composed in substantial part of imitation pearls offered for sale and sold in the United States are products of domestic manufacture in the absence of a tag, mark, or other identification thereon by which foreign origin is indicated.

PAR. 8. The complaint herein also alleges that the respondents' practice of offering for sale, selling, and distributing necklaces or other articles of jewelry composed of imitation pearls made from imported base beads without any label or marking to indicate to purchasers the foreign origin of the base beads constitutes unfair and deceptive acts and practices. For the reasons stated in its opinion accompanying its findings as to the facts and order to cease and desist in the matter of *L. Heller & Son, Inc., et al.*, docket No. 5358, the Commission is of the opinion, and finds, that such charge has not been adequately sustained.[1]

PAR. 9. Respondents' aforesaid acts and practices of offering for sale, selling, and distributing jewelry products composed in whole or in substantial part of imported imitation pearls without any labeling or other mark to indicate the foreign source or origin of such imitation pearls have had, and now have, the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the false and erroneous belief that such jewelry products are wholly of domestic manufacture and origin into the purchase thereof in reliance upon such erroneous belief. Respondents' said acts and practices also place in the hands of retailers of such jewelry products a means and instrumentality by which members of the consuming and purchasing public may be misled and deceived into the false and erroneous belief that such jewelry products are wholly of domestic origin, and thus into the purchase thereof in reliance upon such erroneous belief.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondents, stipulations entered into by and between Daniel J. Murphy, Assistant Chief Trial Counsel for the Commission, and counsel for the respondents, testimony and other evidence introduced before a trial

[1] See *ante*, p. 43.

examiner of the Commission in the matter of *L. Heller & Son, Inc., et al.*, docket No. 5358, recommended decision of the trial examiner and exceptions thereto, and briefs and oral argument of counsel in said *Heller* case; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the corporate respondents, Coro, Inc., and Coro, Inc., of Rhode Island, and their officers, agents, representatives, and employees, and the individual respondents, Gerald E. Rosenberger, Carl Rosenberger, and Henry Rosenblatt, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of imitation pearls, whether offered for sale and sold as necklaces or in other articles of jewelry, do forthwith cease and desist from:

Representing by the use of the word "pearls" or any other word or words of similar import or meaning, or in any other manner, that said imitation pearls are genuine pearls: *Provided, however*, That the foregoing shall not be construed to prohibit the use of the word "pearls" to describe the appearance of said imitation pearls if, wherever used, the word "pearls" is immediately preceded, in equally conspicuous type, by the word "imitation" or the word "simulated" or other word of similar import or meaning, so as to clearly indicate that said imitation pearls are not genuine pearls but imitations thereof.

It is further ordered, That the corporate respondents, Coro, Inc., and Coro, Inc., of Rhode Island, and their officers, agents, representatives, and employees, and the individual respondents, Gerald E. Rosenberger, Carl Rosenberger, and Henry Rosenblatt, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of necklaces of imported imitation pearls, or other articles of jewelry composed in substantial part of imported imitation pearls, do forthwith cease and desist from:

Offering for sale or selling said products without affirmatively and clearly disclosing thereon, or in immediate connection therewith, the country of origin of such imported imitation pearls.

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

IN THE MATTER OF

LAWRENCE B. DOTTENHEIM ET AL. TRADING AS VICTOR IMPORTING CO.

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

Docket 5403. Complaint, Nov. 20, 1945—Decision, Aug. 25, 1950

A substantial portion of the purchasing public has a general preference for products of domestic origin over those of foreign origin, and has a prejudice against some imported products, particularly those originating in Japan, and understands and believes that imitation pearl necklaces and other jewelry, composed in substantial part of imitation pearls and offered and sold in the United States, are products of domestic manufacture, in the absence of some identification indicating foreign origin.

Where four individuals engaged in the interstate sale and distribution at wholesale of domestic and imported merchandise, including necklaces and other articles of jewelry composed of imitation pearls which, purchased by them from importers engaged in the sale and distribution of such products in the United States, were, when received by them, all labeled or marked "Japan", or "Made In Japan", or with other indications of the country of origin, and were strung by them into necklaces to which clasps of domestic manufacture were attached, or used in other articles of jewelry;

Without disclosing by any mark, label, or otherwise the foreign origin of said imported imitation pearls, from which, during the handling and processing above described they caused to be removed all tags, labels, or other indication of foreign origin, offered, sold, and distributed such necklaces and other articles of jewelry which, composed in substantial part of said imported imitation pearls, were substantially of foreign origin;

With capacity and tendency to mislead and deceive purchasers into the erroneous belief that such products were wholly of domestic manufacture and origin, and into the purchase thereof in relience upon such belief; and with the result of placing in the hands of retailers a means of misleading the public into such false belief and thereby into their purchase:

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

As respects the charge in the complaint that respondent's practice of offering, selling, and distributing necklaces and other articles of jewelry composed of cultured pearls, without any label or marking to indicate to purchasers the foreign origin of such cultured pearls, constituted unfair and deceptive acts and practices, the Commission determined for reasons stated in its opinion accompanying its findings and order to desist in the matter of *L. Heller & Son, Inc., et al.*, D. 5358, hereinbefore reported at page 34, *et seq.*, that under the circumstances it should not require that necklaces or jewelry composed of imported cultured pearls should be labeled or marked so as to disclose the foreign origin of such pearls.

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

Mr. B. G. Wilson and *Mr. Joseph Callaway* for the Commission.

Mr. Morton B. Frederick, of New York City, for respondents.

COMPLAINT[1]

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Lawrence B. Dottenheim and Mark Dottenheim, individually and trading as Victor Importing Co., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Lawrence B. Dottenheim and Mark Dottenheim are individuals trading as Victor Importing Co. with their office and principal place of business located at 302 Fifth Avenue, New York, N. Y.

PAR. 2. Respondents Lawrence B. Dottenheim and Mark Dottenheim are now, and for several years last past have been, engaged in the wholesale distribution and sale of domestic and imported merchandise of various kinds, including imitation pearls made into necklaces, cultured pearls made into necklaces and other articles of jewelry in commerce among and between the various States of the United States and in the District of Columbia.

Respondents cause and have caused their said merchandise when sold to be shipped from their said place of business located in the

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[1] The Commission on October 20, 1947, issued an order making Beatrice Dottenheim and May Dottenheim respondents, and providing that the evidence heretofore taken shall be applicable to them, as follows:

This matter coming on to be heard on stipulation of all parties to the effect that the Commission may, by its order, make Beatrice Dottenheim, wife of the respondent Mark Hottenheim, and May Dottenheim, sister of the respondent Lawrence B. Dottenheim, and Mark Dottenheim, parties respondent herein, designating them as copartners with respondents Lawrence B. Dottenheim and Mark Dottenheim, doing business as the Victor Importing Co. without the issuance and service of formal amended complaint or notice with respect thereto, and that the Commission may order further that the evidence heretofore taken in this proceeding shall apply to the said Beatrice Dottenheim and the said May Dottenheim and have the same force and effect as if they had been named respondents in the first instance, duly served with copy of complaint and given due notice of all hearings and all other proceeding in the matter and the Commission having duly considered said stipulation and the record herein, and being now fully advised in the premises:

It is ordered, That Beatrice Dottenheim, wife of the respondent Mark Dottenheim, and May Dottenheim, sister of the respondent Lawrence B. Dottenheim, and Mark Dottenheim, are hereby made parties respondent herein, and designated as copartners with respondents Lawrence B. Dottenheim and Mark Dottenheim, doing business as the Victor Importing Co. It is further ordered that the evidence heretofore taken in this proceeding shall apply to said Beatrice Dottenheim and the said May Dottenheim, and have the same force and effect as if they had been named respondents in the first instance, duly served with copy of complaint and given due notice of all hearings and all other proceedings in the matter.

State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia.

The said respondents maintain and at all times mentioned herein have maintained a course of trade in their said merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business in connection with the sale and distribution of said necklaces and other articles of jewelry respondents have purchased large quantities of imitation pearls for the manufacture of imitation pearl necklaces and cultured pearls made into necklaces of foreign origin from importers engaged in the sale and distribution of said products in the United States. Respondents manufacture necklaces and other articles of jewelry from said imported imitation pearls and cultured pearls and sell and distribute said products in said commerce as aforesaid.

PAR. 4. At the time of the importation into the United States of said imitation pearls and cultured pearls and at the time the said respondents receive said products of foreign origin from importers such products have been and are all labeled or marked with the word "Japan" or the words "Made in Japan," or the "Spanish" or the words "Made in Spain," or marked with other word or words indicating the country of origin.

After said products are received by them the respondents caused the words or marks indicating their foreign origin to be removed therefrom and thereafter sell and distribute said products made into necklaces and other articles of jewelry in commerce as above set forth without any words or marks thereon indicating their foreign origin and cause said products to be offered for sale and sold to members of the purchasing and consuming public in that condition without informing the purchasers thereof that the said products are of foreign origin.

PAR. 5. There is a well-established practice among merchandisers generally to mark or label products of foreign origin and their containers with the name of the country of their origin in legible English words in a conspicuous place. By reason thereof, a substantial portion of the buying and consuming public has come to rely and now relies upon such labeling or marking and is influenced thereby to distinguish and discriminate between competing products of foreign and domestic origin, including imitation pearl necklaces and cultured pearl necklaces. When products composed in whole or in substantial part of imported materials are offered for sale and sold in the channels of trade in commerce in the various States of the United States and in the District of Columbia, they are purchased and accepted as and for,

and taken to be, products wholly of domestic manufacture and origin unless the same are labeled, marked, or imprinted in a manner which informs the purchaser that said products or substantial parts thereof are of foreign origin.

PAR. 6. There is now and for several years last past has been among members of the buying and consuming public, including purchasers and users of imitation pearl necklaces and cultured pearl necklaces, a substantial preference for products which are wholly of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin, or from products made in substantial part of materials or parts of foreign origin. During recent years, and especially at the present time, there is a decided and overwhelming preference among American consumers for products of American manufacture and origin as distinguished from products wholly or partly of Japanese manufacture and origin.

PAR. 7. The practice of the respondents, as aforesaid, of offering for sale, selling, and distributing their imitation pearl necklaces and cultured pearl necklaces, and other articles of jewelry of Japanese, Spanish, or other foreign origin without any labeling or marking to indicate to purchasers the Japanese, Spanish, or other foreign origin of such imitation pearl necklaces and cultured pearl necklaces, has had and now has the capacity and tendency to, and does, mislead and deceive purchasers and prospective purchasers into the false and erroneous belief that said imitation pearl necklaces and cultured pearl necklaces and other articles of jewelry, and all the parts thereof, are wholly of domestic manufacture and origin, and into the purchase thereof in reliance upon such erroneous belief. Furthermore, respondents' said practice places in the hands of uniformed retailers of respondents' imitation pearl necklaces and cultured pearl necklaces and other articles of jewelry a means and instrumentality to mislead and deceive members of the buying and consuming public into the false and erroneous belief that said imitation pearl necklaces and cultured pearl necklaces and all the parts thereof are wholly of domestic origin, and thus into the purchase thereof in reliance upon such erroneous belief.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act the Federal Trade Commission, on November 20, 1945, issued and

subsequently served its complaint in this proceeding upon the respondents Lawrence B. Dottenheim and Mark Dottenheim, individually and trading as Victor Importing Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of the complaint and the filing of respondents' answer thereto, the Commission ordered, on October 20, 1947, pursuant to a stipulation of all parties concerned, that Beatrice Dottenheim and May Dottenheim be made parties respondent herein, and designated as copartners with respondents Lawrence B. Dottenheim and Mark Dottenheim, doing business as the Victor Importing Co., and that the evidence theretofore taken shall apply to said Beatrice Dottenheim and said May Dottenheim, and have the same force and effect, as if they had been named respondents in the first instance, duly served with copy of complaint, and given due notice of all hearings and all other proceedings in the matter. Testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission upon the complaint, answer thereto, testimony and other evidence, recommended decision of the trial examiner, to which no exceptions were filed, and briefs in support of the allegations of the complaint (no brief having been filed on behalf of the respondents and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Lawrence B. Dottenheim, Mark Dottenheim, Beatrice Dottenheim, and May Dottenheim, are individuals trading as Victor Importing Co., with their office and principal place of business located at 302 Fifth Avenue, New York, N. Y.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the wholesale distribution and sale of domestic and imported merchandise of various kinds, including imitation pearl necklaces and other articles of jewelry, among and between the various States of the United States.

Respondents cause, and have caused, their said merchandise, when sold, to be shipped from their place of business located in the State of New York to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said merchandise in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business respondents have purchased imitation pearls from importers engaged in the sale and distribution of said products in the United States. When received by the respondents said imported imitation pearls have been, and are, all labeled or marked with the word "Japan" or the words "Made in Japan," or other word or words indicating the country of origin. The respondents string such imported imitation pearls into necklaces, to which clasps of domestic manufacture are attached, or use them in other articles of jewelry. The necklaces of imported imitation pearls, and other articles of jewelry composed in substantial part of imported imitation pearls, are substantially of foreign origin.

PAR. 4. During the handling and processing of imported imitation pearls as described in paragraph 3, respondents cause to be removed all tags, labels, or other means of identification which indicate the foreign origin of such imitation pearls. Respondents then offer for sale, sell, and distribute necklaces of imported imitation pearls, and other articles of jewelry composed in substantial part of imported imitation pearls, without disclosing by any mark or label, or otherwise, that such imitation pearls are of foreign origin.

PAR. 5. A substantial portion of the purchasing public has a general preference for products of domestic origin over those of foreign origin, and has a prejudice against some imported products, particularly those originating in Japan. A substantial portion of the purchasing public also understands and believes that imitation pearl necklaces and other articles of jewelry composed in substantial part of imitation pearls offered for sale and sold in the United States are products of domestic manufacture in the absence of a tag, mark, or other identification thereon by which foreign origin is indicated.

PAR. 6. The complaint herein also alleges that the respondents' practice of offering for sale, selling, and distributing necklaces and other articles of jewelry composed of cultured pearls without any label or marking to indicate to purchasers the foreign origin of such cultured pearls constitutes unfair and deceptive acts and practices.

The Commission has determined, for the reasons stated in its opinion accompanying its findings as to the facts and order to cease and desist in the matter of *L. Heller & Son, Inc. et al.*, docket No. 5358,[1] that under the circumstances it should not require that necklaces or other articles of jewelry composed of imported cultured pearls be labeled or marked so as to disclose the foreign origin of the cultured pearls.

PAR. 7. Respondents' aforesaid acts and practices of offering for sale, selling, and distributing jewelry products composed in whole or in substantial part of imported imitation pearls without any labeling or other mark to indicate the foreign source or origin of such imitation pearls have had, and now have, the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the false and erroneous belief that such jewelry products are wholly of domestic manufacture and origin and into the purchase thereof in reliance upon such erroneous belief. Respondents' said acts and practices also place in the hands of retailers of such jewelry products a means and instrumentality by which members of the consuming and purchasing public may be misled and deceived into the false and erroneous belief that such jewelry products are wholly of domestic origin, and thus into the purchase thereof in reliance upon such erroneous belief.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondents, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, recommended decision of the trial examiner, to which no exceptions were filed, brief in support of the allegations of the complaint (no brief having been filed on behalf of the respondents and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

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[1] See *ante*, p. 43.

It is ordered, That the respondents, Lawrence B. Dottenheim, Mark Dottenheim, Beatrice Dottenheim, and May Dottenheim, individually and trading as Victor Importing Co., or trading under any other name, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of necklaces of imported imitation pearls, or other articles of jewelry composed in substantial part of imported imitation pearls, do forthwith cease and desist from:

Offering for sale or selling said products without affirmatively and clearly disclosing thereon, or in immediate connection therewith, the country of origin of such imported imitation pearls.

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

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IN THE MATTER OF

HARRY SUSSMAN AND MICHAEL SCHNITZER TRADING AS ATLAS PUTTY COMPANY

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

Docket 5751. Complaint, Mar. 15, 1950—Decision, Sept. 1, 1950

Where two partners engaged in the interstate sale and distribution of putty—

Represented through the use of the words "Pure Linseed Oil Putty" on the labels attached to the containers in which certain products were packaged and sold, that the only oil used therein was pure linseed oil, when in fact substantial quantities of other oils were also included;

With tendency and capacity to mislead a substantial portion of the purchasing public in such respect, and cause it to purchase substantial quantities thereof:

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

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

Mr. Jesse D. Kash for the Commission.

Wegman, Epstein & Burke, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Harry Sussman and Michael Schnitzer, individually and trading as Atlas Putty Co., hereinafter referred to as respondents, have violated the provisions of the said act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Harry Sussman and Michael Schnitzer are individuals, trading as partners under the name Atlas Putty Co., with an office and principal place of business located at 510 Smith Street, Brooklyn, N. Y.

PAR. 2. The respondents are now, and for more than 2 years last past, have been engaged in the sale and distribution of putty.

In the course and conduct of such business respondents cause their said product, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said product in

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

PAR. 3. In the course and conduct of their business and for the purpose of inducing the purchase of certain of their products, respondents, subsequent to March 21, 1938, have represented, directly and by implication, by means of painted labels upon the containers in which the product is sold and by other means that the only oil used in the composition of certain of their putty, described on the said labels as "Pure Linseed Oil Putty" is pure linseed oil.

PAR. 4. The said representation is false and misleading. In truth and in fact the oil content of respondents' said putty does not consist solely of linseed oil, but includes substantial quantities of other oils.

PAR. 5. The use by the respondents of the foregoing false and misleading representation has a tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representation is true and induces and has induced members of the public to purchase substantial quantities of respondents' product as a result of such belief.

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

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated September 1, 1950, the initial decison in the instant matter of trial examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION

By WILLIAM L. PACK, Trial Examiner

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 15, 1950 issued and subsequently served its complaint in this proceeding upon the respondents, Harry Sussman and Michael Schnitzer, individually and trading as Atlas Putty Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the issuance of the complaint and the filing of respondent's answer thereto, hearings were held at which testimony and other evi-

dence in support of and in opposition to the allegations of the complaint were introduced before the above-named trial examiner theretofore duly designated by the Commission, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final consideration by the trial examiner on the complaint, the answer thereto, and testimony and other evidence; and the trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Harry Sussmann and Michael Schnitzer, are individuals trading as partners under the name Atlas Putty Co., with their office and principal place of business located at 510 Smith Street, Brooklyn, N. Y. Respondents are now and for a number of years last past have been engaged in the sale and distribution of putty.

PAR. 2. Respondents cause and have caused their products, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States. Respondents maintain and have maintained a course of trade in their products in commerce among and between the various States of the United States. Their volume of business in such commerce is substantial.

PAR. 3. In the course and conduct of their business respondents have used the words "Pure Linseed Oil Putty" to designate and describe certain of their products, these words appearing on the labels attached to the containers in which such products were packaged and sold. Through the use of these words respondents have represented that the only oil used in the products in question was pure linseed oil.

PAR. 4. The record establishes and the examiner therefore finds that this representation was erroneous and misleading. Actually, the oil content of the products in question did not consist solely of linseed oil but included substantial quantities of other oils.

PAR. 5. The record indicates that respondents have discontinued the use of such other oils and that the oil now used in all of their products is exclusively linseed oil.

PAR. 6. The use by respondents of the representation referred to above has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the character and

composition of respondents' products, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of the products as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondents as hereinabove set out are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondents, Harry Sussman and Michael Schnitzer, individually and trading as Atlas Putty Co., or trading under any other name, and their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of putty in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Pure Linseed Oil Putty," or any other words of similar import, to designate or describe putty whose oil content is not linseed oil exclusively.

2. Representing in any manner, directly or by implication, that the oil content of respondents' products is linseed oil exclusively, when such is not the fact.

In the case of putty which contains both linseed oil and other oils, this order shall not be construed as prohibiting respondents from referring to such linseed oil content, provided the presence of such other oils is clearly disclosed in connection with the reference to the linseed oil content.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein, Harry Sussman and Michael Schnitzer shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order [as required by said declaratory decision and order of September 1, 1950].

IN THE MATTER OF

HAMILTON 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 3944. Complaint, Nov. 8, 1939—Decision, Sept. 7, 1950

Where an individual engaged in the interstate sale and distribution of pushcards and punchboards including many which, arranged with explanatory instructions or blank spaces therefor, were designed for use in the sale and distribution of merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme, whereby the purchaser of a push or punch who by chance selected a concealed winning number, secured an article of merchandise at much less than its normal retail price, and others received nothing other than the privilege of a push or punch—

Sold such devices to dealers in such merchandise as candy, cigarettes, clocks, razors, cosmetics, clothing, etc., by whom assortments were made up of various articles together with a card or board, and sold to retailers and others who exposed and resold the same to the purchasing public in accordance with the aforesaid sales plan, involving a chance to procure articles at much less than their normal retail price; and thereby

Supplied to and placed in the hands of others the means of conducting lotteries, gift enterprises or games of chance in the sale and distribution of merchandise to the consuming public, contrary to an established public policy of the United States Government, and in violation of criminal laws;

With the result that members of the purchasing public were thereby induced to deal with retailers using such sales devices; many retailers were thereby induced to trade with manufacturers, wholesalers and jobbers who thus sold and distributed their products; competitors of such retailers were faced with the alternatives of also using such devices or suffering loss of substantial trade; and competitors of such suppliers who did not use such devices often lost sales to those who did:

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

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

Guesmer, Carson & MacGregor, of Minneapolis, Minn., and *Mr. J. Bond Smith* and *Mr. Joseph A. Padway*, of Washington, D. C., for respondent.

Mr. Joseph A. Padway and *Mr. Herbert S. Thatcher*, of Washington, D. C., for Minneapolis Printing Pressmen and Assistants Union No. 20; Bookbinders and Bindery Women, Twin City Local No. 12, I. B. of B.; and Stenographers, Bookkeepers, Typists and Assistants Union, Minneapolis Local No. 17661; intervenors.

COMPLAINT

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

PARAGRAPH 1. Respondent, Hamilton Manufacturing Co., is a corporation organized and doing business under the laws of the State of Minnesota, with its principal office and place of business located at 413 South Fifth Street, Minneapolis, Minn. Respondent is now and for some time last past has been engaged in the manufacture of devices commonly known as pushcards and punchboards and in the sale and distribution of such merchandise to manufacturers of, and dealers in, various other articles of merchandise in commerce between and among the various states of the United States, and in the District of Columbia.

Respondent causes and has caused said devices, when sold, to be transported from its aforesaid place of business to purchasers thereof in various states of the United States other than the State of Minnesota, and in the District of Columbia, at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondent in such pushcard and punchboard devices in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent sells and distributes and has sold and distributed to said manufacturers and dealers pushcards and punchboards so prepared and arranged as to involve games of chance, gift enterprises, or lottery schemes, when used in making sales of merchandise to the consuming public. Respondent sells and distributes and has sold and distributed many kinds of said pushcards and punchboards, but all of said pushcards and punchboards involve the same chance or lottery features when used in connection with the sale or distribution of merchandise, and vary only in detail. Many of such pushcards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said pushcards and punchboards vary in accordance with the individual device.

Each purchaser is entitled to one push or punch from the pushcard or punchboard, and when a push or punch is made, a disk or printed slip is separated from the pushcard or punchboard and a number is disclosed. The numbers are effectively concealed from the purchasers, and prospective purchasers, until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to designated articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise at prices which are much less than the normal retail price of said articles of merchandise. Persons who do not secure such lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said pushcard and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those pushcards and punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by respondent on said pushcard and punchboard devices hereinabove described. The only use to be made of said pushcard and punchboard devices, and the only manner in which they are used, by the ultimate purchasers thereof, is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance as hereinabove alleged.

PAR. 3. Many persons, firms, and corporations who sell and distribute candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce between and among the various States of the United States, and in the District of Columbia, have purchased respondent's said pushcard and punchboard devices and have packed and assembled assortments comprised of various articles of said merchandise, together with said pushcard and punchboard devices. Retail dealers who have purchased such assortments, either directly or indirectly, have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said pushcards and punchboards in accordance with the sales plan as described in paragraph 2 hereof. Because of the element of chance involved in connection with the sale or distribution of said merchandise by means of said pushcards and punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof, many retail dealers have been induced to deal or

trade with manufacturers, wholesale dealers and jobbers who sell and distribute said merchandise together with said devices. Said persons, firms or corporations have many competitors who sell or distribute like or similar articles of said merchandise in commerce between and among the various States of the United States, and in the District of Columbia. Said competitors are faced with the alternative of descending to the use of said pushcard and punchboard devices or other similar devices which they are under a powerful moral compulsion not to use in connection with the sale or distribution of their merchandise or to suffer the loss of substantial trade. Said competitors do not sell or distribute their merchandise by means of pushcard or punchboard devices or similar devices because of the element of chance or lottery features involved therein, and because such practices are contrary to the public policy of the Government of the United States and in violation of criminal laws, and such competitors refrain from supplying to, or placing in the hands of, others pushcard or punchboard devices or any other similar devices which are to be used, or which may be used, in connection with the sale or distribution of the merchandise of such competitors to the general public by means of a lottery, game of chance, or gift enterprise. As a result thereof substantial trade has been unfairly diverted to said persons, firms, and corporations from said competitors in said commerce, who do not sell or use such devices.

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

The sale or distribution of said pushcards and punchboards by respondent as hereinabove alleged supplies to, and places in the hands of, others the means of conducting lotteries, games of chance, or gift enterprises in the sale or distribution of their merchandise. The respondent thus supplies to, and places in the hands of, said persons, firms and corporations the means of, and instrumentalities for, engaging in unfair methods of competition and unfair acts and practices

within the intent and meaning of the Federal Trade Commission Act.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 8, 1939, issued and subsequently served upon the respondent, Hamilton Manufacturing Co., its complaint in this proceeding, charging said respondent with the use of unfair acts and practices in commerce in violation of the provisions of that act. The respondent's original answer to said complaint was filed on December 19, 1939, but on October 7, 1940, the respondent filed with the Commission a motion for permission to withdraw said answer and to file in lieu thereof a substitute answer admitting, with certain exceptions, all of the allegations of fact set forth in the complaint, and this motion was granted and the substitute answer was accordingly received and filed. On July 23, 1941, the Commission directed that the case be held in abeyance pending disposition by the Commission of certain other proceedings involving the same principle of law. These proceedings have now been disposed of and the principle of law involved has been established. The membership of the Commission having been substantially changed in the interim, however, the respondent was extended an opportunity, in conformity with the Commission's policy in such circumstances, to reargue this matter before the Commission as presently constituted, but the Commission was informed by letter dated July 19, 1950, from counsel for the respondent, that such reargument was not desired. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint of the Commission, the respondent's substitute answer thereto, and briefs and oral argument of counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that the 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. The respondent, Hamilton Manufacturing Co., is a corporation organized and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of

business located at 413 South Fifth Street, in the city of Minneapolis, State of Minnesota.

PAR. 2. Said respondent is now, and for more than 25 years last past it has been, engaged in the sale and distribution of devices commonly known as pushcards and punchboards. The respondent causes and has caused said devices, when sold, to be transported from its place of business in the State of Minnesota to purchasers thereof at their respective points of location in the various States of the United States other than Minnesota and in the District of Columbia. There is now, and at all times mentioned herein there has been, a regular course of trade in such devices by the respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Among the various types of pushcards and punchboards sold by the respondent to dealers in other merchandise are many which are designed for use in the sale and distribution of merchandise to the public by means of a game of chance, gift enterprise or lottery scheme. These cards and boards vary in detail, but all of them involve the same general principle. Many of said devices have printed on the faces thereof certain legends or instructions which explain the manner in which they are to be used or may be used in the sale or distribution of specified articles of merchandise. The prices of the sales on said pushcards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one push or punch from the device, for the amount of money paid, and when a push or punch is made a disk or printed slip is separated and a number is disclosed. The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise at prices which are much less than the normal retail price thereof. Persons not obtaining one of the lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

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

made of said pushcard and punchboard devices, and the only manner in which they are used, by the ultimate purchasers thereof, is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance as hereinabove described.

PAR. 4. Many persons, firms, and corporations who sell and distribute various articles of merchandise in commerce, such as candy, cigarettes, clocks, razors, cosmetics, clothing and other articles of merchandise, have purchased the respondent's pushcards and punchboards, and such purchasers have made up assortments consisting of various articles of merchandise and a card or board and have sold and distributed their merchandise so packed and assembled to retail dealers and others for resale to the public.

PAR. 5. Retail dealers who have purchased assortments of merchandise herein referred to have exposed and sold said merchandise to the purchasing public by the use of the pushcards and punchboards in accordance with the aforesaid sales plan. Thus, the respondent supplies to and places in the hands of others the means of conducting lotteries, gift enterprises, or games of chance in the sale and distribution of merchandise to the consuming public.

PAR. 6. Because of the element of chance involved in the purchase of merchandise by means of pushcards and punchboards, members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing their merchandise through the use of such devices. As a result, many retail dealers have been induced to deal or trade with manufacturers, wholesale dealers, and jobbers who sell and distribute their products together with said pushcards and punchboard devices.

Such retail dealers have competitors who sell or distribute like or similar articles of merchandise. Said competitors are faced with the alternative of also using pushcards and punchboards and other similar devices in connection with the sale and distribution of their merchandise or suffering the loss of substantial trade.

Manufacturers, wholesale dealers, and jobbers who use pushcards, punchboards and similar devices in connection with the sale of their merchandise to retailers also have competitors who do not use such devices. Such manufacturers, wholesalers, and jobbers who do not use lottery devices in promoting the sale of their merchandise often have their sales and potential sales diverted to those who do use these devices.

PAR. 7. The sale of merchandise to the purchasing public through the use of or by means of pushcards or punchcards in the manner

above described involves a game of chance or the sale or a chance to procure articles of merchandise at prices much less than the normal retail price thereof. The use of said sales plan or method in the sale of merchandise, and the sale of merchandise by and through the use thereof and by the aid of said sales plan or method, is a practice which is contrary to an established public policy of the Government of the United States and is in violation of criminal laws.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondent's substitute answer thereto, in which answer said respondent admitted, with certain exceptions, all of the allegations of fact set forth in the complaint, and briefs and oral argument of counsel, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Hamilton Manufacturing Co., and said respondent's officers, agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, pushcards, punchboards, or other lottery devices, which are to be used or may be used in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise or lottery scheme.

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

Commissioner Mason concurring in the findings as to the facts and conclusion, but not concurring in the form of order to cease and desist, for the reasons stated in his opinion concurring in part and dissenting in part in Docket 5203—Worthmore Sales Co.[1]

[1] See 46 F. T. C. 606. March 10, 1950.

IN THE MATTER OF

MAX LEVIN ET AL. TRADING AS LEVIN BROS.

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

Docket 3954. Complaint, Nov. 20, 1939—Decision, Sept. 7, 1950

Where the surviving partner engaged in carrying on under the partnership name the competitive interstate sale and distribution of pushcards and punchboards, including devices which, arranged with explanatory instructions or blank spaces therefor, were designed for use in the sale and distribution of merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme, whereby the purchaser of a push or punch who by chance selected a concealed winning number, secured an article of merchandise for much less than its normal retail price, and others received nothing for their money other than the push or punch—

(*a*) Sold such pushcards and punchboards to dealers in candy, cigarettes and other articles who made up and sold assortments consisting of various articles and a card or board, to retailers and others, by whom they were exposed and sold to the purchasing public in accordance with aforesaid sales plan; and

Where said individual, engaged also in the sale and distribution of assortments of knives, watches, candy, blankets, radios, cigarette lighters and other articles of merchandise packed for sale to the purchasing public, through use of a lottery scheme, consisting, typically of boxes of candy of varying size, together with a punchboard for use in their sale under a plan whereby the purchaser of a punch received for the 5 cents paid, more or less, depending on the number disclosed, one of the boxes of candy, the value of which was in excess of 5 cents, or nothing other than the privilege of making a punch—

(*b*) Sold such and similar assortments to wholesale dealers, jobbers and retailers, by whom they were directly or indirectly exposed and sold to the purchasing public in accordance with the aforesaid sales plan, involving a game of chance to procure articles of merchandise at prices much less than their normal retail price; and

Thereby supplied to and placed in the hands of others, through such assortments and through those assembled by the purchasers of his punchboards and pushcards, the means of conducting lotteries, etc. in the sale of merchandise to the purchasing public, contrary to an established public policy of the United States Government, and in violation of criminal laws;

With the result that many members of the purchasing public, by reason of the element of chance involved, were attracted by said method of sale and were induced to deal with retailers and others who thus distributed their merchandise, and many retailers and others were induced to trade with manufacturers, wholesalers and jobbers who sold their products together with pushcards or punchboards; and trade in commerce was unfairly diverted to those employing said plan or method from their competitors who did not use such methods, and with tendency and capacity so to do:

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

Before *Mr. W. W. Sheppard* and *Mr. John W. Addison*, trial examiners.

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

Dix, Dix & Patrick, of Terre Haute, Ind., for respondents.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Max Levin, Morris L. Levin, and Isaac P. Levin, individuals and copartners trading as Levin Bros., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

COUNT I

PARAGRAPH 1. Respondents, Max Levin, Morris L. Levin, and Isaac P. Levin, are individuals and copartners trading as Levin Bros., with their principal office and place of business located in Terre Haute, Ind. Respondents are now and for some time last past have been engaged in the sale and distribution of knives, watches, candy, blankets, radios, cigarette lighters and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause and have caused said merchandise when sold to be transported from their aforesaid place of business in Terre Haute, Ind., to purchasers thereof, at their respective points of location, in the various other States of the United States and in the District of Columbia. There is now and has been for some time last past a course of trade by respondents in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondents are and have been in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, respondents sell and have sold to wholesale dealers,

jobbers, and retail dealers, certain assortments of merchandise so packed or assembled, as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondents and is as follows:

This assortment consists of boxes of candy of varying size, together with a device commonly called a punchboard. Said boxes of candy are sold and distributed to the consuming public by means of said punchboard in the following manner: Sales are 5 cents each, more or less, and when a punch is made from the board, a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board but the numbers are not arranged in numerical sequence. The board bears the statement or statements informing prospective purchasers that certain specified numbers entitled the purchaser thereof to receive a box of candy. A purchaser who does not qualify by obtaining one of the lucky numbers receives nothing for his money other than the privilege of punching a number from the board. The boxes of candy are worth more than 5 cents each and the purchaser who obtains one of the numbers calling for one of the boxes of candy receives the same for the price of 5 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The said boxes of candy are thus distributed to purchasers of punches from the board wholly by lot or chance.

Respondents sell and distribute and have sold and distributed, various assortments of merchandise along with punchboards involving a lot or chance feature but such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase respondents' said merchandise, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said method in the sale of their merchandise and the sale of said merchandise by and through the use thereof and by the aid of said method, is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged, involves a game of chance or the sale of a chance to procure one of the said articles of merchandise at a price much less

than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondents, as above alleged, are unwilling to adopt and use said method or any method involving a game of chance of the sale of a chance to win something by chance, or any method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondents in the sale and distribution of their merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondents' merchandise in preference to merchandise offered for sale and sold by said competitors of respondents, who do not use the same or an equivalent method. The use of said method by respondents, because of said game of chance, has a tendency and capacity to, and does unfairly, divert trade in commerce between and among the various States of the United States and in the District of Columbia, to respondents from their said competitors who do not use the same or an equivalent method. As a result thereof, substantial injury is being and has been done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

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

COUNT II

PARAGRAPH 1. Respondents, Max Levin, Morris L. Levin, and Isaac P. Levin, are individuals and copartners trading as Levin Bros., with their principal office and place of business located at Terre Haute, Ind. Respondents are now, and for some time last past have been, engaged in the sale and distribution of devices commonly known as punchcards and punchboards, to dealers in various other articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia.

Respondents cause and have caused said devices, when sold, to be transported from their aforesaid place of business in Terre Haute, Ind., to purchasers thereof, at their respective points of location, in various States of the United States other than the State of Indiana, and in the District of Columbia. There is now and has been for some time last past a course of trade by said respondents in such pushcards

and punchboard devices in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, respondents sell and distribute, and have sold and distributed, to dealers pushcards and punchboards so prepared and arranged as to involve games of chance, gift enterprises, or lottery schemes when used in making sales of their merchandise to the consuming public. Respondents sell and distribute, and have sold and distributed, many kinds of said pushcards and punchboards, but all of said pushcards and punchboards involve the same chance or lottery features, when used in connection with the sale or distribution of merchandise and vary only in detail.

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

Others of said pushcard and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those pushcards and punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by the respondents on said pushcard and punchboard devices first hereinabove described. The only use to be made of said pushcard and punchboard devices, and the only manner in which they are used by the ultimate purchasers thereof, is in combination with other merchandise so as to enable said ultimate

purchasers to sell or distribute said other merchandise by means of lot or chance, as hereinabove alleged.

PAR. 3. Many persons, firms, and corporations who sell and distribute, and have sold and distributed, candy, cigarettes and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, purchase and have purchased respondents' said pushcard and punchboard devices and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise, together with said pushcard and punchboard devices. Retail dealers who have purchased said assortments, either directly or indirectly, have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said pushcards and punchboards, in accordance with the sales plan as described in paragraph 2 hereof. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said pushcards and punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof, many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers and jobbers who sell and distribute said merchandise, together with said devices. Said persons, firms, and corporations have many competitors who sell or distribute like or similar articles of merchandise in commerce between and among the various states of the United States and in the District of Columbia. Said competitors are faced with the alternative of descending to the use of said pushcard and punchboard devices, or other similar devices, which they are under a powerful moral compulsion not to use in connection with the sale or distribution of their merchandise, or to suffer the loss of substantial trade. Said competitors do not sell or distribute their merchandise by means of pushcard or punchboard devices, or similar devices, because of the element of chance or lottery features involved therein, and because such practices are contrary to the public policy of the Government of the United States and in violation of criminal laws, and such competitors refrain from supplying to or placing in the hands of, others pushcard or punchboard devices, or any other similar devices which are to be used, or which may be used in connection with the sale or distribution of the merchandise of such competitors to the general public by means of a lottery, game of chance, or gift enterprise. As a result thereof, substantial trade in commerce between and among the various States of the United States and in the District of Columbia

has been unfairly diverted to said persons, firms, and corporations from said competitors, who do not sell or use said devices.

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

The sale or distribution of said pushcard and punchboard devices by respondents, as hereinabove alleged, supplies to and places in the hands of others the means of conducting lotteries, games of chance, or gift enterprises in the sale of distribution of their merchandise. The respondents thus supply to and place in the hands of said persons, firms, and corporations the means of, and the instrumentalities for, engaging in unfair methods of competition in commerce, and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 20, 1939, issued and subsequently served upon the respondents named in the caption hereof its complaint in this proceeding, charging said respondents with the use of unfair methods of competition in commerce and unfair acts and practices in commerce in violation of the provisions of that act. The respondents' answer to said complaint was filed on December 9, 1939, and on January 18, 1941, a trial examiner of the Commission was designated by it to take testimony and other evidence and to perform all other duties authorized by law. On March 21, 1950, after the introduction of certain testimony and other evidence, there was filed with the trial examiner on behalf of Morris L. Levin, surviving

partner of the former partnership composed of Max Levin, Morris L. Levin, and Isaac P. Levin, a motion for permission to withdraw the original answer to said complaint and to file in lieu thereof a substitute answer admitting, with certain exceptions, the material allegations of fact set forth in the complaint and waiving all intervening procedure and further hearing as to said facts, which said motion was granted, and the substitute answer was accordingly received and filed. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint and substitute answer thereto; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that the 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. The respondent, Morris L. Levin, an individual, is the surviving partner of a copartnership formerly composed of the said Morris L. Levin, Max Levin, and Isaac P. Levin who traded under the name of Levin Bros. Said partnership maintained its principal office and place of business in Terre Haute, Ind. Since the deaths of Max Levin and Isaac P. Levin the business of the former partnership has been carried on under the same name and at the same address by the surviving partner, Morris L. Levin, and the term respondent as used hereinafter, when such term is unqualified, refers to Morris L. Levin as such surviving partner.

PAR. 2. The respondent, Morris L. Levin, together with his copartners Max Levin and Isaac P. Levin, was formerly engaged in the sale and distribution of devices commonly known as pushcards and punchboards. The respondent caused said devices, when sold, to be transported from his place of business in the State of Indiana to purchasers thereof at their respective points of location in the various States of the United States other than Indiana and in the District of Columbia. During the time the respondent was engaged in the sale of pushcards and punchboards there was a regular course of trade in such devices by the respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Among the various types of pushcards and punchboards sold by the respondent to dealers in other merchandise were many which were designed for use in the sale and distribution of merchandise to the public by means of a game of chance, gift enterprise or lottery scheme. These cards and boards varied in detail, but all of them in-

volved the same general principle. Many of said devices had printed on the faces thereof certain legends or instructions which explained the manner in which they were to be used or might have been used in the sale or distribution of specified articles of merchandise. The prices of the sales on said pushcards and punchboards varied in accordance with the individual device. Each purchaser was entitled to one push or punch from the device, for the amount of money paid, and when a push or punch was made a disk or printed slip was separated and a number was disclosed. The numbers were effectively concealed from purchasers and prospective purchasers until a selection had been made and the push or punch completed. Certain specified numbers entitled purchasers to articles of merchandise. Persons securing lucky or winning numbers received articles of merchandise at prices which were much less than the normal retail price thereof. Persons who did not obtain one of the lucky or winning numbers received nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise were thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said pushcard and punchboard devices had no instructions or legends thereon but had blank spaces provided therefor. On those pushcards and punchboards the purchasers thereof placed instructions or legends which had the same import and meaning as the instructions or legends placed by the respondent on said pushcard and punchboard devices first hereinabove described. The only use to be made of said pushcard and punchboard devices, and the only manner in which they were used by the ultimate purchasers thereof, was in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance, as hereinabove described.

PAR. 4. Many persons, firms, and corporations who sold and distributed various articles of merchandise in commerce, such as candy, cigarettes, and other articles, purchased the respondent's pushcards and punchboards, and such purchasers made up assortments consisting of various articles of merchandise and a card or board and sold their merchandise so packed and assembled to retail dealers and others for resale to the public.

PAR. 5. In addition to selling pushcards and punchboards as separate items, as herein described, the respondent engaged also in the sale and distribution of knives, watches, candy, blankets, radios, cigarette lighters, and other articles of merchandise. He caused such articles of merchandise, when sold, to be transported from his place of

business in the State of Indiana to purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. During the time the respondent was engaged in the sale of such articles of merchandise there was a regular course of trade in such merchandise by the respondent in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of this business the respondent was in competition with other individuals and with partnerships and corporations also engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

In connection with this phase of the respondent's business it was his practice to sell to wholesale dealers, jobbers, and retail dealers certain assortments of knives, watches, candy, blankets, radios, cigarette lighters, and other articles of merchandise so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said merchandise was sold and distributed to the purchasing public. For the purpose of illustrating this practice one of such assortments is described as follows:

The assortment consisted of boxes of candy of varying size, together with a punchboard. The boxes of candy were sold and distributed to the consuming public by means of said punchboard in the following manner: Sales were 5 cents each, more or less, and when a punch was made from the board, a number was disclosed. The numbers began with 1 and continued to the number of punches there were on the board, but the numbers were not arranged in numerical sequence. The board bore the statement or statements informing prospective purchasers that certain specified numbers entitled the purchaser thereof to receive a box of candy. A purchaser who did not qualify by obtaining one of the lucky numbers received nothing for his money other than the privilege of punching a number from the board. The boxes of candy were worth more than 5 cents each and the purchaser who obtained one of the numbers calling for one of the boxes of candy received the same for the price of 5 cents. The numbers were effectively concealed from purchasers and prospective purchasers until a punch or selection had been made and the particular punch separated from the board. The said boxes of candy were thus distributed to purchasers of punches from the board wholly by lot or chance.

The respondent sold and distributed various other assortments of merchandise and punch boards so packed and assembled as to involve the same lottery feature when the merchandise was sold to the pur-

chasing public, but all of such assortments were similar to the one hereinabove described, varying only in detail.

PAR. 6. Retail dealers who purchased the assortments of merchandise herein referred to, both those packed and assembled by the respondent and those packed and assembled by the purchasers of the respondent's pushcards and punchboards as separate items, directly or indirectly exposed and sold said merchandise to the purchasing public by means of the pushcards and punchboards in accordance with the aforesaid sales plan. Thus, both in the sale of his knives, watches, candy, blankets, radios, cigarette lighters, and other articles of merchandise packed and assembled by the respondent as hereinabove described and in the sale of his pushcards and punchboards as separate items, the respondent supplied to and placed in the hands of others the means of conducting lotteries, gift enterprises, or games of chance in the sale and distribution of merchandise to the purchasing public.

PAR. 7. The sale of merchandise to the purchasing public through the use of or by means of pushcards or punchboards in the manner above described involved a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof. The use of said sales plan or method in the sale of merchandise, and the sale of merchandise by and through the use thereof and by the aid of said sales plan or method, was a practice which was contrary to an established public policy of the Government of the United States and was in violation of criminal laws.

PAR. 8. Because of the element of chance involved in the purchase of merchandise by means of pushcards and punchboards, many members of the purchasing public were attracted by this method of sale and were induced to deal or trade with retail dealers and others who distributed their merchandise by means thereof. As a result, many retail dealers and others were induced to deal or trade with manufacturers, wholesale dealers and jobbers who sold and distributed their products together with pushcards or punchboards. The use of said plan or method thus had the tendency and capacity to and did unfairly divert trade in commerce to those employing it from their competitors who did not use the same or an equivalent method.

CONCLUSION

The acts and practices of the respondent as herein found were all to the prejudice and injury of the public and constituted unfair methods of competition in commerce and unfair acts and practices in

commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of the respondent, Morris L. Levin, surviving partner of the former copartnership composed of the said Morris L. Levin, Max Levin, and Isaac P. Levin, in which answer said respondent admitted, with certain exceptions, all of the material allegations of fact set forth in the complaint and stated that he waived all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Morris L. Levin, individually and trading as Levin Bros., or trading under any other name or trade designation, and said respondent's agents, representatives and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, pushcards, punchboards, or other lottery devices, which are to be used or may be used in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

It is further ordered, That said respondent and his agents, representatives and employees, directly or through any corporate or other-device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of knives, watches, candy, blankets, radios, cigarette lighters, and other articles of merchandise, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others pushcards, punchboards, or other lottery devices, either with assortments of knives, watches, candy, blankets, radios, cigarette lighters, or other merchandise, or separately, which said pushcards or punchboards are to be used, or may be used, in selling or distributing such knives, watches, candy, blankets, radios, cigarette lighters, or other merchandise to the public.

2. Selling or distributing knives, watches, candy, blankets, radios, cigarette lighters, or other merchandise so packed or assembled that sales of such knives, watches, candy, blankets, radios, cigarette lighters, or other merchandise to the public are to be made or, due to the manner in which such merchandise is packed and assembled at the time it is

sold by the respondent, may be made by means of a game of chance, gift enterprise, or lottery scheme.

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

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

Commissioner Mason concurring in the findings as to the facts and conclusion, but not concurring in the form of order to cease and desist, for the reasons stated in his opinion concurring in part and dissenting in part in Docket 5203—Worthmore Sales Co.[1]

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[1] See 46 F T. C. 606. March 10, 1950.

IN THE MATTER OF

ARTHUR WOOD TRADING AS ARTHUR WOOD AND CO.

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

Docket 4069. Complaint, Mar. 20, 1940—Decision, Sept. 7, 1950

Where an individual engaged in the interstate sale and distribution of pushcards and punchboards including many which arranged with explanatory legends or instruction or, in some cases, with blank spaces provided therefor, were designed for use in the sale and distribution of merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme, whereby a lucky purchaser of a push or punch secured, by his chance selection of a concealed winning number, an article of merchandise at much less than its normal retail price and others received nothing for their money other than the privilege of making a push or punch—

(*a*) Sold such devices to dealers in such merchandise as candy, cigarettes, etc. who made up assortments of various articles together with a pushcard or punchboard, and sold the same to retailers by whom they were exposed and sold to purchasing public in accordance with the aforesaid sales plan; and

Where said individual, engaged also in the competitive interstate sale and distribution of knives and other articles, including assortments which were so packed and assembled as to involve the use of a lottery scheme in the sale and distribution thereof, typical one consisting of 12 knives together with a punchboard, under a plan, as explained thereon, whereby those who secured by chance certain lucky numbers, or the last sale in the different sections, received for their 5 cents, a knife, the value of which was in excess thereof, others receiving nothing other than the privilege of a punch;

(*b*) Sold such assortments to wholesalers, jobbers and retailers, by whom they were directly or indirectly exposed and sold to the purchasing public by means of the pushcards and punchboards in accordance with such plans; and

Thereby supplied to and placed in the hands of others the means of conducting games of chance in the sale and distribution of merchandise to the purchasing public, involving sale of a chance to procure articles at much less than their normal retail prices; contrary to an established public policy of the United States Government and in violation of criminal laws;

With the result that many members of the purchasing public were attracted by such method of sale and were induced to trade with retailers and others who thus distributed their merchandise; and many retailers and others were induced to deal with manufacturers, wholesalers, and jobbers who thus sold and distributed their products; whereby trade in commerce was unfairly diverted to those employing such plans from their competitors who did not use such methods, and with tendency and capacity so to do:

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

Before *Mr. W. W. Sheppard* and *Mr. John W. Addison*, trial examiners.

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

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Arthur Wood, an individual trading as Arthur Wood & Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint stating its charges in that respect as follows:

COUNT I

PARAGRAPH 1. Respondent, Arthur Wood, is an individual trading as Arthur Wood & Co. with his principal office and place of business located at 219 Market Street, St. Louis, Mo. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of knives and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said merchandise, when sold, to be transported from his aforesaid place of business in St. Louis, Mo., to purchasers thereof, at their respective points of location, in the various other States of the United States and in the District of Columbia. There is now and has been for more than 1 year last past a course of trade by respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his said business respondent is and has been in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like and similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, and retail dealers, certain assortments of merchandise so packed or assembled, as to involve the use of game of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for

the purpose of showing the method used by respondent and is as follows:

This assortment consists of 12 knives, together with a device commonly called a punchboard. Said knives are sold and distributed to the consuming public by means of said punchboard in the following manner: Sales are 5 cents each and when a punch is made from the board, a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board but the numbers are not arranged in numerical sequence. The board bears the statement or statements informing prospective purchasers that certain specified numbers entitle the purchaser thereof to receive a knife and that purchasers of the last sale in each section receives a knife. A purchaser who does not qualify by obtaining one of the lucky numbers, or by punching the last number in one of the sections receives nothing for his money other than the privilege of punching a number from the board. The said knives are worth more than 5 cents each and the purchaser who obtains one of the numbers calling for one of the knives, or the last punch on the board, receives the same for the price of 5 cents. The said numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. These said knives are thus distributed to purchasers of punches from the board wholly by lot or chance.

Respondent sells and distributes, and has sold and distributed, various assortments of merchandise along with punchboards involving a lot or chance feature but such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's said merchandise, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of his merchandise and the sale of said merchandise by and through the use thereof and by the aid of said method, is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged, involves a game of chance or the sale of a chance to procure one of the said articles of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute merchandise in competition

with respondent, as above alleged, 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, or any method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent, who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has a tendency and capacity to, and does unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia, to respondent from his said competitors who do not use the same or an equivalent method. As a result thereof, substantial injury is being and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

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

COUNT II

PARAGRAPH 1. Respondent Arthur Wood is an individual trading as Arthur Wood & Co., with his principal office and place of business located at 219 Market Street, St. Louis, Mo. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of devices commonly known as pushcards and punchboards to dealers in commerce between and among the various States of the United States and in the District of Columbia.

Respondent causes and has caused said devices, when sold, to be transported from his aforesaid place of business in St. Louis, Mo., to purchasers thereof, at their respective points of location, in various States of the United States, other than the State of Missouri, and in the District of Columbia. There is now and has been for more than 1 year last past a course of trade by said respondent in such pushcards and punchboard devices in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent sells and distributes, and has sold and distributed, to dealers pushcards and punchboards so prepared and arranged as to involve games of chance, gift enterprises or lottery schemes when used in making sales of their merchandise to the consuming public. Respondent sells and distributes, and has sold and distributed, many kinds of said pushcards and punchboards but all of said pushcards and punchboards involve the same chance or lottery features, when used in connection with the sale or distribution of merchandise and vary only in detail. The majority of said pushcards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said pushcards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one punch or push from the device, for the amount of money paid, and when a push or punch is made a disk or printed slip is separated and a number is disclosed. The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise at prices which are much less than the normal retail price of said articles of merchandise. Persons not obtaining one of the lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Dealers purchasing punchboards or pushcards without said printed instructions or legends thereon place printed instructions or legends on the faces of said pushcards or punchboards on the blank space provided therefor. The legends or instructions placed on the faces of said devices by said dealers and used in conjunction therewith involve the same chance or lottery features as those legends or instructions placed or printed on the faces of pushcard or punchboard devices by respondent, as hereinabove described.

PAR. 3. Many persons, firms and corporations who sell and distribute candy, cigarettes, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia have purchased respondent's said pushcards and punchboard devices and have packed and assembled

assortments comprised of various articles of said merchandise, together with said pushcards and punchboard devices. Retail dealers who have purchased such assortments, either directly or indirectly, or retail dealers who have purchased said devices direct from respondent and made up their own assortments, have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said pushcards or punchboards in accordance with the sales plan as described in paragraph 2 hereof. Many dealers in, and ultimate consumers of, said merchandise have been induced to deal with or purchase said merchandise from dealers selling or distributing the same by means of or together with respondent's said pushcards and punchboards because of the lottery feature involved therein and inherent thereto. Said persons, firms, and corporations have many competitors who sell or distribute like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Said competitors are faced with the alternative of descending to the use of said pushcard and punchboard devices or other similar devices which they are under a powerful moral compulsion not to use in connection with the sale or distribution of their merchandise or to suffer the loss of substantial trade. Said competitors do not sell and distribute their said merchandise by means of pushcard or punchboard devices or similar devices because of the element of chance or lottery feature involved therein and because such practices are contrary to the public policy of the Government of the United States and such competitors refrain from supplying to or placing in the hands of others such pushcard or punchboard devices or any other similar devices to be used in connection with the sale and distribution of the merchandise of such competitors to the general public by lot or chance. As a result thereof substantial trade has been unfairly diverted to said persons, firms, and corporations from said competitors in said commerce, who do not sell or use such devices.

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

ods of competition and unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

The sale or distribution of said pushcards and punchboards by respondent, as hereinabove alleged, supplies to and places in the hands of others the means of conducting lotteries, games of chance or gift enterprises in the sale and distribution of their merchandise. The respondent thus supplies to and places in the hands of said persons, firms, and corporations the means of, and instrumentalities for, engaging in unfair methods of competition and unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 20, 1940, issued and thereafter served upon the respondent Arthur Wood, an individual trading as Arthur Wood & Co., its complaint in this proceeding, charging said respondent with the use of unfair methods of competition in commerce and unfair acts and practices in commerce in violation of the provisions of that act. The respondent's original answer to said complaint was filed on May 10, 1940. At a hearing held on March 13, 1947, before a trial examiner of the Commission theretofore designated by it, the respondent requested of the trial examiner and was by him granted permission to withdraw the original answer to said complaint and to file in lieu thereof a substitute answer admitting all of the material allegations of fact set forth in the complaint and waiving all intervening procedure and further hearings as to said facts, and said substitute answer was accordingly received and filed. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint and substitute answer thereto; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that the 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. The respondent, Arthur Wood, is an individual trading and doing business as Arthur Wood & Co., with his principal of-

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fice and place of business located 926 North Broadway, in the city of St. Louis, State of Missouri.

PAR. 2. Said respondent is now, and for a number of years last past he has been, engaged in the sale and distribution of devices commonly known as pushcards and punchboards. The respondent causes and has caused said devices, when sold, to be transported from his place of business in the State of Missouri to purchasers thereof at their respective points of location in the various States of the United States other than Missouri and in the District of Columbia. There is now, and at all times mentioned herein there has been, a regular course of trade in such devices by the respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Among the various types of pushcards and punchboards sold by the respondent to dealers in other merchandise are many which are designed for use in the sale and distribution of merchandise to the public by means of a game of chance, gift enterprise or lottery scheme. These cards and boards vary in detail, but all of them involve the same general principle. The majority of said devices have printed on the faces thereof certain legends or instructions which explain the manner in which they are to be used or may be used in the sale or distribution of specified articles of merchandise. The prices of the sales on said punshcards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one push or punch from the device, for the amount of money paid, and when a push or punch is made a disk or printed slip is separated and a number is disclosed. The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise at prices which are much less than the normal retail price thereof. Persons not obtaining one of the lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Dealers purchasing pushcards or punchboards without said printed instructions or legends thereon place printed instructions or legends on the faces of said pushcards or punchboards on the blank space provided therefor. The legends or instructions placed on the faces of said devices by said dealers and used in conjunction therewith involve the same chance or lottery features as those legends or instructions placed

or printed on the faces of pushcard or punchboard devices by the respondent, as hereinabove described.

PAR. 4. Many persons, firms, and corporations who sell and distribute various articles of merchandise in commerce, such as candy, cigarettes, and other articles, purchase and have purchased the respondent's pushcards and punchboards, and such purchasers make up and have made up assortments consisting of various articles of merchandise and a board or card and sell and have sold their merchandise so packed and assembled to retail dealers and others for resale to the public.

PAR. 5. In addition to selling pushcards and punchboards as separate items, as herein described, the respondent is now, and for a number of years last past he has been, engaged also in the sale and distribution of knives and other articles of merchandise. He causes and has caused such knives and other articles of merchandise, when sold, to be transported from his place of business in the State of Missouri to purchasers therof at their respective points of location in various other States of the United States and in the District of Columbia. There is now, and at all times mentioned herein there has been, a regular course of trade in such merchandise by the respondent in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of this business, the respondent is and has been in competition with other individuals and with partnerships and corporations also engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

In connection with this phase of the respondent's business it is and has been his practice to sell to wholesale dealers, jobbers, and retail dealers certain assortments of knives and other articles of merchandise so packed and assembled as to involve the use of a game of chance, gift enterprise or lottery scheme when said merchandise is sold and distributed to the purchasing public. For the purpose of illustrating this practice one of such assortments is described as follows:

The assortment consists of 12 knives, together with a punchboard. The knives are sold and distributed to the consuming public by means of said punchboard in the following manner: Sales are 5 cents each and when a punch is made from the board, a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears the statement or statements informing

prospective purchasers that certain specified numbers entitle the purchasers thereof to receive a knife and that purchasers of the last sale in each section receive a knife. A purchaser who does not qualify by obtaining one of the lucky numbers, or by punching the last number in one of the sections receives nothing for his money other than the privilege of punching a number from the board. The said knives are worth more than 5 cents each and the purchaser who obtains one of the numbers calling for one of the knives, or the last punch on the board, receives the same for the price of 5 cents. The said numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. These knives are thus distributed to purchasers of punches from the board wholly by lot or chance.

The respondent sells and distributes, and has sold and distributed, various other assortments of merchandise and punchboards so packed and assembled as to involve the same lottery feature when the merchandise is sold to the purchasing public, but all of such assortments are and have been similar to the one hereinabove described, varying only in detail.

PAR. 6. Retail dealers who purchase the assortments of merchandise herein referred to, both those packed and assembled by the respondent and those packed and assembled by the purchasers of the respondent's pushcards and punchboards as separate items, directly or indirectly expose and sell said merchandise to the purchasing public by means of the pushcards and punchboards in accordance with the aforesaid sales plan. Thus, both in the sale of his knives and other merchandise packed and assembled by the respondent as hereinabove described and in the sale of his pushcards and punchboards as separate items, the respondent supplies to and places in the hands of others the means of conducting lotteries, gift enterprises or games of chance in the sale and distribution of merchandise to the purchasing public.

PAR. 7. The sale of merchandise to the purchasing public through the use of or by means of pushcards or punchboards in the manner above described involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof. The use of said sales plan or method in the sale of merchandise, and the sale of merchandise by and through the use thereof and by the aid of said sales plan or method, is a practice which is contrary to an established public policy of the Government of the United States and is in violation of criminal laws.

PAR. 8. Because of the element of chance involved in the purchase of merchandise by means of pushcards and punchboards, many mem-

bers of the purchasing public are attracted by this method of sale and are induced to deal or trade with retail dealers and others distributing their mechandise by means thereof. As a result, many retail dealers and others are induced to deal or trade with manufacturers, wholesale dealers, and jobbers who sell and distribute their products together with pushcards or punchboards. The use of said plan or method thus has the tendency and capacity to and does unfairly divert trade in commerce to those employing it from their competitors who do not use the same or an equivalent method.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of the respondent, in which answer said respondent admitted all of the material allegations of fact set forth in the complaint and stated that he waived all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent Arthur Wood, individually and trading as Arthur Wood & Co., or trading under any other name or trade designation, and said respondent's agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, pushcards, punchboards, or other lottery devices, which are to be used or may be used in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

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

1. Supplying to or placing in the hands of others pushcards, punchboards, or other lottery devices, either with assortments of knives or other merchandise or separately, which said pushcards or punchboards are to be used, or may be used, in selling or distributing such knives or other merchandise to the public.

2. Selling or distributing knives or other merchandise so packed or assembled that sales of such knives or other merchandise to the public are to be made or, due to the manner in which such merchandise is packed and assembled at the time it is sold by the respondent, may be made by means of a game of chance, gift enterprise, or lottery scheme.

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

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

Commissioner Mason concurring in the findings as to the facts and conclusion, but not concurring in the form of order to cease and desist, for the reasons stated in his opinion concurring in part and dissenting in part in Docket 5203—Worthmore Sales Co.[1]

[1] See 46 F. T. C. 606. March 10, 1950.

IN THE MATTER OF

MARIUS J. GLERUP, TRADING AS PACIFIC SALES BOARD COMPANY

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

Docket 5595. Complaint, Oct. 26, 1948—Decision, Sept. 7, 1950

Where an individual engaged in the interstate sale and distribution in the Territory of Alaska and elsewhere of pushcards and punchboards, which were designed for use in the sale and distribution of merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme, whereby a lucky purchaser punching by chance a concealed winning number secured an article of merchandise at much less than its normal retail price, and others received nothing for their money other than the privilege of making a push or punch—

(*a*) Sold said devices to dealers in such merchandise as candy, cigarettes, razors, cosmetics, clothing, etc., who made up assortments of various articles together with a pushcard or punchboard, and sold them to retailers and others by whom they were exposed and sold to the purchasing public in accordance with the aforesaid sales plan; and

Where said individual, engaged also in the sale and distribution of dolls, novelties, sporting goods, and other articles, including assortments packed for lottery selling, and, as illustrative, an assortment of dolls of varying size and a number of packages of cigarettes together with a punchboard, for use under a plan, as explained thereon, whereby those who secured by chance certain lucky numbers or made the last punch in the board's section or the last one on the board, received a doll, worth more than the 5 cents paid, or one or more packages of cigarettes;

(*b*) Sold such assortments to purchasers by whom they were directly or indirectly exposed and sold to the purchasing public by means of the pushcards and punchboards included therewith; and

Thereby supplied to and placed in the hands of others the means of conducting games of chance in the sale and distribution of merchandise to the purchasing public, involving sale of a chance to procure articles at much less than their normal retail prices, contrary to an established public policy of the United States Government, and in violation of criminal laws;

With the result that many members of the purchasing public were attracted by such method of sale and were induced to deal with retailers and others who thus distributed their merchandise, and many retailers and others were induced to trade with manufacturers, wholesalers, and jobbers who sold and distributed their products together with pushcards or punchboards:

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

Mr. J. W. Brookfield, Jr., for the Commission.
Mr. Nathan Lavine, of Philadelphia, Pa., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Marius J. Glerup, an individual, trading as Pacific Sales Board Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interests, hereby issues its complaint, stating its charges in that respect as follows:

COUNT I

PARAGRAPH 1. Respondent Marius J. Glerup, is an individual, trading and doing business as Pacific Sales Board Co., with his office and principal place of business located at 709 Madison Street in the city of Seattle, Wash.

Respondent is now and for more than 3 years last past has been engaged in the sale and distribution of devices commonly known as pushcards and punchboards to dealers in various articles of merchandise, in commerce, between and among the various States of the United States and in the District of Columbia, and to dealers in various articles of merchandise located in the various States of the United States, in the Territory of Alaska, and in the District of Columbia.

Respondent causes and has caused said devices when sold to be transported from his place of business in the State of Washington to purchasers thereof at their respective points of location in the various States of the United States other than Washington, in the Territory of Alaska, and in the District of Columbia. There is now and has been for more than 3 years last past a course of trade in such devices by said respondent in commerce between and among the various States of the United States, in the Territory of Alaska, and in the District of Columbia.

PAR. 2. In the course and conduct of his said business as described in paragraph 1 hereof, respondent sells and distributes, and has sold and distributed, to said dealers in merchandise, pushcards and punchboards so prepared and arranged as to involve games of chance, gift enterprises or lottery schemes when used in making sales of merchandise to the consuming public. Respondent sells and distributes, and has sold and distributed many kinds of pushcards and punch-

boards, but all of said devices involve the same chance or lottery features when used in connection with the sale or distribution of merchandise and vary only in detail.

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

Others of said pushcard and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those pushcards or punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by the respondent on said pushcard and punchboard devices first hereinabove described. The only use to be made of said pushcard and punchboard devices, and the only manner in which they are used, by the ultimate purchasers thereof, is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance as hereinabove alleged.

PAR. 3. Many persons, firms, and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, purchase and have purchased respondent's said pushcard and punchboard devices, and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise together with said puchcards and punchboard devices. Retail dealers who have purchased said assortments either directly or

indirectly have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said pushcards and punchboards in accordance with the sales plan as described in paragraph 2 hereof. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said pushcards and punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers, and jobbers who sell and distribute said merchandise together with said devices.

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

The sale or distribution of said pushcards and punchboard devices by respondent as hereinabove alleged supplies to and places in the hands of others the means of conducting lotteries, games of chance or gift enterprises in the sale or distribution of their merchandise. The respondent thus supplies to, and places in the hands of, said persons, firms, and corporations the means of, and instrumentalities for, engaging in unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

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

COUNT II

PARAGRAPH 1. Respondent Marius J. Glerup, an individual as described in paragraph 1 of count I herein, has also been engaged in the sale and distribution of dolls, novelties, sporting goods, and other articles of merchandise to dealers. Respondent causes, and has caused, said articles of merchandise when sold to be shipped or transported

from his aforesaid place of business in the State of Washington to purchasers thereof at their respective points of location in various other States of the United States, in the Territory of Alaska, and in the District of Columbia.

There is now and for more than 6 months last past has been a course of trade by said respondent in said merchandise, in commerce, between and among the various States of the United States, in the Territory of Alaska, and in the District of Columbia.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent sells and has sold to dealers certain assortments of merchandise so packed and assembled as to involve the use of a game of chance, gift enterprise or lottery scheme when said merchandise is sold and distributed to the purchasing public. One of said assortments, typical of the various assortments sold by the said respondent, consists of a number of dolls together with a punchboard bearing the following legend:

GIVE ME A HOME

Nos. 111—222—333—444—555—666—777—888—925—950—975—999 each Receive
A Cellophane Wrapped Cutie Doll
No. 500 Receives SMALL DOLL
No. 750 Receives MEDIUM DOLL
No. 555 Rec's 10 PACKS CIGARETTES
Nos. 25—50—75—100—125—150—175—200—225
250—300—325—400—425—450—475—525—550 5¢
575—600—625—650—675—700—725— Each Receive Per Sale
1 PACKAGE CIGARETTES
LAST PUNCH IN FIRST THREE SECTIONS RECEIVE
5 PACKS CIGARETTES
LAST SALE ON BOARD RECEIVES LARGE DOLL

Said dolls are distributed to the purchasing public in accordance with the above legend in the following manner. Sales are 5 cents each, and when a punch is made a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears the legend above described, informing purchasers and prospective purchasers that a certain specified number entitles the purchaser thereof to receive one of the articles listed on the board. A customer who does not qualify by punching one of the specified numbers receives nothing for his purchase money. Each of the various dolls has a retail value in excess of 5 cents, and the purchaser who punches a number calling for one of the various articles receives the same for 5 cents. The numbers are effectively concealed from pur-

chasers and prospective purchasers until the punch or selection has been made and the particular punch separated from the board. The dolls and cigarettes are thus distributed to the purchasers of punches from the board wholly by lot or chance.

The respondent sells and has sold various punchboards and assortments to be distributed by the use of said punchboards in the manner above described and these punchboards vary only in detail as to the individual items of merchandise to be sold by said boards, the plans of all of said boards and assortments being similar to the one hereinabove described.

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

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

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

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 26, 1948, issued and thereafter served upon Marius J. Glerup, an individual trading as Pacific

Sales Board Co., its complaint in this proceeding, charging said respondent with the use of unfair acts and practices in commerce in violation of the provisions of that act. The respondent's answer to said complaint was filed on December 17, 1948. On March 24, 1949, however, the respondent filed with the Commission a motion for permission to withdraw said answer and to file in lieu thereof a substitute answer dated February 25, 1949, admitting all of the material allegations of fact set forth in the complaint, but reserving to the respondent the right to file a brief and to present oral argument before the Commission (which right was waived in a letter from the respondent's counsel dated June 6, 1950), and this motion was granted and the substitute answer was accordingly received and filed. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint and substitute answer thereto; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that the 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. The respondent, Marius J. Glerup, is an individual trading and doing business as Pacific Sales Board Co., with his office and principal place of business located at 709 Madison Street, in the city of Seattle, State of Washington.

PAR. 2. Said respondent is now, and for more than 3 years last past he has been, engaged in the sale and distribution of devices commonly known as pushcards and punchboards. The respondent causes and has caused said devices, when sold, to be transported from his place of business in the State of Washington to purchasers thereof at their respective points of location in the various States of the United States other than Washington, in the Territory of Alaska, and in the District of Columbia. There is now, and at all times mentioned herein there has been, a regular course of trade in such devices by the respondent in commerce between and among the various States of the United States, in the Territory of Alaska, and in the District of Columbia.

PAR. 3. Among the various types of pushcards and punchboards sold by the respondent to dealers in other merchandise are many which are designed for use in the sale and distribution of merchandise to the public by means of a game of chance, gift enterprise or lottery scheme. These cards and boards vary in detail, but all of them involve the same general principle. Many of said devices have printed on the faces

thereof certain legends or instructions which explain the manner in which they are to be used or may be used in the sale or distribution of specified articles of merchandise. The prices of the sales on said pushcards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one push or punch from the device, for the amount of money paid, and when a push or punch is made a disk or printed slip is separated and a number is disclosed. The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitled purchasers to articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise at prices which are much less than the normal retail price thereof. Persons not obtaining one of the lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said pushcard and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those pushcards or punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by the respondent on said pushcard and punchboard devices first hereinabove described. The only use to be made of said pushcard and punchboard devices, and the only manner in which they are used, by the ultimate purchasers thereof, is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance as hereinabove described.

PAR. 4. Many persons, firms, and corporations who sell and distribute various articles of merchandise in commerce, such as candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise, purchase and have purchased the respondent's pushcards and punchboards, and such purchasers make up and have made up assortments consisting of various articles of merchandise and a card or board and sell and have sold their merchandise so packed and assembled to retail dealers and others for resale to the public.

PAR. 5. In addition to selling pushcards and punchboards as separate items, as herein described, the respondent is now, and for more than 6 months last past he has been, engaged also in the sale and distribution of dolls, novelties, sporting goods, and other articles of merchandise. He causes and has caused such articles of merchandise, when sold, to be transported from his place of business in the State

of Washington to purchasers thereof at their respective points of location in various other States of the United States, in the Territory of Alaska, and in the District of Columbia. There is now, and at all times mentioned herein there has been, a regular course of trade in such merchandise by the respondent in commerce between and among the various States of the United States, in the Territory of Alaska, and in the District of Columbia.

In connection with this phase of the respondent's business it is and has been his practice to sell to dealers certain assortments of merchandise so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said merchandise is sold and distributed to the purchasing public. One of such assortments, typical of the various assortments which the respondent sells and has sold, consists of a number of dolls, together with a punchboard bearing the following legend:

GIVE ME A HOME

Nos. 111—222—333—444—555—666—777—888—925—950
975—999 each Receive a Cellophane Wrapped
Cutie Doll

No. 500 Receives SMALL DOLL

No. 750 Receives MEDIUM DOLL

No. 555 Rec's 10 PACKS CIGARETTES

Nos. 25—50—75—100—125—150—175—200—225
250—300—325—400—425—450—475—525—550
575—600—625—650—675—700—725 Each Receive
5¢

1 PACKAGE CIGARETTES Per Sale

LAST PUNCH IN FIRST THREE SECTIONS RECEIVE
5 PACKS CIGARETTES

LAST SALE ON BOARD RECEIVES LARGE DOLL

In this assortment the plan is for the dolls to be distributed to the purchasing public by the use of the punchboard in accordance with the above legend in the following manner. Sales are 5 cents each, and when a punch is made a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears the legend above described, informing purchasers and prospective purchasers that a certain specified number entitles the purchaser thereof to receive one of the articles listed on the board. A customer who does not qualify by punching one of the specified numbers receives

nothing for his purchase money. Each of the various dolls has a retail value in excess of 5 cents, and the purchaser who punches a number calling for one of the various articles receives the same for 5 cents. The numbers are effectively concealed from purchasers and prospective purchasers until the punch or selection has been made and the particular punch separated from the board. The dolls and cigarettes are thus distributed to the purchasers of punches from the board wholly by lot or chance.

The respondent sells and distributes, and has sold and distributed, various other assortments of merchandise and punchboards so packed and assembled as to involve the same lottery feature when the merchandise is sold to the purchasing public, but all of such assortments are and have been similar to the one hereinabove described, varying only in detail.

PAR. 6. Retail dealers who purchase the assortments of merchandise herein referred to, both those packed and assembled by the respondent and those packed and assembled by the purchasers of the respondent's pushcards and punchboards as separate items, directly or indirectly expose and sell said merchandise to the purchasing public by means of the pushcards and punchboards in accordance with the aforesaid sales plan. Thus, both in the sale of his dolls, novelties, sporting goods, and other articles of merchandise packed and assembled by the respondent as hereinabove described and in the sale of his pushcards and punchboards as separate items, the respondent supplies to and places in the hands of others the means of conducting lotteries, gift enterprises, or games of chance in the sale and distribution of merchandise to the purchasing public.

PAR. 7. The sale of merchandise to the purchasing public through the use of or by means of pushcards or punchboards in the manner above described involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof. The use of said sales plan or method in the sale of merchandise, and the sale of merchandise by and through the use thereof and by the aid of said sales plan or method, is a practice which is contrary to an established public policy of the Government of the United States and is in violation of criminal laws.

PAR. 8. Because of the element of chance involved in the purchase of merchandise by means of pushcards and punchboards, many members of the public are attracted by this method of sale and are induced to deal or trade with retail dealers and others distributing their merchandise by means thereof. As a result, many retail dealers and others

are induced to deal or trade with manufacturers, wholesale dealers and jobbers who sell and distribute their products together with push-cards or punchboards.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of the respondent, in which answer said respondent admitted all of the material allegations of fact set forth in the complaint, but reserved to himself the right to file a brief and to present oral argument before the Commission in defense of the proceeding, which right, however, the respondent has now waived, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Marius J. Glerup, individually and trading as Pacific Sales Board Co., or trading under any other name or trade designation, and said respondent's agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, pushcards, punchboards, or other lottery devices, which are to be used or may be used in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise or lottery scheme.

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

1. Supplying to or placing in the hands of others pushcards, punchboards, or other lottery devices, either with assortments of dolls, novelties, sporting goods or other merchandise or separately, which said pushcards or punchboards are to be used, or may be used, in selling or distributing such dolls, novelties, sporting goods, or other merchandise to the public.

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2. Selling or distributing dolls, novelties, sporting goods, or other merchandise so packed or assembled that sales of such dolls, novelties, sporting goods, or other merchandise to the public are to be made or, due to the manner in which such merchandise is packed and assembled at the time it is sold by the respondent, may be made by means of a game of chance, gift enterprise, or lottery scheme.

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

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

Commissioner Mason concurring in the findings as to the facts and conclusion, but not concurring in the form of order to cease and desist, for the reasons stated in his opinion concurring in part and dissenting in part in Docket 5203—Worthmore Sales Co.[1]

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[1] See 46 F. T. C. 606. March 10, 1950.

IN THE MATTER OF

WALTER H. LIESMAN ET AL. TRADING AS BECKMAN AND GROHS, ETC.

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

Docket 5699. Complaint, Sept. 16, 1949—Decision, Sept. 19, 1950

Where three individuals engaged in the interstate sale and distribution of push-cards and punchboards designed for use in the sale and distribution of merchandise to the public by means of a game of chance whereby the purchaser of a push or punch who by chance selected a concealed winning number secured an article of merchandise at much less than its normal retail price, and others received nothing for their money other than the privilege of a push or punch—

Sold such devices to dealers in such merchandise as candy, cigarettes, clocks, razors, cosmetics, clothing, etc., by whom assortments were made up of various articles together with a card or board, and sold to retailers and others, who exposed and resold them to the purchasing public in accordance with the aforesaid sales plan, involving sale of a chance to procure articles at much less than their normal retail price; and thereby

Supplied to and placed in the hands of others the means of conducting lotteries, gift enterprises, or games of chance in the sale and distribution of merchandise to the consuming public, contrary to an established public policy of the United States Government and in violation of criminal laws;

With the result that by reason of the element of chance involved many members of the purchasing public were induced to trade or deal with retailers thus selling or distributing their merchandise; many retailers were induced to trade with manufacturers, wholesalers and jobbers who thus sold and distributed their products; and gambling among members of the public was taught and encouraged:

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

Before *Mr. Abner E. Lipscomb*, trial examiner.
Mr. J. W. Brookfield, Jr. for the Commission.
Mr. James A. O'Callaghan, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Walter H. Liesman, Fred Grohs, and Cecil Beckman, individually and trading as Beckman & Grohs, hereinafter referred to as respondents, have vio-

lated the provisions of said act, and it appearing to the Commission that a proceeding by it in regard thereto would be in the public interest, hereby issues this complaint by stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Walter H. Liesman, Fred Grohs, and Cecil Beckman, are individuals and copartners trading and doing business as Beckman & Grohs, and formerly doing business as Beckman & Grohs Amusement Co. Their office and principal place of business is located at 1308 SW Alder Street, Portland, Oreg. All of said respondents have cooperated and acted together in the performance of the acts and practices hereinafter alleged.

Respondents are now and for more than 3 years last past have been engaged in the sale and distribution of devices commonly known as pushcards and punchboards and in the sale and distribution of said devices to dealers in various articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia and to dealers in various articles of merchandise in the various States of the United States and in the District of Columbia.

Respondents cause and have caused said devices when sold to be transported from their place of business in the State of Oregon to purchasers thereof at their points of location in the various States of the United States and in the District of Columbia. There is now and has been for more than 3 years last past a course of trade in such devices by said respondents in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their said business as described in paragraph 1 hereof, respondents sell and distribute, and have sold and distributed, to said dealers in merchandise, pushcards and punchboards so prepared and arranged as to involve games of chance, gift enterprises, or lottery schemes when used in making sales of merchandise to the consuming public. Respondents sell and distribute, and have sold and distributed many kinds of pushcards and punchboards, but all of said devices involve the same chance or lottery features when used in connection with the sale or distribution of merchandise and vary only in detail.

Many of said pushcards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said pushcards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one punch

or push from the pushcard or punchboard, and when a push or punch is made a disk or printed slip is separated from the pushcard or punchboard and a number is diclosed. The numbers are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to designated articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Persons who do not secure such lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said pushcard and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those pushcards and punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by the respondents on said pushcard and punchboard devices first hereinabove described. The only use to be made of said pushcard and punchboard devices, and the only manner in which they are used, by the ultimate purchasers thereof is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance as hereinabove alleged.

PAR. 3. Many persons, firms, and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, purchase and have purchased respondents' said push card and punchboard devices, and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise together with said pushcards and punchboard devices. Retail dealers who have purchased said assortments either directly or indirectly have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said pushcards and punchboards in accordance with the sales plan as described in paragraph 2 hereof. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said pushcards and punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof, many retail dealers have been induced

to deal with or trade with manufacturers, wholesale dealers, and jobbers who sell and distribute said merchandise together with said devices.

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

The sale or distribution of said pushcards and punchboard devices by respondents as hereinabove alleged supplies to and places in the hands of others the means of conducting lotteries, games of chance of gift enterprise in the sale or distribution of their merchandise. The respondents thus supply to, and place in the hands of, said persons, firms, and corporations the means of, and instrumentalities for, engaging in unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 16, 1949, issued and subsequently served upon the respondents named in the caption hereof its complaint in this proceeding, charging said respondents with the use of unfair acts and practices in commerce in violation of the provisions of that act. The respondents' answer to said complaint was filed on October 19, 1949, and on the same date a trial examiner of the Commission was appointed by it to take testimony and receive evidence in this proceeding. On April 3, 1950, the respondents filed with the trial examiner a motion for permission to withdraw their original answer to the complaint and to file in lieu thereof a substitute answer, attached to the motion, admitting all of the material allegations of fact set forth in the complaint and waiving all intervening

procedure and further hearing as to said facts, which was granted, and the substitute answer was accordingly received and filed. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint of the Commission and the respondents' substitute answer thereto; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Walter H. Liesman, Fred Grohs, and Cecil Beckman, are individuals and copartners trading and doing business as Beckman & Grohs. They formerly did business as Beckman & Grohs Amusement Co. Said respondents have their office and principal place of business at 1308 SW Alder Street, in the city of Portland, State of Oregon. All of said respondents have cooperated and acted together in the performance of the acts and practices hereinafter found.

PAR. 2. The respondents are now, and for more than 3 years last past they have been, engaged in the sale and distribution of devices commonly known as pushcards and punchboards. The respondents cause and have caused said devices, when sold, to be transported from their place of business in the State of Oregon to purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. There is now, and at all times mentioned herein there has been, a regular course of trade in such devices by the respondents in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Among the various types of pushcards and punchboards sold by the respondents to dealers in other merchandise are many which are designed for use in the sale and distribution of merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme. Such cards and boards vary in detail, but all of them involve the same general principle. Many of said pushcards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which they are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said pushcards or punchboards vary in accordance with the individual device. Each purchaser is entitled to one push or punch from the pushcard or punchboard, and when a push or punch is made a disk or printed slip

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

Others of said pushcard and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those pushcards and punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by the respondents on said pushcard and punchboard devices first hereinabove described. The only use to be made of said pushcard and punchboard devices, and the only manner in which they are used, by the ultimate purchasers thereof, is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance as hereinabove described.

PAR. 4. Many persons, firms, and corporations who sell and distribute various articles of merchandise in commerce, such as candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise, purchase and have purchased the respondents' pushcards and punchboards, and such purchasers make up and have made up assortments consisting of various articles of merchandise and a card or board and sell and have sold and distributed their merchandise so packed and assembled to retail dealers and others for resale to the public.

PAR. 5. Retail dealers who have purchased assortments of merchandise herein referred to have exposed and sold said merchandise to the purchasing public by the use of the pushcards and punchboards in accordance with the aforesaid sales plan. Thus, the respondents supply to and place in the hands of others the means of conducting lotteries, gift enterprises or games of chance in the sale and distribution of merchandise to the consuming public.

PAR. 6. Because of the element of chance involved in the purchase of merchandise by means of pushcards and punchboards, many mem-

bers of the purchasing public have been induced to trade or deal with retail dealers selling or distributing their merchandise through the use of such devices. As a result, many retail dealers have been induced to deal or trade with manufacturers, wholesale dealers, and jobbers who sell and distribute their products, together with pushcard and punchboard devices.

PAR. 7. The sale of merchandise to the purchasing public through the use of, or by means of, pushcards or punchboards in the manner above described involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof, and teaches and encourages gambling among members of the public. The use of said sales plan or method in the sale of merchandise, and the sale of merchandise by and through the use thereof, and by the aid of said sales plan or method, is a practice which is contrary to an established public policy of the Government of the United States and is in violation of criminal laws.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the respondents' substitute answer thereto, in which answer said respondents admitted all of the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Walter H. Liesman, Fred Grohs, and Cecil Beckman, individually and trading as Beckman & Grohs, or trading under any other name or trade designation, and said respondents' agents, representatives and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, pushcards, punchboards, or other lottery devices, which are to be used or may be used in the sale or dis-

tribution of merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

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

Commissioner Mason concurring in the findings as to the facts and conclusion, but not concurring in form of order to cease and desist, for the reasons stated in his opinion concurring in part and dissenting in part in Docket 5203-Worthmore Sales Company.[1]

[1] See 46 F. T. C. 606. March 10, 1950.

IN THE MATTER OF

HORLICKS CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (A) OF SEC. 2, AND SEC. 3 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5701. Complaint, Oct. 3, 1949—Decision, Sept. 19, 1950

Where a corporation engaged in the manufacture of malted-milk products, including instant cocoa and malted milk for sale at soda fountains, malted-milk tablets and packages of malted milk for sale to consumers through drug, confectionery and grocery stores, and in the interstate sale thereof to different purchasers, some of whom were competitively engaged in the resale thereof at wholesale or retail or both, and including a large corporate wholesaler which sold drugs, fountain supplies, including malted milk, and many other items to retail drug stores throughout the United States—

Contracted to sell and sold its said products on the condition, agreement or understanding that the purchasers thereof should not use or deal in the malted-milk products of its competitors, and, since on or about April 1, 1948, contracted to sell and sold malted milk for soda fountain use to said wholesaler at prices which were fixed on the condition, etc., that it would supply said purchaser with all its requirements of said product, with the result that said purchaser did not deal in malted-milk products of said corporation's competitors;

Effect of which sales and contracts for sale on said condition, agreement or understanding might be to substantially lessen competition or tend to create a monopoly in the lines of commerce in which it and said purchaser were respectively engaged:

Held, That such acts and practices, under the circumstances set forth, constituted a violation of section 3 of the Clayton Act.

In said proceeding in which count 1 of the complaint charged respondent with violation of subsection (a) of section 2 of the Clayton Act, as amended, by reason of having sold, and selling malted milk products to some purchasers at higher prices than to others: the trial examiner found the evidence in the record insufficient to support said charges, and granted respondent's motion to dismiss count 1, in view of a stipulation between counsel supporting the complaint and the respondent, that respondent could produce evidence which would demonstrate that the price differentials alleged in the complaint and shown by the record made only due allowance for differences in the cost of sale and delivery resulting from the differing methods or quantities or both, and that witnesses, if called, would testify that said price differentials made only due allowances for such differences, and that such testimony could not be rebutted in any material respect.

Before *Mr. Frank Hier*, trial examiner.
Mr. Rice E. Schrimsher for the Commission.
Bell, Boyd, Marshall & Lloyd, of Chicago, Ill., for respondent.

COMPLAINT

The Federal Trade Commission having reason to believe that Horlicks Corp. is violating and has violated the provisions of section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, sec. 13), and section 3 of the Clayton Act (U. S. C. Title 15, sec. 14), hereby issues its complaint, stating its charges with respect thereto as follows:

COUNT I

Charging violation of subsection (a) of section 2 of the Clayton Act, as amended, the Commission alleges:

PARAGRAPH 1. Respondent, Horlicks Corp., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located in Racine, Wis.

PAR. 2. Respondent is now and, since June 19, 1936, has been engaged in the manufacture of malted-milk products, including malted-milk powder, in Racine, Wis., and has sold and now sells such products to different purchasers located in the various States of the United States and the District of Columbia for use, consumption, or resale therein. Respondent transports said products, or causes the same to be transported, from Racine, Wis., to said purchasers so located, thereby creating a continuous current of commerce in said products.

PAR. 3. The respondent, in the course and conduct of its business, has been and is in competition with other corporations, individuals, partnerships, and firms engaged in manufacturing, selling, and distributing malted-milk products, including malted-milk powder, in commerce between and among the various States of the United States and the District of Columbia.

Some of respondent's purchasers, and some customers of such purchasers are competitively engaged in the resale of its malted-milk products at wholesale or at retail, or both, in the various territories and places where they respectively carry on their businesses.

PAR. 4. In the course and conduct of its business, as above described, respondent has sold and now sells its malted-milk products to some

purchasers at higher prices than it has sold and now sells such products of like grade and quality to other purchasers.

For example, respondent, since on or about April 1, 1948, has sold and now sells malted-milk powder to certain favored purchasers such as Rexall Drug Co. and McKesson & Robbins, Inc., at lower prices than it has sold or offered to sell malted-milk powder of like grade and quality to other purchasers. The monetary differential between the selling price to such favored purchasers and the selling price to other nonfavored purchasers remains constant. In other words, in the event of an increase or decrease in the selling price per container to nonfavored purchasers, the price charged favored purchasers is increased or decreased by the same amount. The following table illustrates prices charged said favored purchasers and the comparable prices charged other purchasers:

Prices are delivered prices (minimum shipment 100 lbs. freight prepaid) in effect July 1, 1948	Container size				
	5-pound jar	10-pound tin	25-pound tin	100-pound drum	200-pound drum
	Each	*Each*	*Each*	*Each*	*Each*
Price to favored purchasers	$1.15	$2.175	$5.25	$20.30	$39.80
Price to other purchasers	$1.50	$2.90	$6.75	$26.00	$50.00
Price discrimination:					
Per container	$0.35	$0.725	$1.50	$5.70	$10.20
Percent	23.3	25.0	22.2	21.9	20.4

PAR. 5. The effect of such discriminations in price made by respondent, as set forth in paragraph 4 hereof, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and its purchasers are respectively engaged; or to injure, destroy, or prevent competition with respondent or with purchasers of respondent who receive the benefit of such discriminations, or with customers of said purchasers.

PAR. 6. Such discriminations in price by respondent between different purchasers of goods of like grade and quality in interstate commerce in the manner and form aforesaid, are in violation of the provisions of subsection (a) of section 2 of the above-mentioned act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, (the Clayton Act), as amended by section 1 of the act of Congress entitled "An act to amend section 2 of the act entitled 'An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. Title 15, Sec. 13, and for other purposes," approved June 19, 1936 (the Robinson-Patman Act).

COUNT II

Charging violation of section 3 of the Clayton Act, the Commission alleges:

PAR. 7. Paragraph 1 to 3, inclusive, of count I hereof are hereby repeated and made a part of this count as fully and with the same force and effect as though here again set forth in full.

PAR. 8. Respondent in the course and conduct of its business, as herein described, has sold and now sells or has made contracts for the sale of its malted-milk products on the condition, agreement or understanding that the purchasers thereof shall not use or deal in the malted-milk products of a competitor or competitors of the respondent.

Respondent, since on or about April 1, 1948, has sold and now sells or has made contracts for the sale of its malted-milk powder, to certain purchasers, including Rexall Drug Co. and McKesson & Robbins, Inc., at prices which were and are fixed on the conditions, agreements, or understanding that respondent supply said purchasers all their requirements of malted-milk powder, with the result that said purchasers have not and do not now deal in malted-milk powder of a competitor or competitors of respondent.

PAR. 9. The effect of said sales, or contracts for sale on said condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in the lines of commerce in which respondent and said purchasers are respectively engaged.

PAR. 10. The aforesaid acts of respondent constitute a violation of the provisions of section 3 of the hereinabove mentioned act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (the Robinson-Patman Act), the Federal Trade Commission, on October 3, 1949, issued and subsequently served upon the respondent, Horlicks Corp., its complaint in this proceeding, charging said respondent, in count I thereof, with violation of subsection (a) of section 2 of said act as amended and, in count II thereof, with violation of section 3 of said act. After the issuance of the complaint and the filing of respondent's answer thereto, a trial examiner of the Com-

mission was designated by it to take testimony and receive evidence in support of and in opposition to the allegations of the complaint, and a number of hearings were held and a substantial amount of evidence was introduced and duly recorded and filed. At a hearing held on March 15, 1950, there was read into the record a stipulation as to the facts which had theretofore been agreed upon between counsel in support of the complaint and counsel for the respondent. Said stipulation provides, among other things, that the facts set forth therein are in addition to, and not in lieu of, any and all evidence in the record, and that said stipulation, together with such evidence, shall constitute the whole record herein.

Thereafter this proceeding came on for final consideration by the Commission upon the complaint, answer thereto, testimony and other evidence, stipulation as to the facts, recommended decision of the trial examiner, and memorandum of counsel supporting the complaint (no briefs having been filed and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent Horlicks Corp. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located in Racine, Wis. Respondent also maintains warehouses in various of the larger cities in the United States.

PAR. 2. Respondent is now, and for many years last past has been, engaged in the production and manufacture of malted-milk products, including Instant Cocoa and malted milk for sale at soda fountains, malted-milk tablets, and packages of malted milk for sale to consumers through drug, confectionery, and grocery stores.

Respondent now sells, and for many years last past has sold, its malted-milk products to different purchasers located in the various States of the United States and in the District of Columbia for use, consumption, or resale therein. Respondent transports said products, or causes the same to be transported, from Racine, Wis., to said purchasers so located, thereby creating a continuous current of commerce in said products.

PAR. 3. In the course and conduct of its business, respondent has been, and is, in competition with other corporations, individuals, partnerships, and firms engaged in manufacturing, selling, and dis-

tributing malted-milk products in commerce between and among the various States of the United States and the District of Columbia.

Some of respondent's purchasers, and some customers of such purchasers, are competitively engaged in the resale of its malted-milk products at wholesale or at retail, or both, in the various territories and places where they respectively carry on their businesses.

PAR. 4. Respondent, in the course and conduct of its business as aforesaid, has contracted to sell, has sold, and now sells its malted-milk products on the condition, agreement, or understanding that the purchasers thereof shall not use or deal in the malted-milk products of a competitor or competitors of the respondent.

Rexall Drug Co. is a large wholesaler which sells drugs, fountain supplies, including malted milk, and many other items to retail drug stores throughout the United States. Respondent, since on or about April 1, 1948, has contracted to sell, has sold, and now sells, malted milk for soda fountain use to Rexall Drug Co. at prices which were, and are, fixed on the condition, agreement, or understanding that respondent supply said purchaser all its requirements of said malted milk, with the result that said purchaser has not dealt, and does not now deal, in said malted milk of a competitor or competitors of respondent.

PAR. 5. The effect of said sales and contracts for sale on said condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in the lines of commerce in which respondent and said purchaser are, respectively, engaged.

PAR. 6. Count I of the complaint herein charges the respondent with violation of subsection (a) of section 2 of the Clayton Act, as amended, by reason of its having sold, and now selling, malted-milk products to some purchasers at higher prices than it has sold, and now sells, such products of like grade and quality to other purchasers. In a stipulation as to the facts which is a part of the record herein, it was stipulated and agreed between counsel supporting the complaint and the respondent that the respondent could produce evidence which would demonstrate that the price differentials alleged in the complaint and shown by the record are differentials which make only due allowance for differences in the cost to the respondent of sale and delivery resulting from the differing methods or quantities, or both, of such sale and delivery, and that witness, if called, would testify that said price differentials make only due allowances for such differences, and that such testimony could not be rebutted in any material respect. The trial examiner consequently found that the evidence in the record is insufficient to support the charges in count I of the

complaint, and granted respondent's motion to dismiss count I of the complaint.

CONCLUSION

The acts and practices of the respondent as herein found constitute a violation of section 3 of the act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondent, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, stipulation as to the facts entered into by and between counsel supporting the complaint and the respondent, recommended decision of the trial examiner, and memorandum of counsel supporting the complaint (no briefs having been filed and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act):

It is ordered, That the respondent, Horlicks Corp., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the sale, or making of any contract for the sale, of malted-milk products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

(1) Selling or making any contract for the sale of malted-milk products on the condition, agreement, or understanding that the purchaser thereof shall not use or deal in the malted-milk products, or other goods or merchandise of, a competitor or competitors of the respondent.

(2) Fixing the price charged for malted milk products, or granting a discount from or rebate upon the price therefor, on the condition, agreement, or understanding that the purchaser of such products shall not use or deal in the malted-milk products, or other goods or merchandise, of a competitor or competitors of the respondent.

(3) Enforcing or continuing in operation or effect any condition, agreement, or understanding in or in connection with any existing sale or contract for the sale of malted-milk products, which condition,

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agreement, or understanding is to the effect that the purchaser of such products shall not use or deal in the malted-milk products, or other goods or merchandise, of a competitor or competitors of the respondent.

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

IN THE MATTER OF

CONSOLIDATED ROYAL CHEMICAL CORPORATION, TRADING ALSO AS CONSOLIDATED DRUG TRADE PRODUCTS

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

Docket 5302. Complaint, Apr. 3, 1945—Decision, Sept. 21, 1950

Where a corporation engaged in the interstate sale and distribution of a medicinal preparation designated as "New Pe-Ru-Na," and also as "New Pe-Ru-Na Tonic"; in advertisements thereof through radio continuities and by other means—

(*a*) Falsely represented that the use of said preparation would build resistance to colds, prevent them and shorten their duration;

(*b*) Represented that its use would be effective in relieving the symptoms of colds, and would relieve coughs, the facts being that its therapeutic value in relieving the symptoms or discomfort of a cold was limited to its expectorant qualities, which tend, in a slight degree, to increase the exudate from the mucous membranes, thereby making it more liquid and more easily removed by coughing; and

(*c*) Represented that it would assist in building up the strength, energy, and vigor of the user because of its tonic properties; the facts being that it had no tonic properties which would accomplish such results, except to the extent that it might increase the appetite, and might, because of its iron and ammonium citrate content, aid slightly in correcting iron deficiency when taken for a considerable length of time;

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

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

As respects the charge in the complaint that respondent's advertisements concerning its "Pe-Ru-Na" constituted false advertisements for the further reason that they failed to reveal facts material in the light of such representations or material with respect to the consequences which might result from its use under the prescribed or usual conditions, no evidence was introduced, and consequently no findings with respect thereto were made.

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

Mr. Joseph Callaway for the Commission.

Mr. Elwood H. Seal, of Washington, D. C., *Nash & Donnelly*, of Chicago, Ill., and *Mr. Harlan W. Kelley*, of Milwaukee, Wis., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Consolidated Royal Chemical Corp., a corporation, trading under its own name and also under the name of Consolidated Drug Trade Products, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing that a proceeding in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Consolidated Royal Chemical Corp. is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its principal office and place of business at 540–544 South Wells Street, Chicago, Ill. Respondent has been and is now trading under its own name and also under the name of Consolidated Drug Trade Products.

PAR. 2. Respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution of a certain medicinal preparation designated as New Pe-Ru-Na and also as New Pe-Ru-Na Tonic.

In the course and conduct of its business the respondent causes said preparation, when sold, to be transported from its place of business in the State of Illinois to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said preparation by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said preparation by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading and deceptive statements and representations contained in said false advertisements dissemi-

nated and caused to be disseminated, as hereinabove set forth, by the United States mails, by radio continuities and by various other means, are the following:

Many users say it has helped them build the cold fighting resistance of their bodies, thereby often preventing or relieving colds and that this has often helped them go through whole winters without having a single bad cold. Others whose cold fighting resistance is strong say that when they get a cold it is so mild and short-lived that you could hardly call it a cold.

Friends, if you have coughs due to colds or congested breathing passages and chest discomforts also due to colds, remember to follow the example set by thousands all over the country and start taking the New Peruna right away to help relieve these discomforts of a cold. The new Peruna, you know, encourages the body to bring about an increased secretion from the various membranes of the respiratory tract which is nature's way of thinning congested secretions and thus loosening up the congestion. You know that when you have this congestion it is very annoying and uncomfortable. So if you have a cough due to a cold or congested breathing passages and chest discomforts due to a cold why not do as thousands in the same boat are doing and take the New Peruna. Remember also that thousands of folks who need an appetizing tonic also take the New Peruna to help build up their strength, energy and vigor.

You know thousands of folks take the new Pe-Ru-Na when they have a cold to help the body to loosen up the congestion of heavy secretions in the breathing passages which is nature's way of loosening up the cough, lessening the chest discomfort and relieving the congestion and discomfort of a cold. Many users say it has helped them as a tonic to build up their strength, energy and vigor.

PAR. 4. Through the use of the foregoing statements and representations and others of the same import and meaning not specifically set out herein, respondent has represented and now represents that the use of said preparation will build resistance to cold; will prevent colds and shorten their duration: will be effective in relieving the symptoms of colds; will relieve coughs due to colds and will assist in building up the strength, energy and vigor of the user because of its tonic properties.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth, and in fact, the use of said preparation will not build resistance to, nor will it prevent a cold, or have any therapeutic value in the treatment of a cold or in shortening the duration thereof or in the treatment of the symptoms or discomforts of a cold, in excess of its mild expectorant qualities which tend, in a slight degree, to increase the exudate from the mucous membrane, thereby making it more liquid and more easily removed by coughing. Said preparation has no value in the treatment of coughs no matter how caused. It has only limited tonic properties and its use will assist in building up strength, energy and vigor only in the sense and to the extent that it may increase the appetite and thereby tend to increase the consumption of food.

PAR. 6. Respondent's advertisements, disseminated as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations or material with respect to the consequences which may result from the use of the preparation to which the advertisements relate, under the conditions prescribed in said advertisements or under such conditions as are customary and usual. Respondent's said preparation contains potassium iodide. Iodine-containing preparations are potentially dangerous for use by persons having tuberculosis or a thyroid gland disease, and the continued use of this preparation by such persons may result in serious and irreparable injury to health.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and into the purchase of substantial quantities of said preparation because of such erroneous and mistaken belief. Further, the failure of the respondent to disclose in its said advertising to those suffering from tuberculosis or a thyroid gland disease, has the tendency and capacity to mislead a substantial portion of the purchasing public into the mistaken belief that said medicinal preparation is entirely safe and harmless and may be taken by all persons without ill effects.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act the Federal Trade Commission, on April 3, 1945, issued and subsequently served its complaint in this proceeding upon the respondent, Consolidated Royal Chemical Corp., a corporation trading under its own name and also under the name of Consolidated Drug Trade Products, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of the complaint and the filing of respondent's answer thereto, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of

the Commission. Thereafter this proceeding regularly came on for final consideration by the Commission upon the complaint, answer thereto, testimony and other evidence, recommended decision of the trial examiner, to which no exceptions were filed, briefs in support of and in opposition to the complaint, and oral argument of counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and it conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Consolidated Royal Chemical Corp. is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business at 540–544 South Wells Street, Chicago, Ill. Respondent has been and is now trading under its own name and also under the name of Consolidated Drug Trade Products.

PAR. 2. Respondent is now, and for more than 2 years last past has been engaged in the sale and distribution of a certain medicinal preparation designated as New Pe-Ru-Na and also as New Pe-Ru-Na Tonic.

In the course and conduct of its business, respondent causes said preparation, when sold, to be transported from its place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said preparation by the United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act, and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said preparation in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated, as hereinabove set forth, by

the United States mails, by radio continuities, and by various other means, are the following:

SENSATIONAL
NEW PERUNA
HELPS BUILD COLD
FIGHTING RESISTANCE
TO HELP PREVENT AND
WIN FIGHTS
WITH COLDS!

Well, old man winter is in the air, tryin' his very best to give a bad cold to everybody whose cold-chasin' resistance isn't as strong as it should be. You know, thousands of folks take the New Peruna as a tonic to help build up their cold-fighting resistance. So many thankful people now praise Peruna, because you see, its purpose is to help build cold-fighting resistance, which is often just the thing needed to prevent and relieve colds, before they get you all worn out. Many users say it has helped them to build the cold-fighting resistance of their bodies, thereby often preventing or relieving colds, and that this has often helped them go through whole winters without having a single bad cold. Others whose cold-fighting resistance is strong, say that when they get a cold, it is so mild and short-lived that you can hardly call it a cold. So try Peruna. * * *

Friends, if you have coughs due to colds or congested breathing passages, and chest discomforts also due to colds, remember to follow the example set by thousands all over the country and start taking the New Peruna right away to help relieve these discomforts of a cold. The New Peruna, you know, encourages the body to bring about an increased secretion from the various membranes of the respiratory tract, which is nature's way of thinning congested secretions and thus loosening up the congestion. You know that when you have this congestion it is very annoying and uncomfortable. So, if you have a cough due to a cold or congested breathing passages and chest discomforts due to a cold, why not do as thousands in the same boat are doing and take New Peruna? Remember also, that thousands of folks who need an appetizing tonic also take the New Peruna to help build up their strength, energy, and vigor. * * *

Well, that old chilliness is often in the air at night and sometimes even in the day, tryin' its very best to give a cold to everybody. You know, thousands of folks take the new Peruna when they have a cold, to help the body to loosen up the congestion of heavy secretions in the breathing passages which is nature's way of loosening up the cough, lessening the chest discomfort, and relieving the congestion and discomfort of a cold. So many thankful people who needed an appetizing tonic now praise Peruna, because you see, its purpose as a tonic, is to help build up strength, energy, and vigor. As a medicine, when they have a cold, they praise the new Peruna because it helps the body loosen up the congestion of heavy secretions in the breathing passages, which often loosens up the cough, and lessens the chest discomforts—often just the thing needed to relieve the discomfort of a cold before it gets you all worn out. Many users say it has helped them, as a tonic, to build up their strength, energy, and vigor, and also, as a medicine, has helped them to loosen up the congestion of colds, and such loosening up of the congested secretions in the breathing passages often loosens up the

cough, lessens the chest discomforts, and relieves discomforts of colds. Why don't you try the new Peruna? * * *

Other advertisements similar to the last two quoted above were disseminated in the same manner during 1946 and 1947.

PAR. 4. Through the use of the foregoing statements and representations and others of the same import and meaning not specifically set out herein, respondent has represented and now represents that the use of said preparation will build resistance to colds; will prevent colds and shorten their duration; will be effective in relieving the symptoms of colds; will relieve coughs due to colds, and will assist in building up the strength, energy, and vigor of the user because of its tonic properties.

PAR. 5. The formula by which Pe-Ru-Na was made in 1944, and the directions for its use accompanying that preparation, are as follows:

Peruna—1944 Formula

Ingredient	Per 7,863 gallons	Per fluid-ounce	Per tablespoonful
S. E. cascara sagrada	19 pounds 12 ounces	0.14 grain	0.07 grain.
S. E. boneset	71 pounds 8 ounces	0.5 grain	0.25 grain.
S. E. gentian	30 pounds 6 ounces	0.21 grain	0.11 grain.
Extract licorice	53 pounds 3 ounces	0.37 grain	0.19 grain.
Oil copaiba	9 pounds	0.06 grain	0.03 grain.
Potassium iodide	300 pounds	2.09 grains	1.04 grains.
Saccharin insoluble	9 pounds	0.06 grain	0.03 grain.
Sodium bicarbonate	79 pounds 1 ounce	0.55 grain	0.27 grain.
Iron and ammonium citrate	*	3.0 grains	1.5 grains.
Oleoresin ginger	5 pounds 6 ounces	0.037 grain	0.018 grain.
Malt syrup	10,674 pounds	74.3 grains	37.15 grains.
Alcohol ethyl U. S. P.	1,242 gallons	75.8 minims	37.9 minims.
Water q. s. ad	7,863 gallons	q. s.	q. s.

*Iron and ammonium citrate content given in grains per fluid ounce, p. 42 of transcript.

DIRECTIONS

Adults: Take one tablespoonful before each meal and at bedtime. Delicate persons should commence with a teaspoonful in a little water before each meal and at bedtime.

Children—5 to 10 years old: Thirty drops to a teaspoonful. Do not give to children under 5 years of age.

Caution: If skin rash occurs discontinue the use of the product. See that the bottle is kept well closed and in a cool place, when not in use.

For coughs due to colds, adults take two tablespoonfuls every hour for six hours each day for two days.

The 1939 formula for Pe-Ru-Na contains, among other ingredients:

	Per fluid ounce	*Per tablespoonful*
Iron and Ammonium Citrate	3 grains	1.5 grains
Potassium Iodide	1 grain	0.5 grain

In the 1941 formula these ingredients appear as:

	Per fluid ounce	*Per tablespoonful*
Iron and Ammonium Citrate	3.06 grains	1.53 grains
Potassium Iodide	1.01 grains	0.50 grain

And in the 1946 formula these amounts have been increased to:

	Per fluid ounce	*Per tablespoonful*
Iron and Ammonium Citrate	4.72 grains	2.36 grains
Potassium Iodide	2.09 grains	1.04 grains

PAR. 6. The foregoing statements and representations are false, misleading, and deceptive. A cold is an acute infection of the upper respiratory tract, resulting in inflammation of the infected area. The common symptoms of a cold are the pouring out of secretions in the nose and upper bronchial tree, a cough, a general feeling of malaise, sore throat, headache, chest discomfort, and in some cases an elevation of temperature and diarrhea. The taking of Pe-Ru-Na in accordance with the directions for its use will not build resistance to a cold, prevent a cold, shorten the duration of a cold, or have any therapeutic value in the treatment of a cold. Its therapeutic value in relieving the symptoms or discomforts of a cold is limited to its expectorant qualities, which tend, in a slight degree, to increase the exudate from the mucous membranes, thereby making it more liquid and more easily removed by coughing. Said preparation does not have any tonic properties which will build up strength, energy, and vigor, except to the extent that it may increase the appetite, thereby tending to increase the consumption of food, and to the extent that it may, because of its iron and ammonium citrate content, aid in a slight degree to correct iron deficiency in the system when taken for a considerable length of time.

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

PAR. 8. The complaint charged also that respondent's advertisements concerning its product Pe-Ru-Na constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations or material with respect to the consequences which may result from the use of the preparation under the conditions prescribed in said advertisements or under such conditions as are customary and usual. No evidence with respect to this

charge was introduced, and consequently no findings with respect thereto have been made.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondent, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, recommended decision of the trial examiner, and briefs and oral argument of counsels; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Consolidated Royal Chemical Corp., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of its preparation designated New Pe-Ru-Na and New Pe-Ru-Na Tonic, or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same names or any other name or names, do forthwith cease and desist from:

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

a. that said preparation will build resistance to a cold, prevent a cold, shorten the duration of a cold; or have any therapeutic value in the treatment of a cold;

b. that said preparation will have any therapeutic value in relieving the symptoms or discomforts of a cold in excess of its expectorant qualities, which tend in a slight degree to increase the exudate from the mucous membranes, thereby making it more liquid and more easily removed by coughing;

c. that said preparation will assist in building up strength, energy, or vigor, except and to the extent that its use may (1) increase the appetite and thereby tend to increase the consumption of food, and

(2) by supplying some iron, aid in a slight degree to correct iron deficiency, if taken over a long period of time.

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

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

IN THE MATTER OF

WALSH LABORATORIES, INC., ET AL.

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

Docket 5665. Complaint, June 17, 1949—Decision, Sept. 21, 1950

Where a corporation and the two officers who controlled it, engaged in the interstate sale and distribution of a product which they designated as "Rodan"—

(*a*) Represented in advertisements thereof in newspapers and circulars, on letterheads and other advertising material, that said preparation was an effective killing agent for mice and all varieties of rats, and would destroy the rats on infested premises; the facts being that it was not such an agent except for brown rats, and could not be depended upon to destroy all the rats, or even all brown rats, on infested premises;

(*b*) Represented falsely, as aforesaid, that the use of the product was completely safe and would not harm domestic animals or poultry;

(*c*) Falsely represented through the use of the words "manufacturing chemists" in connection with their corporate name, that they manufactured or compounded chemicals and employed chemists in connection with their business;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to their said product and their business status, and thereby induce the purchase by it of substantial quantities of said product:

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

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

Mr. B. G. Wilson for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Walsh Laboratories, Inc., a corporation, John J. Walsh and Henry E. Staffel, individually and as officers of Walsh Laboratories, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of the said act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Walsh Laboratories, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois. John J. Walsh is president and treasurer and Henry E.

Staffel is vice president and secretary of said Walsh Laboratories, Inc. The corporate respondent and individual officers have their office and principal place of business located at 525 West Seventy-sixth Street, Chicago 20, Ill. The individual officers control the policies and practices of said corporate respondent.

PAR. 2. Respondents are now, and for more than 1 year last past, have been engaged in the sale and distribution of a product designated by them as "Rodan."

The respondents cause their said product when sold to be transported from their place of business in the State of Illinois to the purchasers thereof located in various States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said product between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business and for the purpose of inducing the purchase of their said product respondents have made and now make certain statements and representations with respect to said product by means of advertisements inserted in newspapers, circulars, on letterheads and other advertising material. Among and typical of such statements and representations are the following:

GET RID OF RATS
With Guaranteed RODAN

Why let rats destroy your property, spread disease when it is so easy to kill them with RODAN—the only rat killer that contains both DuPont ANTU (the dealiest rat killer available to the public) and the scientific Walsh 16 Ingredient Rat Bait! Laboratory tests show RODAN safe around animals and poultry—get a package that contains enough to kill a thousand rats for only $1.00 from your dealer or mail coupon today.

KILL RATS AND MICE

* * *

RODAN Rat Killer contains ANTU, the most effective killing agent for use against rats and mice available to the public.

Walsh Laboratories, Inc. Manufacturing Chemists.

PAR. 4. Through the use of the foregoing statements and representations and others of the same import not specifically set out herein, respondents represented that their product "Rodan" is an effective killing agent for mice and all varieties of rats and will destory all rats on infested premises; and that the use of said product is completely safe and will not cause harm to animals or poultry. Further through the use of the words "manufacturing chemists" re-

spondents represent that they manufacture or compound chemicals and employ chemists in connection with their said business.

PAR. 5. The above statements and representations are false, misleading and deceptive. In truth and in fact, respondents' product "Rodan" is not an effective killing agent for mice or for rats, other than brown rats. The use of the product cannot be depended upon to destroy all the rats on infested premises, including brown rats. The product may be harmful to animals and poultry. The respondents do not manufacture or compound chemicals nor do they employ chemists in their business.

PAR. 6. The use by the respondents of the aforesaid false, misleading and deceptive statements and representations has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken beliefs, to purchase said product.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 17, 1949, issued and subsequently served its complaint in this proceeding upon the respondents, Walsh Laboratories, Inc., a corporation, and John J. Walsh and Henry E. Staffel, individually and as officers of said corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, a hearing was convened by a trial examiner of the Commission theretofore duly designated by it for the purpose of receiving testimony and other evidence in support of and in opposition to the allegations of the complaint. At said hearing there was read into the record a stipulation as to the facts between counsel in support of the complaint and respondents in which it was agreed, among other things, that the facts set forth therein may be taken as the facts in this proceeding and in lieu of evidence in support of and in opposition to the charges stated in the complaint, 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 this proceeding without the presentation of argument or the filing of briefs. Also at the same hearing, certain explanatory testimony and other evidence were introduced. Such testimony and other evidence, including the aforesaid stipulation as to the facts, were duly recorded and filed in the office of the Commission.

Thereafter this proceeding regularly came on for final hearing before the Commission upon the complaint, answer thereto, testimony and other evidence, including the stipulation as to the facts and recommended decision of the trial examiner; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Walsh Laboratories, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois. John J. Walsh is president and treasurer and Henry E. Staffel is vice president and secretary of said Walsh Laboratories, Inc. The corporate respondent and individual officers have their office and principal place of business located at 525 West Seventy-sixth Street, Chicago 20, Ill. The individual officers control the policies and practices of said corporate respondent. Respondents are now, and for more than 1 year last past, have been engaged in the sale and distribution of a product designated by them as "Rodan."

PAR. 2. The respondents cause their said product when sold to be transported from their place of business in the State of Illinois to the purchasers thereof located in various States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said product between and among the various States of the United States.

PAR. 3. In the course and conduct of their business and for the purpose of inducing the purchase of their said product respondents have made certain statements and representations with respect to said product by means of advertisements inserted in newspapers, circulars, on letterheads and other advertising material. Among and typical of such statements and representations are the following:

GET RID OF RATS

With Guaranteed RODAN

Why let rats destroy your property, spread disease when it is so easy to kill them with RODAN—the only rat killer that contains both DuPont ANTU (the deadliest rat killer available to the public) and the scientific Walsh 16 Ingredient Rat Bait! Laboratory tests show RODAN safe around animals and poultry—get a package that contains enough to kill a thousand rats for only $1.00 from your dealer or mail coupon today.

KILLS RATS AND MICE

* * *

RODAN Rat Killer contains ANTU, the most effective killing agent for use against rats and mice available to the public.

Walsh Laboratories, Inc. Manufacturing Chemists.

PAR. 4. Through the use of the foregoing statements and representations and others of the same import, respondents have represented that their product "Rodan" is an effective killing agent for mice and all varieties of rats and will destroy all the rats on infested premises; and that the use of said product is completely safe and will not cause harm to domestic animals or poultry. Through the use of the words "manufacturing chemists" in connection with the name of the corporation, respondents have also represented that they manufacture or compound chemicals and that they employ chemists in connection with their business.

PAR. 5. The above statements and representations are erroneous and misleading. In truth and in fact, respondent's product "Rodan" is not an effective killing agent for mice or for rats, other than brown rats. The use of the product cannot be depended upon to destroy all the rats, even all brown rats, on infested premises. The product may be harmful to domestic animals and poultry. The respondents do not manufacture or compound chemicals nor do they employ chemists in their business.

PAR. 6. The use by the respondents of the aforesaid erroneous and misleading representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondents' said product and with respect to respondents' business status, and to induce a substantial portion of the purchasing public to purchase substantial quantities of said product as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice and injury of the public and constitute unfair and

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondents, testimony and other evidence, including a stipulation as to the facts agreed upon by counsel, introduced before a trial examiner of the Commission theretofore duly designated by it, and the recommended decision of the trial examiner; and the Commission having made its findings as to the facts and its conclusion that respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered That the respondents, Walsh Laboratories, Inc., a corporation, its officers, agents, representatives, and employees, and John J. Walsh and Henry E. Staffel, individually and as officers of respondent corporation, their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of their product designated "Rodan" or any other product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from:

(1) Representing, directly or by implication,

(*a*) That said product is an effective killing agent for mice;

(*b*) That said product is an effective killing agent for rats other than brown rats;

(*c*) That the use of said product will destroy all rats on infested premises;

(*d*) That the use of said product will not cause harm to domestic animals and poultry.

(2) Using the words "manufacturing chemists" in connection with the corporate name of respondent corporation; or otherwise representing, directly or by implication, that respondents manufacture or compound chemicals or that they have chemists in their employ.

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

In the Matter of

FREDERICK GODFREY

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

Docket 5702. Complaint, Oct. 11, 1949—Decision, Sept. 22, 1950

Where an individual engaged in the interstate sale and distribution of its drug product "Terits," made, successively, under two different formulae; in advertisements thereof in various newspapers published in larger cities in Indiana, Colorado, and Ohio, among others; directly and by implication—

(*a*) Falsely represented that said product was an adequate, effective, and competent treatment and cure for all kinds of rheumatism, arthritis, and neuritis; would arrest the progress and correct the underlying causes; and would afford complete and permanent relief from, and cure, the aches and pains thereof; and

(*b*) Falsely represented that such product was beneficial in the treatment of the aforesaid symptoms beyond furnishing a temporary and partial relief from minor aches and pains and fever associated therewith; and constituted a new medicine:

The facts being that the aches and pains incident to the various kinds of such diseases may be of such a nature that they would be in no way alleviated by the use of said product, under either formula and however taken; and in any event relief would be limited to temporary analgesic and antipyretic effect of the salicylate content;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public with respect to its product, and thereby cause it to purchase substantial quantities thereof:

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

Mr. Joseph Callaway for the Commission.

Complaint

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

PARAGRAPH 1. Respondent Frederick Godfrey is an individual trading and doing business under the name "Canam Sales Agency," and having an office and principal place of business at Rockport, Mass.

PAR. 2. Respondent is now, and has been for more than one year last past, engaged in the business of selling and distributing a certain drug product, as "drug" is defined in the Federal Trade Commission Act.

The designation used by respondent, the formula and directions for use thereof are as follows:

Designation: Terits.

Formula: Each tablet contains 5 grains potassium bicarbonate and 5 grains sodium salicylate.

Directions: For adults only. Take two tables after each meal with glass of water. Repeat dosage in 3 or 4 hours if necessary.

Respondent causes the said product, when sold, to be transported from his place of business in the State of Massachusetts to purchasers thereof located in other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product in commerce between and among the various States of the United States and in the District of Columbia. Respondent's volume of business in such commerce is substantial.

PAR. 3. In the course and conduct of his business the respondent, subsequent to March 21, 1938, has disseminated and caused the dissemination of certain advertisements concerning Terits by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which were likely to induce, directly or indirectly, its purchase.

Among the said advertisements are those of which copies are attached hereto, marked "Exhibits 1 to 6," inclusive, and by this reference incorporated herein and made a part hereof.

The advertisement exemplified by Exhibit 1 was published in various newspapers, including, but not limited to, the following newspapers and issues thereof: Terre Haute (Ind.) Star, issue of January 21, 1947; Denvel (Colo.) Post, issue of February 24, 1947; Cincinnati (Ohio) Times-Star, issue of April 14, 1947.

The advertisement exemplified by Exhibit 2 was published in various newspapers, including, but not limited to, the following newspapers and issues thereof: Denver (Colo.) Post, issue of February 28, 1947; Duluth (Minn.) News-Tribune, issue of March 1, 1947; Dayton (Ohio) Herald, issue of June 13, 1947.

The advertisement exemplified by Exhibit 3 was published in the following newspaper: Cincinnati (Ohio) Post, issue of October 1, 1948.

The advertisement exemplified by Exhibit 4 was published in various newspapers, including, but not limited to the following newspapers and issues thereof: Terre Haute (Ind.) Star, issue of February 18, 1947; Cincinnati (Ohio) Times-Star, issue of October 21, 1947; Indianapolis (Ind.) News, issue of October 7, 1947.

The advertisement exemplified by Exhibit 5 was published in the following newspaper: Denver (Colo.) Post, issue of March 3, 1947.

The advertisement exemplified by Exhibit 6 was published in the following newspapers and issues thereof: Indianapolis (Ind.) News, issue of March 5, 1947; Peoria (Ill.) Journal-Transcript, issue of March 5, 1947; Detroit (Mich.) News, issue of February 13, 1948.

Respondent has also disseminated and caused the dissemination of the advertisements referred to above for the purpose of inducing, and the said advertisements were likely to induce, directly or indirectly, the purchase of Terits in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Through the use of the said advertisements respondent has made, directly and by implication, the representations shown in the following subparagraphs identified as (A) to (E) inclusive. The said advertisements, by reason of the said representations, are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act, by reason of the true facts which are set forth in subparagraphs (1) to (5) inclusive.

(A) That Terits is an adequate, effective and competent treatment for all kinds of arthritis, rheumatism, and neuritis.

(1) Terits, however taken, is not an adequate, effective or competent treatment for any kind of rheumatism, arthritis, or neuritis.

(B) That Terits will arrest the progress of, correct the underlying causes of, and cure all kinds of arthritis, rheumatism, and neuritis.

(2) Terits, however taken, will not arrest the progress of, correct the underlying causes of, and will not cure any kind of rheumatism, arthritis, or neuritis.

(C) That Terits will afford complete and immediate and permanent relief from, and will cure, the aches and pains of all kinds of arthritis, rheumatism, and neuritis.

(3) Terits, however taken, will not correct the underlying causes of the aches and pains incident to the various kinds of arthritis, rheumatism, and neuritis, and will not cure such aches and pains. These

aches and pains may be of such a nature that they well be in no way alleviated by the use of Terits, however taken, and in other cases the relief afforded will be limited to such degree of temporary and partial analgesic and antipyretic effect as its content of sodium salicylate may afford in the individual case.

(D) That Terits is beneficial in the treatment of arthritis, rheumatism, and neuritis and manifestations and symptoms thereof above and beyond furnishing a temporary and partial relief for minor aches and pains, and fever, associated therewith.

(4) The effect of Terits when used in any of the ailments mentioned herein is limited to temporary and partial relief of minor aches and pains, and fever, associated therewith.

(E) That Terits is a new medicine.

(5) The ingredients of Terits are not new, and so far as arthritis, rheumatism, and neuritis are concerned, it is not a new medicine.

PAR. 5. The use by respondent of said false advertisements with respect to Terits has had the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that the representations and statements contained therein were true, and into the purchase of substantial quantities of Terits by reason of said erroneous and mistaken belief.

PAR. 6. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

(Exhibit 1)

HAD ENOUGH ARTHRITIS PAIN

Now of great interest to many sufferers is in a compound by a Canadian firm, now being distributed here for the agonizing pains of Arthritis, Rheumatism, Neuritis. Many can now get fast-acting relief by taking a product called TERITS. It is a small tablet, inexpensive and easy to take. Lick your Arthritis and Rheumatism pains today. Your druggist has TERITS, or can get them for you. Double your money back if they fail to help you. Get TERITS now. For sale by (name of local store) and druggists everywhere.

(Exhibit 2)

HAD ENOUGH ARTHRITIS PAINS?

Considerable interest is being shown thru-out Canada in a compound called TERITS now being distributed here, that brings fast-acting relief from the agonizing pains of Arthritis, Rheumatism, Neuritis. TERITS is a small tablet,

inexpensive—easy to take. Your druggist has TERITS or can get them for you. Double your money back if they fail to help you. Get them today. For sale by (name of local store) and druggists everywhere.

(Exhibit 3)

HAD ENOUGH ARTHRITIS PAINS?

A noted New York physician has created a new formula that brings fast-acting relief from agonizing pains of Arthritis, Rheumatism, Neuritis. Known as TERITS. It is a small tablet, inexpensive, easy to take, and a real blessing to sufferers. Your druggist has them, or can get them for you. Be sure to ask for the new TERITS. Money back if they fail. Try them today. For sale by (name of local store) and druggists everywhere.

(Exhibit 4)

CANADIAN LICKS ARTHRITIS PAINS

Considerable interest is being shown throughout Canada in a compound now being distributed here which is bringing fast-acting relief from the agonizing pains of Arthritis, Rheumatism, Neuritis, which often cripple so many sufferers. Many can now get fast-acting relief by taking the product called TERITS. It is a small tablet, inexpensive and easy to take. Lick your Arthritis or Rheumatic pains today. Your druggist has TERITS, or can get them for you. Double your money back if they fail to help you. Get TERITS now. For sale by (name of local store) and druggists everywhere.

(Exhibit 5)

FAST RELIEF FOR ARTHRITIS PAINS

Considerable interest is being shown throughout Canada in a compound now being distributed here which is bringing fast-acting relief from the agonizing pains of Arthritis, Rheumatism, Neuritis, which often cripple so many sufferers. Many can now get fast-acting relief by taking the product called TERITS. It is a small tablet, inexpensive and easy to take. Relieve your Arthritis and Rheumatic pains today. Your druggist has TERITS or can get them for you. Double your money back if they fail to help you. Get TERITS now. For sale by (name of local store) and druggists everywhere.

(Exhibit 6)

NEWS FOR ARTHRITIS SUFFERERS

Now of great interest to many sufferers is in a compound by a Canadian firm, now being distributed here, for the agonizing pains of Arthritis, Rheumatism, Neuritis. Many can now get fast-acting relief by taking a product called TERITS. It's a small tablet, inexpensive and easy to take. Your druggist has Terits or can get them for you. Lick your Arthritis and Rheumatism pains today. Double your money back if they fail to help you. For sale by (name of local store) and druggists everywhere. Get TERITS today.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on October 11, 1949, issued and subquently served its complaint in this proceeding upon respondent Frederick Godfrey, an individual trading as Canam Sales Agency, charging said respondent with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the filing of answer to such complaint, a stipulation as to the facts was entered into between Daniel J. Murphy, Chief of Trial Division, of the Federal Trade Commission, and the respondent, subject to the approval of the Commission, whereby it was stipulated that the statement of facts set out in such stipulation might be taken as the facts in this proceeding and in lieu of evidence in support of the charges stated in the complaint or in opposition thereto, and that the Commission might proceed upon said statement of facts to make its report stating its findings as to the facts (including inferences which might be drawn from said stipulated facts) and its conclusion based thereon, and enter its order disposing of this proceeding without other intervening procedure. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, and stipulation, said stipulation having been approved and accepted and filed by the Commission; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Frederick Godfrey is an individual trading and doing business under the name "Canam Sales Agency," and having an office and principal place of business at Rockport, Mass.

PAR. 2. Respondent is now, and has been for more than one year last past, engaged in the business of selling and distributing a certain drug product, as "drug" is defined in the Federal Trade Commission Act.

Respondent's product is designated as "Terits" and under the formula followed prior to July 1, 1948, each tablet contained 5 grains potassium bicarbonate and 5 grains sodium salicylate. At such time, the directions for use were as follows:

For adults only. Take two tablets after each meal with glass of water. Repeat dosage in 3 or 4 hours if necessary.

Since July 1, 1948, the designation has remained the same. The formula and directions for use have been as follows:

Each tablet contains 3 grains salysal, 3 grains strontium salicylate and 3 grains of aspirin.

Take two or three tablets with a glass of water. May be repeated in two or three hours.

Respondent causes the said product, when sold, to be transported from his place of business in the State of Massachusetts to purchasers thereof located in other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product in commerce between and among the various States of the United States and in the District of Columbia. Respondent's volume of business in such commerce is substantial.

PAR. 3. In the course and conduct of his business the respondent, subsequent to March 21, 1938, has disseminated and caused the dissemination of certain advertisements concerning Terits by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which were likely to induce, directly or indirectly, its purchase.

Among the said advertisements have been those inserted by respondent during the years 1947 and 1948 in various newspapers published in larger cities located in the States of Indiana, Colorado, and Ohio, among others, which advertisements are as follows:

HAD ENOUGH ARTHRITIS PAIN

Now of great interest to many sufferers is in a compound by a Canadian firm, now being distributed here for the agonizing pains of Arthritis, Rheumatism, Neuritis. Many can now get fast-acting relief by taking a product called TERITS. It is a small tablet, inexpensive and easy to take. Lick your Arthritis and Rheumatism pains today. Your druggist has TERITS, or can get them for you. Double your money back if they fail to help you. Get TERITS now. For sale by (name of local store) and druggists everywhere.

HAD ENOUGH ARTHRITIS PAINS?

Considerable interest is being shown thru-out Canada in a compound called TERITS now being distributed here, that brings fast-acting relief from the agonizing pains of Arthritis, Rheumatism, Neuritis.

TERITS is a small tablet, inexpensive—easy to take. Your druggist has TERITS or can get them for you. Double your money back if they fail to help you. Get them today. For sale by (name of local store) and druggists everywhere.

HAD ENOUGH ARTHRITIS PAINS?

A noted New York physician has created a new formula that brings fast-acting relief from agonizing pains of Arthritis, Rheumatism, Neuritis, Known as Terits. It is a small tablet, inexpensive, easy to take, and a real blessing to sufferers. Your druggist has them, or can get them for you. Be sure to ask for the new TERITS. Money back if they fail. Try them today. For sale by (name of local store) and druggists everywhere.

CANADIAN LICKS ARTHRITIS PAINS

Considerable interest is being shown throughout Canada in a compound now being distributed here which is bringing fast-acting relief from the agonizing pains of Arthritis, Rheumatism, Neuritis, which often cripple so many sufferers. Many can now get fast-acting relief by taking the product called TERITS. It is a small tablet, inexpensive and easy to take. Lick your Arthritis or Rheumatic pains today. Your druggist has TERITS, or can get them for you. Double your money back if they fail to help you. Get TERITS now. For sale by (name of local store) and druggists everywhere.

FAST RELIEF FOR ARTHRITIS PAINS

Considerable interest is being shown throughout Canada in a compound now being distributed here which is bringing fast-acting relief from the agonizing pains of Arthritis, Rheumatism, Neuritis, which often cripple so many sufferers. Many can now get fast-acting relief by taking the product called TERITS. It is a small tablet, inexpensive and easy to take. Relieve your Arthritis and Rheumatic pains today. Your druggist has TERITS or can get them for you. Double your money back if they fail to help you. Get TERITS now. For sale by (name of local store) and druggists everywhere.

NEWS FOR ARTHRITIS SUFFERERS

Now of great interest to many sufferers is in a compound by a Canadian firm, now being distributed here, for the agonizing pains of Arthritis, Rheumatism, Neuritis. Many can now get fast-acting relief by taking a product called TERITS. It's a small tablet, inexpensive and easy to take. Your druggist has TERITS or can get them for you. Lick your Arthritis and Rheumatism pains today. Double your money back if they fail to help you. For sale by (name of local store) and druggists everywhere. Get TERITS today.

Respondent has also disseminated and caused the dissemination of the advertisements referred to above for the purpose of inducing, and the said advertisements were likely to induce, directly or indirectly, the purchase of Terits in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Through use of the foregoing advertisements, respondent has represented directly and by implication that Terits is an adequate, effective, and competent treatment and cure for all kinds of rheumatism, arthritis, and neuritis, and that it will arrest the progress of

and correct the underlying causes thereof, that it will be effective in affording complete and permanent relief from and will cure the aches and pains of all kinds of arthritis, rheumatism, and neuritis, that such product is beneficial in the treatment of the aforesaid diseases and the symptoms thereof above and beyond furnishing a temporary and partial relief from minor aches and pains, and fever associated therewith, and that Terits is a new medicine.

PAR. 5. The said advertisements by reason of the foregoing representations are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, under either formula however taken, Terits is not an adequate, effective or competent treatment or cure for any kind of rheumatism, arthritis, or neuritis. Respondent's said preparation will not arrest the progress of or correct the underlying causes of any kind of rheumatism, arthritis, or neuritis, or correct the underlying causes of such aches and pains as are incident to any kind of rheumatism, arthritis, or neuritis.

Respondent's preparation will not afford complete or permanent relief from nor will it cure the aches and pains incident to the various kinds of rheumatism, arthritis, and neuritis. These aches and pains may be of such a nature that they will be in no way alleviated by the use of Terits under either formula however taken, and in other cases the relief afforded will be limited to such degree of temporary and partial analgesic and antipyretic effect as the salicylate content of Terits may afford in individual cases. In any event, the value of Terits under either formula or directions when used for the ailments mentioned herein is limited to temporary and partial relief of minor aches and pains, and fever associated therewith. The ingredients of Terits under either formula are not new and insofar as arthritis, rheumatism, and neuritis are concerned it is not a new medicine.

PAR. 6. The use by respondent of said false advertisements has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public with respect to respondent's product and the tendency and capacity to cause such portion of the public to purchase substantial quantities of Terits as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding came on to be heard by the Federal Trade Commission upon the complaint of the Commission, the answer to the respondent, and a stipulation as to the facts, in which stipulation respondent waived all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that the said respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent Frederick Godfrey, individually and trading under the name of Canam Sales Agency, or any other name, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of the preparation designated "Terits," or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from:

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

(*a*) That said preparation is a competent or effective treatment or cure for rheumatism, arthritis, or neuritis or that it will have any therapeutic value in the treatment of rheumatism, arthritis, or neuritis, or in treating or relieving any of the symptoms thereof, in excess of affording temporary and partial relief of minor aches and pains, and fever associated therewith.

(*b*) That said preparation is a new medicine.

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

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

In the Matter of

STERLING DRUG, INC.

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

Docket 5441. Complaint, June 4, 1946—Decision, Sept. 25, 1950

Where a corporation engaged in the manufacture and competitive interstate sale and distribution of its "Bayer Tablets of Aspirin," "Bayer Aspirin Tablets," "Bayer Aspirin," "Phillips Milk of Magnesia Cleansing Cream" and "Phillips Milk of Magnesia Skin Cream"; in weekly broadcasts, during the period from the spring of 1936 until April or May of 1944 over a Nationwide hookup of a certain radio musical program known as the "American Melody Hour," which promoted and advertised the sale of its Bayer Aspirin—

(*a*) Falsely represented to the radio listening public through opening announcements, that the druggists of America sponsored and presented said program, and through such representations in said connection as "presented" or "brought to you" by or with "the compliments or best wishes of the druggists of America" imported that said druggists were recommending such products; with the potentiality, necessarily, of injuring manufacturers and sellers of competitive products and of deceiving the public; and

(*b*) Falsely represented that the retail price of its said product had only recently been reduced through such statements as "Get it at any drugstore * * * now for only 15 cents for 12 tablets" or "only 15 cents now, for 12 tablets"; the facts being that while said representation was true, when first made in 1934, it was deceptive as continued for 9 years thereafter; and

Where said corporation, in advertising its said creams in newspapers and periodicals and by radio, directly or by implication—

(*c*) Represented that the use of its said cleansing and skin creams would keep the skin free of enlarged pores and prevent enlarged pore openings; the facts being that said creams would have no value in the reduction in size of pore openings except to the extent that use thereof would facilitate the removal of blackheads from the follicles and thus apparently reduce the size of the latter; and they would not under any circumstances "keep the skin free of enlarged pores" or "prevent enlarged pore openings";

(*d*) Represented falsely that said skin creams would control oiliness of the skin or oily shine or dull shine; the facts being that while application thereof followed by vigorous rubbing would temporarily remove the accumulated oil from the skin, persistent use thereof would result in over activity of the sebaceous glands and increased oiliness; and

(*e*) Represented falsely that its said creams would keep the skin free of dry, scaly roughness; the facts being that any possible improvement would be only temporary, the duration thereof depending largely upon the degree of prespiration to which the skin was subjected after application thereof; said condition, when resulting from pathological causes would not be appreciably affected; and in no case would they "keep the skin free of dry, scaly roughness";

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true and therby induce the purchase of its said products; and with tendency and capacity by reason thereof to unfairly direct substantial trade in commerce to it from its competitors:

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

As respects charges in the complaint that respondent had falsely represented that its agreements would (*a*) help neutralize any excess fatty acid accumulations in the pore external openings of the skin, (*b*) help to retain moisture in the skin, (*c*) help to ease out blackheads, and (*d*) seems to smooth out tiny lines of the skin: the Commission was of the opinion, and found, that the allegations of the complaint with respect to the falsity of said representations had not been sustained by the greater weight of the evidence.

Before *Mr. Webster Ballinger*, trial examiner.

Mr. Edward L. Smith for the Commission.

Rogers, Hoge & Hills, of New York City, for respondent.

Complaint

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

Paragraph 1. The respondent, Sterling Drug, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 170 Varick Street, in the city of New York, State of New York.

Par. 2. Respondent is now, and for more than 3 years last past has been, engaged in the sale and distribution of various products, among such products being "Bayer-Tablets of Aspirin," "Bayer Aspirin Tablets," and "Bayer Aspirin," and cosmetic preparations designated by it as "Phillips' Milk of Magnesia Cleansing Cream" and "Phillips' Milk of Magnesia Skin Cream," in commerce between and among the various States of the United States and in the District of Columbia. It now causes, and for more than 3 years last past has caused, such products when sold by it to be shipped to the purchasers

thereof located in various States of the United States other than those in which such shipments originate and in the District of Columbia, and there is now, and for more than 3 years last past has been, a constant current of trade and commerce in such products between and among the various States of the United States and in the District of Columbia.

PAR. 3. The respondent is now, and for more than 3 years last past has been, one of the largest manufacturers of tablets of aspirin, aspirin tablets, and aspirin and of cleansing creams and skin creams in the United States, and is now, and for more than 3 years last past has been, in substantial competition with other corporations and with persons, firms, and partnerships engaged in the sale of tablets of aspirin, aspirin tablets, and aspirin and cleansing creams and skin creams in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business described in paragraph 1 hereof, and for the purposes of aiding and promoting the sale by it in the commerce aforesaid of its said "Bayer-Tablets of Aspirin," "Bayer Aspirin Tablets," and "Bayer Aspirin," respondent has represented, in magazines of Nation-wide circulation, in newspapers of interstate circulation, by local radio broadcasts and by Nation-wide hook-ups of broadcasts, and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act.

(*a*) that the druggists of America sponsor and present a radio program promoting and advancing the sale of "Bayer-Tablets of Aspirin," "Bayer Aspirin Tablets," and "Bayer Aspirin," and

(*b*) that the retail price of "Bayer-Tablets of Aspirin," "Bayer Aspirin Tablets," and "Bayer Aspirin" has only recently been reduced to 15¢ for a dozen tablets.

PAR. 5. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact, the druggist of America did not present or sponsor, and have never presented or sponsored, any radio program aiding or promoting the sale of such products; and in truth and in fact, the retail price of said products at the time of such advertisements had not been only recently reduced to 15 cents per dozen tablets, but such products for a number of years prior to the use of such representation had been continuously and regularly sold at the retail price of 15 cents per dozen tablets.

PAR. 6. The aforesaid representations made by the respondent have had, and still have, the tendency and capacity to mislead and deceive the purchasing public into the erroneous belief that such representa-

tions were true and had the capacity and tendency to induce the purchasing public to purchase such products in such erroneous beliefs. Thereby, substantial injury has been done and is being done by respondent to substantial competition in interstate commerce.

PAR. 7. In the course and conduct of its aforesaid business, the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning its said products, Phillips' Milk of Magnesia Cleansing Cream and Phillips' Milk of Magnesia Skin Cream, by the United States mails, and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent has disseminated and is now disseminating, and has caused, and is now causing the dissemination of, false advertisements concerning its said products by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading, and deceptive statements and representations, contained in said false advertisements disseminated and caused to be disseminated by the United States mails, by insertion in newspapers and periodicals, by radio continuities and also in circulars, leaflets and other advertising, are the following:

(*a*) In respect to Phillips' Milk of Magnesia Face Creams:

Ladies, if the natural radiance of your skin is marred by enlarged pores, oily shine and dry scaly roughness, get Phillips' Milk of Magnesia Cleansing Cream and Phillips' Milk of Magnesia Skin Cream. See how they soften and smooth your skin * * * and help neutralize any excess fatty acid accumulations in the pore openings. Try Phillips' Milk of Magnesia Face Creams today.

(*b*) In respect to Phillips' Milk of Magnesia Skin Cream:

It contains special beneficial ingredients which do special constructive work for your skin—(1) softening and neutralizing any acid accumulations often found in the external pore openings; (2) help to retain moisture in the skin and thus help to keep it soft, supple, free from dryness.

What are these ingredients? First something no other cream contains—genuine Phillips' Milk of Magnesia. And there is cholesterol to hold moisture in the skin. And there are finest oils to soften and supple.

A cream to Use At Night. Let these beneficial beautifying ingredients work at night—to soften, to neutralize any acid accumulations in the outer pore openings, to supply moisture and oils.

* * * More than a luxurious cosmetic. * * * What a cream does for your skin depends upon what's in it. * * * It skillfully combines the cosmetic and pharmaceutical arts by offering special ingredients. * * * Work special benefits on the skin—control oiliness, dull shine—help to ease out black-

heads and prevent large pore openings—supply needed moisture and oils to dry flaky skin.

Many a woman and girl may be missing many really thrilling moments of life because oily shine, enlarged pores or scaly roughness are robbing her skin of its natural beauty. * * * You may easily make your skin lovelier to look at. * * * The only beauty creams made from genuine Phillips' Milk of Magnesia.

* * * A skin free of enlarged pores, oily shine, dry scaly roughness * * *. Well, you can achieve thrilling results right in your home using the remarkable care. * * * A care that employs two unique creams * * *.

If your skin shows wayward tendencies at times, don't fret. Even the loveliest, the freshest, may stray—roughen a bit with wind and weather—give way to minor blemishes. * * * Curb such waywardness by special daily care. * * *

For it removes oiliness, softens scaly roughness and even seems to smooth out those tiny lines that so often spoil the appearance of the skin.

PAR. 8. Through the use of the aforesaid statements and representations, and others of the same import but not specifically set out herein, respondent represents, directly and by implication, that the milk of magnesia in its said cream acts to neutralize acid accumulations in pore openings, that such accumulation is an unnatural condition and the neutralization thereof is of special benefit to the skin; that the use of said creams helps to prevent enlarged pores and reduces their size once they have developed, prevents oily skin and dry, scaly roughness of the skin. Respondent further represents that the use of its Skin Cream helps to ease out blackheads, prevents and corrects minor skin blemishes and smooths out tiny lines in the skin.

PAR. 9. The aforesaid statements and representations are exaggerated, false, and misleading. In truth and in fact the skin, including the pore openings, normally has an acid reaction and the neutralization of this acid condition will not benefit the skin or make it more attractive. The use of these preparations will not prevent enlarged pores or reduce the size of enlarged pores. While the application and removal of said preparations will remove excessive oil from the skin, their use will have no effect upon the conditions which cause an excessive accumulation of oil on the skin and no influence upon the tendency of certain skins to be oily and shiny. They will, therefore, not control or prevent oily shine or oiliness of the skin except in the sense that they will remove excessive oil from the skin and the skin will be free of excessive oil temporarily. There are many conditions which cause a dry, scaly skin, some of them being of a systemic nature. The use of respondent's creams will smooth or otherwise benefit rough, scaly skin only when caused by excessive