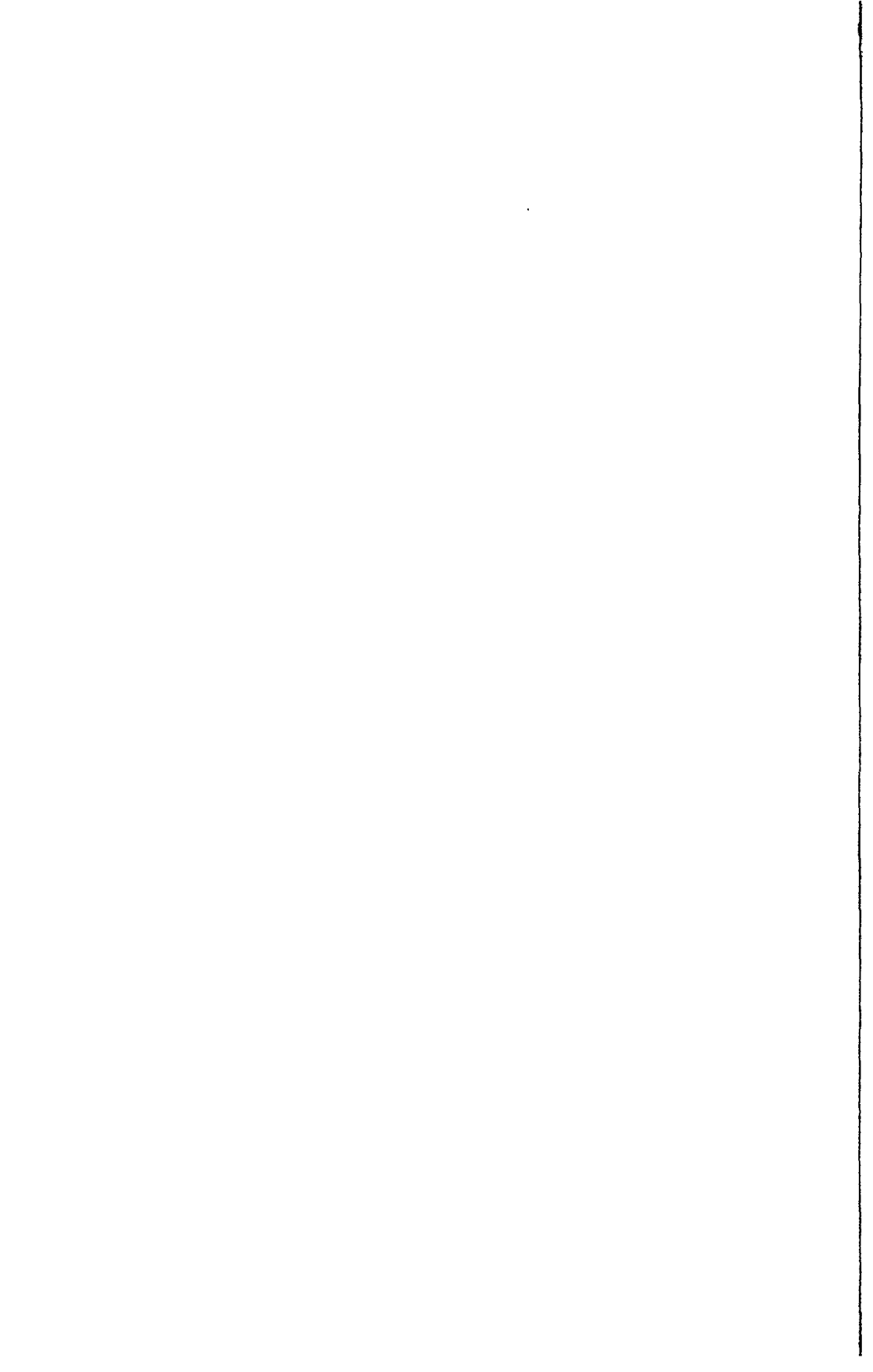


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