

composition or possessing substantially similar properties, whether sold under that name or any other name, by the United States mails or by any other means in commerce as "commerce" is defined in the Federal Trade Commission Act, or disseminate or cause to be disseminated any such advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said product in commerce, which represents directly or by implication:

(a) by the use of the word "alkalize" or otherwise, that the product has any effect of reducing "acidity" except that of the contents of the stomach;

(b) that it will relieve fatigue caused by lack of sleep; or which fails to reveal that the taker shall "Follow the label—avoid excessive use"; and

It further appearing that under the terms of said stipulation and agreement the Commission's approval thereof does not in any way prejudice the right of the Commission to resume formal proceedings against the respondent if at any time in the future such action may be deemed warranted; and

The Commission being of the opinion that in the circumstances the public interest will be best served by the settlement of this proceeding through the approval of the proposed stipulation and agreement:

It is ordered, That the proposed stipulation and agreement executed by the respondent on July 6, 1950, be, and the same hereby is, approved and accepted.

It is further ordered, That the amended complaint herein be, and the same hereby is, dismissed, without prejudice, however, to the right of the Commission to institute a new proceeding against the respondent or to take such further or other action in the future as may be warranted by the then existing circumstances.

Commissioner Ayres dissenting.

DISSENTING OPINION BY COMMISSIONER AYRES

I cannot agree with the manner in which the Commission has disposed of this proceeding. The reasons for my disagreement are of such nature that it seems appropriate to state them on the record. This I do with reluctance and with full deference to the views and convictions of my colleagues.

In January 1943 the Commission issued its amended complaint charging respondent with false and misleading advertising in connection with its medicinal preparation "Bromo Seltzer." The charge of principal importance is based upon the allegation that the improper use of Bromo Seltzer may be dangerous. The amended complaint alleges, among other things:

“Its continued use in a quantity exceeding the recommended dose, or with a greater frequency than the recommended frequency, may cause dependence upon the drug, skin eruptions, mental derangement and collapse, and its administration to children may be dangerous and injurious to their health.”

The product is offered for the relief of headaches and other pains, and the amended complaint alleges:

“The palliative effect of respondent’s product does not extend over a period exceeding four hours for each prescribed dose. Because of these facts, the usual and customary condition in cases of persistent headache or other pain is and will be that there will exist a tendency for the sufferer to take more frequent and larger doses than prescribed. Such increased use will in itself tend to cause headache, creating a tendency to take additional and more frequent doses. Respondent’s advertisements contain no caution or warning against use of its product in greater amount or greater frequency than as stated on the label.”

The complaint charged that through affirmative representations and through failure to reveal in advertising the dangers which may result from the improper use of the product, the respondent engaged in false and misleading advertising.

Before issuance of the amended complaint, the respondent rejected the opportunity to correct its advertising voluntarily by the stipulation procedure. Since then the matter has been contested long and vigorously. Hearings were held beginning September 20, 1943 and ending August 13, 1948. The transcript of testimony covers more than 4,000 pages and the record includes almost 200 documentary exhibits. On July 7, 1950 the Commission entered an order disposing of pending interlocutory motions. The case was then ready for presentation on the merits to the trial examiner for a recommended decision, and thereafter for presentation to the Commissioner on briefs and arguments for final decision on the merits.

At this stage a stipulation and agreement was submitted by the respondent and accepted by the Commission and on that basis the complaint was dismissed without prejudice. I cannot agree with the Commission’s action in thus disposing of the proceeding on a basis which does not give full effect to the record of evidence which is now available.

If the record fails to support the allegations of the complaint, no remedy is warranted by agreement or otherwise, and the complaint should be dismissed. If, on the other hand, those allegations are supported, the remedy should be squarely in accord with the needs of the public interest as disclosed by the evidence and should be binding and enforceable. The provisions of the stipulation involved here, however, have not been weighed against the evidence in the record to deter-

mine whether or not they represent the full extent of the remedy needed.

Although we have proceeded in this matter over a period of years and at great cost, the Commission has not determined the issues on the basis of the evidence which has been developed. On the contrary, it has accepted a stipulation and agreement which is not enforceable, and the violation of which would subject the respondent to nothing more than the possibility that this proceeding may be resumed or that a new proceeding may be instituted. Even so, however, I seriously doubt that strict compliance with the stipulation would materially affect the advertising which was challenged in the complaint or would afford any substantial protection to the consuming public. Such a settlement represents, in my opinion, an unwise substitute for orderly adjudication.

In its published statement the Commission has announced that it is not its policy "to grant the privilege of settling cases through trade practice conference or stipulation agreements to persons who have violated the law where such violations involve * * * false advertisement of foods, drugs, devices or cosmetics which are inherently dangerous or where injury is probable; * * *." The complaint alleges that the usual and customary condition in cases of persistent headache or other pain is and will be that there will exist a tendency for the sufferer to take more frequent or larger doses than prescribed, and that when the product is taken more frequently than recommended, serious injury may result. There has been no determination by the Commission that the record fails to support these allegations. On the basis of these allegations it appears that the product involved here is a drug which is dangerous and the use of which may result in injury. It is not the policy of the Commission to settle a case by stipulation when it involves the false advertising of such a product.

On its face the remedy here is, in my opinion, also contrary to the published policy of the Commission. The effect of the stipulation is that respondent will not be required to disclose the dangers which may be inherent in its product provided its advertising contains the statement: "Follow the label—avoid excessive use." The Commission's statement of policy provides:

"In the case of advertisements of food, drugs, cosmetics or devices which are false because of failure to reveal facts material with respect to the consequences which may result from the use of the commodity, it is the policy of the Commission to proceed only when the resulting dangers may be serious or the public health may be impaired, and in such cases to require that appropriate disclosure of the facts be made in the advertising."

In this case the Commission has charged that the respondent's advertising is false because of failure to reveal facts material with

respect to the consequences which may result from use of the commodity. If that charge is not justified there should be no requirement for disclosure in advertising concerning the dangers of the product. If, however, the charge is justified, disclosure is needed and it is the policy of the Commission to require "that appropriate disclosure of the facts be made in the advertising." The cautionary statement provided for in the stipulation fails to disclose any facts, and, in my opinion, is in direct contravention of the Commission's policy statement on this subject.

It is further my opinion that any voluntary settlement of proceedings before the Commission should be consistent with previous action in similar cases. I shall make no effort here to review all instances in which the Commission has previously considered cases involving similar products. For present purposes it is sufficient to refer to the Commission's action in 1946 in Docket 4851, B. C. Remedy Co. [43 F. T. C. 673], and Docket 4855, Stanback Co., Ltd. [43 F. T. C. 678]. Those proceedings were against products similar in their essential respects to the product involved here and the theory of the proceedings was substantially the same. After evidence in support of the complaints had been presented in those matters, the respondents waived presentation of evidence in defense and offered to settle the matters without further litigation. Their offers and the resulting settlements were, however, in sharp contrast with the settlement which has been accepted in this matter.

In those cases the respondents eliminated acetanilid and bromide, both of which are involved in the present proceeding, from the formulae of their respective products, and expressed a firm intention not to use either of those ingredients in their products again. They agreed that if they should ever use acetanilid or bromide in their products in the future the Commission "shall have the right, without further proceedings and upon the evidence now in the record in this proceeding, to make such findings as to the facts, conclusions drawn therefrom, and to issue such cease and desist order as it may deem wise and proper; and from which respondents agree that no appeal will be taken." On that basis the Commission suspended further action in those cases and closed them without prejudice.

The disposition of those cases evidently recognizes the substance in those and in the present case of the Commission's charges and that there is evidence to support them. Those cases, in my opinion, commit this Commission to obtain a remedy in the present case as full and effective as can be supported by the record. What that may be can be satisfactorily determined only by presentation of the case to the Commission in regular course for final decision on the record.

It is not sufficient to say that the respondents in the earlier cases can be put in status quo by being relieved of the conditions of the

settlements in those cases. They made fundamental changes in their products by removing the dangerous ingredients, and have since built their advertising and good will on the new products. These were major changes, doubtless at great cost, for which the Commission was responsible. They were changes, however, which, in the light of the present action, were unnecessary. If the record here supported the action which has been taken, no one could reasonably be heard to complain. It seems most unfortunate, however, for the Commission voluntarily to take such action, with its probable effect upon the broad competitive situation, without testing it by full and judicial appraisal of the record in this proceeding.

I am anxious that needless delays in bringing proceedings to a conclusion should be avoided. My objection here is not to the fact of settlement, but is based upon my opinion that the settlement which has been made in this case is contrary to Commission policy, that at best it will have no binding effect and cannot be enforced in the event of violation, and that it is clearly inconsistent with previous action by the Commission in similar matters.

Before *Mr. Arthur F. Thomas, Mr. Clarence T. Sadler, Mr. John L. Hornor and Mr. Earl J. Kolb*, trial examiners.

Mr. Robt. N. McMillen, Mr. J. V. Buffington and Mr. Randolph W. Branch for the Commission.

Cook, Ruzicka, Veazey & Gans, of Baltimore, Md., and *Davies, Richberg, Beebe, Busick & Richardson*, of Washington, D. C., for respondent.

CAPUDINE CHEMICAL Co. Complaint, January 30, 1943.¹ Order, September 21, 1950. (Docket 4852.)

Charge: Advertising falsely or misleadingly as to qualities, properties, or results and comparative merits and neglecting, unfairly or deceptively, to make material disclosure as to safety of product; in connection with the manufacture and sale of a medicinal preparation known and designated as "Hick's Liquid Capudine."

AMENDED COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the Capudine Chemical Company, 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 amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Capudine Chemical Company, is a corporation organized and existing under and by virtue of the laws of

¹ Amended.

the State of North Carolina, with its principal place of business at Raleigh, in said State.

PAR. 2. Respondent now and for some time last past has been engaged in the manufacture, sale and distribution of a medicinal preparation known and designated as "Hick's Liquid Capudine." Respondent causes said preparation, when sold, to be shipped from its said place of business to the purchasers thereof located in various States other than the State of North Carolina and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said medicinal preparation, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, respondent has disseminated and is now disseminating and has caused and is now causing the dissemination of false advertisements concerning its said product by use of the United States mails and by various 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 product by various means for the purpose of inducing, and which are likely to induce directly or indirectly, the purchase of said product 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 hereinafter set forth, by the United States mails, by advertisements inserted in newspapers and periodicals, by radio continuities and by pamphlets, circulars and other advertising literature, are the following:

Soothes the nerves. Relieves that tense jittery feeling. Brings relaxation. Imparts a feeling of comfort and well-being. Capudine acts fast because it's liquid. There is nothing to dissolve, so no delay. Reliable because it has been used over forty years.

Capudine soothes tense nerves, relieves pain and brings restful relaxation.

"Morning after" headache—no need to go through the day with a "hangover headache" * * *. Just take liquid Capudine and note how quickly head clears, pep returns and nerves are calmed and steadied.

If travel causes headache, don't let it ruin your trip. Capudine usually gives quick relief. Better still, you may avoid misery by taking Capudine before boarding that train, bus, boat or plane.

PAR. 4. Through the use of the statements hereinabove set forth, and others similar thereto not specifically set forth herein, all of which purport to be descriptive of the therapeutic value and properties of respondent's said preparation, respondent represents that the use of its preparation "Capudine" relieves tense, jittery nerves and brings rest-

ful relaxation and a feeling of comfort and well-being; that because it is in liquid form it acts more quickly than similar remedies in other forms; that it will relieve the after effects of over-indulgence in food and alcoholic liquors by clearing the head, calming and steadying the nerves and restoring energy; that if taken before travel begins it will ward off so-called travel headache and will relieve headache caused by travel.

PAR. 5. The aforesaid representations and advertisements used and disseminated by respondent are grossly exaggerated, false and misleading. In truth and in fact, the use of respondent's said preparation will not effectively relieve tense, jittery nerves nor will it bring restful relaxation. It will not give materially quicker relief, because of its liquid form, than similar remedies in other forms. It will not relieve the after effects of over-indulgence in food or alcoholic liquors in excess of providing temporary relief from the usual accompanying headache. The administration of said preparation before travel cannot be depended upon to ward off so-called travel headache nor relieve headache caused by travel.

PAR. 6. Respondents' advertisements, disseminated as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations and material with respect to consequences which may result from the use of the preparation to which the advertisements relate, under the conditions prescribed in said advertisements and under such conditions as are customary and usual.

The ingredients of respondent's preparation and the amount of the principal ingredients contained in a recommended dose of said preparation are as follows:

Antipyrene	3 grains
Potassium bromide.....	7½ grains
Sodium salicylate, caffen, sodium, bicarbonate, ammonia, ammonium carbonate	

The dosage of said preparation and the frequency of its administration, as recommended on the label of the container, are 2 teaspoonfuls, which may be repeated in 3 or 4 hours, not more than two doses to be taken in 24 hours. Its continued use in a quantity exceeding the recommended dose, or with a greater frequency than that recommended, may cause skin eruption, mental derangement and serious blood disturbances, and its administration to children may be dangerous and injurious to health.

The respondent represents that its product will relieve headache and other pains. In many cases the headache or other pain will persist for an extended period of time and tend to recur after the palliative effect of an analgesic may have worn off. The palliative effect of respondent's product does not extend over a period exceeding four

hours for each prescribed dose. Because of these facts, the usual and customary condition in cases of persistent headache or other pain is and will be that there will exist a tendency for the sufferer to take more frequent and larger doses than prescribed. Such increased use will in itself tend to cause headache, creating a tendency to take additional and more frequent doses. Respondent's advertisements contain no caution or warning against use of its product in greater amount or with greater frequency than as stated on the label.

PAR. 7. The use by respondent of the foregoing false, deceptive, and misleading advertisements, statements and representations has had, and now has, the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said advertisements, statements and representations are true and that said preparation is safe and harmless for use under the conditions prescribed in respondent's advertisements, and under such conditions as are customary and usual, and to induce a substantial portion of the public, because of such erroneous and mistaken belief, to purchase respondent's said medicinal preparation.

PAR. 8. The 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.

Complaint dismissed without prejudice, by the following order:

It appearing to the Commission that the respondent, Capudine Chemical Co., has executed and tendered to the Commission an offer of settlement in this proceeding in the form of a proposed stipulation and agreement; and

It further appearing that under the terms of said stipulation and agreement the respondent agrees, among other things, not to disseminate or cause to be disseminated any advertisement concerning its product "Hick's Liquid Capudine" or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under that name or any other name, by the United States mails or by any other means in commerce as "commerce" is defined in the Federal Trade Commission Act, or disseminate or cause to be disseminated any such advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said product in commerce, which represents directly or by implication:

(1) that "Capudine" will give quicker relief because of its liquid form than other medicines for relief of headache pain or nervousness in nonliquid form;

(2) that "Capudine" will restore "pep" or brisk energy to one suffering from the after-effects of alcohol; or

(3) which fails to reveal that the taker shall "Follow the label—avoid excessive use"; and

It further appearing that under the terms of said stipulation and agreement the Commission's approval thereof does not in any way prejudice the right of the Commission to resume formal proceedings against the respondent if at any time in the future such action may be deemed warranted; and

The Commission being of the opinion that in the circumstances the public interest will be best served by the settlement of this proceeding through the approval of the proposed stipulation and agreement:

It is ordered, That the proposed stipulation and agreement executed by the respondent on July 8, 1950, be, and the same hereby is, approved and accepted.

It is further ordered, That the amended complaint herein be, and the same hereby is, dismissed, without prejudice, however, to the right of the Commission to institute a new proceeding against the respondent or to take such further or other action in the future as may be warranted by the then existing circumstances.

Commissioner Ayres dissenting for the reasons stated in his opinion in Docket 4854, Emerson Drug Company.¹

Before *Mr. Webster Ballinger*, *Mr. Andrew B. Duvall*, and *Mr. John P. Bramhall*, trial examiners.

Mr. Robt. N. McMillen, *Mr. J. V. Buffington*, and *Mr. Randolph W. Branch*, for the Commission.

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

MILES LABORATORIES, INC. Complaint, July 6, 1943. Order, September 21, 1950. (Docket 4993.)

Charge: Advertising falsely or misleadingly as to scientific or relevant facts and qualities, properties or results and neglecting, unfairly or deceptively, to make material disclosure as to safety of product; in connection with the sale of various medicinal preparations, one known and designated as "Dr. Miles Liquid Nervine," another as "Dr. Miles Nervine Tablets" and the third as "Dr. Miles Anti-Pain Pills."

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 Miles Laboratories, 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:

¹ See ante, p. 1476 at 1480.

PARAGRAPH 1. Respondent, Miles Laboratories, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Indiana, with its principal place of business at Elkhart, in said State.

PAR. 2. Respondent is now, and for many years last past has been, engaged in the sale and distribution of various medicinal preparations, one known and designated as "Dr. Miles Liquid Nervine," another as "Dr. Miles Nervine Tablets," and the third as "Dr. Miles Anti-Pain Pills." The first two of said preparations are sometimes designated as "Dr. Miles Nervine" without distinction between the liquid and tablet forms. Respondent causes said preparations, when sold, to be shipped from its place of business in the State of Indiana 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 medicinal preparations in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements of and concerning its said preparations 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 its said preparations, 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 statements contained in the false, misleading, and deceptive advertisements disseminated and caused to be disseminated, as hereinabove set forth, by United States mails, by radio continuities, by advertisements inserted in newspapers and periodicals, by booklets and other advertising media, with respect to Dr. Miles Liquid Nervine and Dr. Miles Nervine Tablets, are the following:

Don't miss out on your share of good times. The next time overtaxed nerves make you Wakeful, Restless, Irritable, try the soothing effect of Dr. Miles Nervine.

Have you ever had a day when you felt tense, jumpy, irritable? A night when you were wakeful and restless? Overtaxed nerves are likely to cause loss of friends, loss of sleep, loss of pleasure, time missed from work, family quarrels, physical and mental suffering. The next time you feel nervous try the soothing effect of one or two Dr. Miles Effervescent Nervine Tablets. Try Dr. Miles Effervescent Nervine Tablets for Sleeplessness due to nervousness, Nervous Irritability, Nervous Headache, Excitability and Restlessness.

Overtaxed nerves lie to you. They fill your mind with imaginary disorders and woes. If (or when) you are nervous why not seek relief as thousands of others do, by taking Dr. Miles Effervescent Nervine Tablets. Dr. Miles Effervescent Nervine Tablets help to quiet jangled nerves, to permit refreshing sleep, to lessen nervous excitability and irritability. * * * Just one or two tablets at the first symptom of nervous tension may save you hours of discomfort.

Next time nerves threaten to give you a hectic day or a wakeful night, take Dr. Miles Liquid Nervine.

When tense nerves interfered with Jim's career, I resolved to do something about it. So, I went to a drug store and got a package of Dr. Miles Effervescent Nervine Tablets. * * * He's not cranky now and he's sleeping a lot better. * * * Now both of us use Dr. Miles Nervine Tablets when we need relief from Sleeplessness, Nervous Headache, Restlessness, Nervous Irritability and Excitability.

Thousands use Dr. Miles Nervine as a mild but effective sedative when tense nerves threaten their calm and peace of mind.

PAR. 4. Through the use of the above statements and others similar thereto, all of which purport to be descriptive of the therapeutic value and effects of respondent's preparations, and descriptive of the symptoms for which, and the conditions under which, said preparations may be used and are recommended by respondent, respondent represents that restlessness, sleeplessness, irritability, jumpiness, imaginary disorders and woes, excitability, and headaches are symptoms of nervousness and that the use of respondent's preparations "Dr. Miles Liquid Nervine" and "Dr. Miles Nervine Tablets" constitute an adequate, proper, and effective treatment for the relief of such symptoms.

PAR. 5. The aforesaid statements and representations contained in said advertisements, used and disseminated by respondent, are misleading and deceptive. In truth and in fact, nervousness is itself only a symptom or manifestation of some underlying condition and while the various symptoms enumerated in paragraph 4 hereof may be the result of nervousness, and may be relieved, in whole or in part, by the use of respondent's said preparations, such relief will be only temporary and the said symptoms will recur until the underlying conditions causing the nervousness and the various symptoms are removed or relieved. These underlying conditions cannot be removed or relieved by the use of respondent's said preparations.

PAR. 6. Respondent's advertisements of and concerning its Liquid Nervine and Nervine Tablets constitute false advertisements within the meaning of the Federal Trade Commission Act for the further reason that they fail to reveal facts material in the light of the representations therein contained and material with respect to the consequences which may result from the use of said preparations under the conditions prescribed in said advertisements and under such conditions as are customary and usual.

The active ingredients of respondent's Liquid Nervine and Nervine

Tablets and the amount of each contained in a dose (one teaspoonful or one tablet) are as follows:

Sodium bromide.....	4.5 grains
Potassium bromide.....	4.5 grains
Ammonium bromide.....	0.5 grain

The dosage and frequency of administration recommended on the label of the container are 1 teaspoonful, or 1 tablet, which may be repeated in 1 hour if necessary, not exceeding 3 teaspoonfuls, or 3 tablets, in 24 hours. The continued use of either of said preparations in a quantity exceeding the recommended dose, or with a frequency exceeding that recommended, may cause skin eruptions and mental derangement. Their administration to children may be injurious to health.

The underlying conditions causing nervousness are not relieved by the use of respondent's said preparations and any symptomatic or partial relief afforded through their use is of a temporary nature. As a consequence, the said symptoms may, and are likely to, recur day after day for an extended period of time. Because of these facts, the usual and customary condition, in cases of nervousness and in the presence of the various symptoms thereof, is that there will exist a tendency for the sufferer to take larger and more frequent doses of respondent's preparations than those prescribed and the tendency will exist to continue such use day after day over an extended period.

Respondent's said advertisements do not contain any warning against use of said preparations in greater amount or with greater frequency than that recommended. Further, the representations in said advertisements that said preparations are preventives of the symptoms for which they are recommended have and will have a tendency to cause persons who have been and are subject thereto to take more frequent doses and larger doses than recommended.

PAR. 7. Respondent's advertisements of and concerning its preparation Anti-Pain Pills constitute false advertisements within the meaning of the Federal Trade Commission Act for the reason that they fail to reveal facts material in the light of the representations therein contained and material with respect to the consequences which may result from the use of said preparation under the conditions prescribed in said advertisements, and under such conditions are customary and usual.

The active ingredients of said preparation and the amount of each contained in a dose are as follows:

Acetanilid.....	2 grains
Caffeine.....	.25 grain

The dosage and frequency of administration recommended on the label of the container are 1 tablet; if not relieved repeat after interval of 3 hours, not exceeding 2 tablets in any 24 hours. The continued

use of said preparation in a quantity exceeding the recommended dose, or with a frequency exceeding that recommended, may cause dependence upon the said active ingredients, or upon the preparation in which they are contained, and may cause blood disturbances and collapse. Its administration to children may be injurious to health.

Respondent represents in its advertisements that its Anti-Pain Pills will relieve headache and other pains. In many cases the headache or other pain will persist for an extended period of time and tend to recur after the palliative effect of the analgesic may have worn off. The palliative effect of said preparation does not extend over a period exceeding 4 hours for each prescribed dose. Because of these facts, the usual and customary condition in cases of persistent headache or other pain is and will be that there will exist a tendency for the sufferer to take more frequent and larger doses than prescribed. Such increased use will in itself tend to cause headache, creating a tendency to take additional and more frequent doses. Respondent's advertisements of and concerning said preparation do not contain any warning against frequency than that recommended.

PAR. 8. The use by the respondent of the foregoing false, deceptive, and misleading advertisements and representations has had, and now has, the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said advertisements and representations are true, and that said preparations are safe and harmless for administration to children and safe and harmless for use under the conditions prescribed in respondent's said advertisements and under such conditions as are customary and usual, and to induce a substantial portion of the public, because of such erroneous and mistaken belief, to purchase said medicinal preparations.

PAR. 9. The 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.

Complaint dismissed without prejudice by the following order:

It appearing to the Commission that the respondent, Miles Laboratories, Inc., has executed and tendered to the Commission an offer of settlement in this proceeding in the form of a proposed stipulation and agreement; and

It further appearing that under the terms of said stipulation and agreement the respondent agrees, among other things, not to disseminate or cause to be disseminated any advertisement concerning its products "Dr. Miles Liquid Nervine," "Dr. Miles Nervine Tablets," or "Dr. Miles Anti-Pain Pills," or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under those names or any other names, by the

United States mails or by any other means in commerce as "commerce" is defined in the Federal Trade Commission Act, or disseminate or cause to be disseminated any such advertisement by any means for the purpose of inducing or which is likely to induce the purchase of said products in commerce, which fails to reveal that the taker shall "Follow the label—avoid excessive use"; and

It further appearing that under the terms of said stipulation and agreement the Commission's approval thereof does not in any way prejudice the right of the Commission to resume formal proceedings against the respondent if at any time in the future such action may be deemed warranted; and

The Commission being of the opinion that in the circumstances the public interest will be best served by the settlement of this proceeding through the approval of the proposed stipulation and agreement:

It is ordered, That the proposed stipulation and agreement executed by the respondent on July 8, 1950, be, and the same hereby is, approved and accepted.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed, without prejudice, however, to the right of the Commission to institute a new proceeding against the respondent or to take such further or other action in the future as may be warranted by the then existing circumstances.

Commissioner Ayres dissenting for the reasons stated in his opinion in Docket 4854—Emerson Drug. Co.¹

Before *Mr. Webster Ballinger*, *Mr. Andrew B. Duwall* and *Mr. John P. Bramhall*, trial examiners.

Mr. Robt. N. McMillen, *Mr. J. V. Buffington*, and *Mr. Randolph W. Branch* for the Commission.

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

NATIONAL MINERAL CO. TRADING AS HELENE CURTIS INDUSTRIES. Complaint, June 20, 1944. Order, October 23, 1950. (Docket 5182.)

Charge: Advertising falsely or misleadingly as to comparative merits, qualities, properties, or results, test and safety of product and neglecting, unfairly or deceptively, to make material disclosure as to safety of product; in connection with the sale of certain products used in the process of giving "permanent waves", under the name of "Helene Curtis Cold Waves", including preparations designated as "Preliminary Lotion", "Waving Compound", "Neutralizing Compound", a brush called by it an "Applicator Brush" and "Helene Curtis Protecto Hand Cream".

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 National

¹ See ante, p. 1476 at 1480.

Mineral Co., a corporation, trading as Helene Curtis Industries, 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, National Mineral Company, is a corporation organized and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business at 2638 North Pulaski Road, Chicago, Illinois.

PAR. 2. The respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution of certain products used in the process of giving "permanent waves," under the name of "Helene Curtis Cold Waves," including preparations designated as "Preliminary Lotion," "Waving Compound," "Neutralizing Compound," a brush called by it an "Applicator Brush," and "Helene Curtis Protecto Hand Cream".

In the course and conduct of its business, respondent has caused and now causes said products, when sold, to be transported from its place of business in the State of Illinois to purchasers thereof located in various States of the United States and in the District of Columbia. Such purchasers consist largely of hair dressers, beauty parlor operators, and others who are engaged in the business of giving "permanent waves" to women. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products, in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said products by the United States mails and by various 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 its said products, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said products in commerce, as commerce is defined in the Federal Trade Commission Act. Said false advertisements have appeared and do appear in magazines and newspapers, letters, circulars, instruction brochures, and in advertising mats furnished by respondent to the purchasers of its products suitable for use by them in reproducing said advertisements under the names of said purchasers in magazines, newspapers, and circulars. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements are the following:

1. Helene Curtis Cold Wave—Simplicity—Safety—Satisfaction.
2. Absolutely Harmless.
3. You need not wear gloves.
No gloves needed.
4. Curls right down to the scalp—No protectors or spacers.
Gets right down to the scalp—No protectors or spacers used.
5. Always under control.
Always under perfect control by the operator.
6. A method which is simpler, faster, safer.
Simple to use.
Does not require special skill.
Simplest of all methods.
Simplest to learn.
Simplest to give.
Relaxing to operators.
A method so simple even a novice can produce waves.
7. Foolproof. Tried, tested, 100% perfect.
8. Almost like a shampoo.
9. Comfortable to patrons.
Pleasant and enjoyable.
Most comfortable wave ever given.
10. Actually improves the condition of the hair.
Conditions the hair while it waves.
Actually a hair conditioner while it waves.
Kind to ends—they soften, never split.
A delightfully, comfortable creation—cool, refreshing, gentle liquids—flow with loving care through your hair. And let you have silky-soft, lustrous waves—glowing with vitality and naturalness.
11. Longer lasting than conventional waves.
12. Finest by test.

PAR. 4. Respondent's method of giving a so-called "permanent wave" by use of its preparations, which it calls a "Helene Curtis Cold Wave," as set forth in its instruction brochure, disseminated and distributed by respondent in commerce, as aforesaid, includes the following procedures:

1. Before being wound on rods, the hair is divided into strands, and each strand is moistened with respondent's "Preliminary Lotion" by means of its "Applicator Brush," starting the application about $\frac{1}{2}$ inch from the scalp and stopping 1 inch from the end. Then, by use of a comb, such lotion is combed through the entire strand.

2. Tests are then taken of two curls by pretesting them with respondent's "Waving Compound," followed by application of its "Neutralizing Compound," for the purpose of aiding the operator in establishing respondent's "Processing Time" for its "Processing" procedure. The operator then determines the length of the "Processing Time."

3. The separate strands are wound on rods and cotton is placed under the curls at the edge of the scalp and under the test curls. Each strand is moistened and saturated with said "Waving Compound" in the order theretofore wound on the rods.

4. Cotton is removed and a "Processing Cap" is placed over the hair, which remains over the hair for a period of time called the "Processing Time" or "Processing Period" determined upon by the operator as aforesaid.

5. At the end of the "Processing Time," the "Neutralizing Compound" is applied to the hair, the hair is rinsed with water, the rods are removed, the "Neutralizing Compound" is again applied and the hair is again rinsed with water.

6. In the event the waves thus made are found to be too tight and it is desired "to relax the curl," the "Preliminary Lotion" is brushed into the hair until the hair is saturated, allowed to remain 1½ to 2 minutes, and then the "Neutralizing Compound" is again applied.

PAR. 5. Among and typical of the false, deceptive, and misleading statements and representations, contained in respondent's instruction brochure are the following:

1. In connection with procedure "1" aforesaid during which respondent's "Preliminary Lotion" is applied, the following statements are made:

The hair should be held at the ends of the strand when wetting so hands contact solution as little as possible.

NOTE: All types of permanent waving lotions have a drying action on the operator's hands. Some hands are especially sensitive. As a safeguard against extraordinary sensitivity, and because solutions are in contact with the hands for a longer period under the Cold Wave Method we recommend the application of a light coating of Helene Curtis Protecto Hand Cream over the hands. Practice will also enable you to eliminate most contact between your hands and the solution.

2. In connection with procedure "3" aforesaid in which cotton is placed or packed under certain curls, the following statements are made:

Before applying Waving Compound to the complete head, firmly pack cotton under the curls around the temple, forehead and over the ears to absorb the excess lotion which might otherwise run down the face . . . This packing should be removed before applying the processing cap and should be changed as it becomes saturated with solution.

3. In connection with procedure "3" aforesaid in which respondent's "Waving Compound" is applied, the following statements are made:

Go over each curl two or three times to make sure each strand has reached the saturation point. Once this point is reached, further wetting is not necessary, and only leads to solution running down on the scalp. By careful handling of the brush, you can avoid getting the waving lotion on your hands or the patron's scalp.

4. In connection with procedure "6" aforesaid in which respondent's "Preliminary Lotion" is applied to relax the curl, the following statements are made:

Take a section of hair about three or four inches square and, placing the hair between the fingers, brush the solution into the hair. . . . Never allow the solution to remain on the hair more than one and one-half to two minutes. . . .

5. After the instructions in said brochure with respect to procedure "3" aforesaid in which respondent's "Waving Compound" is applied the following statements are made under the title "Skin Sensitivity":

Improperly applied or over-applied preliminary and waving solutions run down into the patron's scalp, forehead, or cheek. This should be wiped off immediately and never allowed to dry on the skin. Care should also be exercised against saturated cotton contacting the scalp, forehead, or neck any longer than necessary. Should these precautions be overlooked, sensitivity may, but very seldom does, occur. Don't be alarmed if sensitivity develops—it will disappear within one to three days as though nothing happened.

Avoid the temporary inconvenience of sensitivity by: 1. Proper waving technique in application of solutions. 2. Immediately wiping off any solution contacting the skin. 3. Replacing cotton when saturated on scalp, forehead, or test curls.

We suggest you test for possible sensitivity any patron who has been found supersensitive to most services. These women may be given a wave if you apply Helene Curtis Protecto Cream to their forehead near the hair line, back of ears, and neck, before beginning and after finishing the wave. Should sensitivity develop in the absence of such precautions, Protecto Cream will be quite beneficial even when applied afterward.

PAR. 6. By and through the use of the statements and representations set out in paragraph 3 aforesaid, as to the harmless nature of respondent's hair waving preparations, called "Preliminary Lotion" and "Waving Compound" and their safety in use, respondent has represented and represents that said preparations are harmless and incapable of causing harm to the skin and nails of the operators giving such waves, and to the hair, scalp, and skin of the person receiving the wave.

By the representations last aforesaid, and its representations that operators do not need to wear gloves while applying its said hair waving preparations to the hair, as set forth in paragraph 3 aforesaid, respondent represents that said preparations will not cause harm or injury to the hands, skin, and finger nails of such operators, and that for such reason, there is no necessity of shielding or protecting the hands from such preparations by the wearing of gloves capable of affording such a shield and protection and, in fact, that said preparations are harmless and incapable of causing harm either to the operator or the person receiving a "permanent wave" by the use of said preparations.

PAR. 7. By the representations set out in paragraph 3 aforesaid, as to the curling of the hair down to the scalp, without the use of "spacers" or "protectors," respondent represents that said preparations are harmless to the scalp and that for such reason, there is no necessity of shielding or protecting the scalp from said preparations

by the use of devices capable of affording such a shield and protection, and particularly not by the use of devices referred to by respondent as "spacers" and "protectors," being devices made of separate pieces of material, designed to be placed under each strand of hair to be "waved," for the purpose of affording a shield and protection to the scalp from the waving preparations applied to such strands while they are in the process of being given a "permanent wave," and that devices of such character are not needed in the giving of permanent waves by its preparations and method.

PAR. 8. The aforesaid statements and representations are false, misleading and deceptive. Respondent's hair waving preparations called "Preliminary Lotion" and "Waving Compound" both contain the chemicals thioglycolic acid, and ammonium, and the latter compound contains, in addition, the chemical ammonium sulphite. When said waving preparations separately, and as combined and used in the giving of a "Permanent wave" according to respondent's method, come in contact with the hair a softening is brought about by hydrolysis of the keratin which is the principal component of the hair. This hydrolysis of the keratin is usually referred to as Keratolysis. If carried too far, Keratolysis will permanently injure the hair and in fact, from a structural standpoint, some damage results to the hair even though the wave is properly given.

The outer layer of the skin, including the nails is composed largely of keratin and when the waving preparations last mentioned, separately, and as combined in respondent's method, come in contact therewith a similar reaction, as aforesaid, occurs, affecting the keratin, and preparations each have the capacity of causing injury thereto, and upon such contacts being repeated or extended, such preparations each have the capacity of causing, and will cause and do cause, additional injury. The nature and extent of such injury depends upon various circumstances, including the length and number of such contacts and the nature and the condition of the skin exposed. On some persons such exposures will cause chemical burns of varying degrees of severity and painfulness. Where such burns appear on the scalp such condition has the capacity of causing, and may cause blisters, infections on, and a falling out of the hair from the parts of the scalp thus affected. Where such burns appear upon the hands, wrists, and the finger nails, such condition has the capacity of causing, and may cause, a deterioration of the skin of the hands and wrists and the finger nails thus exposed, the drying up, the cracking and loss of finger nails and of the skin thus affected, as well as skin infections and diseases of various degrees of severity and painfulness on the hands and wrists. In order to cause such conditions, said burns need not be severe burns, but need only be the kind which causes the parts of the epidermal tissues of the body thus exposed to become sensitive and thus susceptible to the de-

velopment of such conditions. Repeated exposure of such tissues has the capacity of causing and will and does cause increased sensitivity of the tissues exposed and their susceptibility to the development of the conditions described aforesaid. On some persons exposure of the skin to said preparations will cause a disease of the skin known as "dermatitis" to appear or reappear.

PAR. 9. By the representations set out in paragraph 3 aforesaid as to the action of respondent's waving preparations always being "under control," respondent represents that said preparations are harmless to the hair and that, during the application thereof by respondent's method of giving a "permanent wave," the chemical action of said preparations is always under the control of the operator using them. In truth, and in fact, the operator exercises no control over such chemical action except to limit the period thereof beginning at a time, however, after such action has been going on during varying lengths of time with respect to the different strands of hair. Such length of time is determined by the operator, according to his judgment or lack thereof, and not by a controlled method, upon his examination of the condition of two so-called "test curls" which he has first made, by the use of respondent's preparations, to guide him in such decision. In fact, such test does not afford an exact or controlled method of determining the length of time that each strand of hair should be subjected to said chemical action in order to give a maximum cosmetic effect, with a minimum of danger to the structural composition of the hair. In some instances, the outcome of such chemical action from a cosmetic standpoint, is unsatisfactory, and the hair is again subjected to such chemical action to attain as nearly as is possible by respondent's preparations the desired cosmetic effect. In other instances, the structure of the hair is harmed and changed as a result of improper timing the length of said chemical action. Both of said undesirable results may, and often are, caused by the operators having failed, on account of the respondent's representations as to the simplicity of its method, to take necessary precautions.

PAR. 10. By the representations aforesaid, as to the simplicity of respondent's method of applying its waving preparations, including such representations as "simplest of all methods," "foolproof," and "almost like a shampoo," as well as all of the other representations set forth in subparagraphs "1" to "12" inclusive, of paragraph 3 aforesaid, respondent has given and gives operators using respondent's preparations and their patrons the false and erroneous impression and belief that said preparations are harmless and that no care or only a minimum amount of care need be used in the handling of such products in order to give a "permanent wave" that will have the most desirable cosmetic effect, leave the hair without harm, and cause no harm or injury either to the operator or to the patron. The effect of such

representations on such operators and their patrons is to cause them to have a false sense of security and to minimize erroneously the possibility of injury to the hair of the patron and the health of both the operator and the patron. Such representations also have the capacity and tendency to contribute to laxity and carelessness on the part of operators in the handling and applying of such preparations to the damage and injury of themselves and their patrons.

PAR. 11. By the representations set out in paragraph 3 aforesaid, as to the comfort giving qualities of its waving preparations, respondent represents that the receiving of a "permanent wave" by its waving preparations and method is accompanied by no discomfort to the persons receiving such waves, but on the other hand, is a comfortable, enjoyable, cooling, and refreshing experience to them. The fact is that the receiving of such waves may be accompanied by an uncomfortable, burning sensation on the scalp and is often attended by a feeling of alarm on account thereof.

PAR. 12. By the representations set out in paragraph 3 aforesaid, as to the effect of its waving preparations on the hair, respondent represents that said preparations have various effect on the hair of a desirable nature in addition to that of making the hair wavy. Thus, respondent represents that the effect of said preparations on the hair is to improve the condition of the hair, "condition" the hair "while it waves," to soften the ends of the hair, to leave the ends soft, lustrous, and aglow with vitality and naturalness. These representations and similar representations are all false and deceptive. In truth and in fact, such waving preparations do not have any such effects. On the other hand, when such preparations are used according to respondent's method they may, and often do, have the effect of putting the hair, from a structural standpoint, in a less satisfactory condition, and if they are applied to the hair for a longer period than that required to permit the hair to be "waved," can and will permanently damage and injure the hair. The effect created by and through respondent's method aforesaid, in no sense either is, or looks natural, but in fact, is and looks artificial.

PAR. 3. Respondent's representations aforesaid that its method of giving a "permanent wave" is the finest by test, that it is 100 percent perfect, and that the waves produced by its method are "longer lasting than conventional waves" and others of similar import and meaning are false and deceptive. In truth and in fact, no test has been made warranting or supporting said representations that such method is the finest by test or that it is 100 percent perfect, or that the waves produced by its method last longer than so-called "permanent waves" produced by other methods. Respondent's representations aforesaid by which it has compared and compares its method of giving a "per-

manent wave" with other methods are misleading and deceptive in that its method of giving a wave to the hair, like all "permanent wave" methods, depends on the same chemical reaction, namely, hydrolysis, and results in the same chemical and physical change in the hair. The only difference in such methods is in the agency used and the routine followed.

PAR. 14. By and through the use of the statements and representations set out in paragraph 5 aforesaid, contained in instructions to operators purchasing and using its preparations and to prospective purchasers thereof respondent represents that the contact of its said preparations with the skin results only in a "drying action" and that the only effect which this action may have upon the skin is an effect which is called "sensitivity" and "super-sensitivity"; that such effect seldom occurs and only on skin which is "sensitive or super-sensitive"; that such effect is only a "temporary inconvenience" and is no cause for "alarm."

Such statements and representations are false, misleading, and deceptive. In truth and in fact, the action of said preparations on coming in contact with the skin is not merely a drying action but a chemical action of the kind hereinabove described and the condition of the skin described as "sensitivity" or "super-sensitivity" is a type of chemical burn. While the likelihood of injury and the degree thereof may be greater in the cases of persons who are allergic or sensitive to such preparations, the fact is that such harmful effects may arise in many cases of normal skin, especially when said preparations are carelessly used.

PAR. 15. By the representations set out in paragraph 5 aforesaid, contained in instructions and statements to operators, respondent represents that operators need not wear gloves when handling and applying respondent's preparations used in the giving of a wave to the hair, but that an operator may, if he desires, use as a protection to the hands, its cream called "Helene Curtis Protecto Hand Cream." and that such cream will protect the hands from injury as a result of contact with said preparations. In truth, there are no facts upon which to base a representation that the use of such cream on the hands while in contact with such preparations will sufficiently protect the hands against injuries such as those described aforesaid. In fact, there is no reason to assume that adequate protection against injury to the hands from said preparations can be effected by any means except by the wearing of gloves which will keep the hands from coming in contact with such preparations when the operator is handling and applying said preparation. Also, the use of the name "Protecto," as aforesaid, is deceptive in that it serves as a representation that said cream will afford such protection which is contrary to fact.

PAR. 16. By the representations set out in paragraph 5 aforesaid, respondent represents that the wiping off of the waving preparations that may run down onto the scalp, face, and neck of the person receiving a wave by the use of said preparations, and by the placing of cotton at the edge of the scalp and under test curls, and the replacing of such cotton when it becomes saturated with said preparations will be sufficient precautions to take against injury to the scalp, face, and neck of such persons while receiving a permanent wave by the use of said preparations. In truth and in fact, such precautions will not prevent injurious effects from arising of the character described aforesaid. In fact, there is no reason to assume that any precautionary measures will prevent such injurious effect from arising, short of the affixing to the head in some manner of a shield or protector so designed and made that it will shield and protect the scalp and skin from coming in contact with said preparations.

PAR. 17. By the representations set out in paragraph 5 aforesaid, respondent represents that the application of a coating of its cream called "Helene Curtis Protecto Hand Cream" to the "forehead, near the hair line, back of the ears, and neck, before beginning and after finishing the wave," by use of its preparations, will protect the skin of such persons from injury and that if injury results said cream will be effective in treating such injury. Such representations are false, misleading, and deceptive. In truth and in fact, the application of such cream in such manner will not serve as a shield or as a protector from said preparations or their effects, and the use of said cream in such manner or in any manner cannot be relied upon to prevent injurious effects to the skin arising by reason of contact with said preparations, or to effectively treat such injuries after they arise.

PAR. 18. The advertisements and instructions to operators disseminated by respondent as aforesaid constitutes false advertisements for the further reason that they fail to reveal that the use of the preparations "Preliminary Lotion" and "Waving Compound" in the manner described in said advertisements or under such conditions as are customary and usual may result in serious injury to the operators using such preparations in the process of giving a permanent wave and to the persons receiving such waves. In truth and in fact, the presence of thioglycolic acid in said preparations renders them potentially dangerous and likely to result in the injuries hereinabove enumerated. Respondent, at no place in its advertising material or instructions to operators clearly or sufficiently discloses or reveals this potential danger and the nature or the extent of injury which may arise through the use of said preparations or to recommend or disclose a reasonable

or sufficient means for obviating or protecting against such danger and the injury incident thereto.

PAR. 19. The use by the respondent of the aforesaid false, deceptive and misleading statements and representations with respect to its products, disseminated as aforesaid, has had and now has, the capacity and tendency to, and does mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are true, and to induce a substantial number of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's preparations, and to induce substantial numbers of persons to obtain from such purchasers "permanent waves" in which said preparations are used.

PAR. 20. 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.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, the attached initial decision of the trial examiner did, on October 23, 1950, become the decision of the Commission.

ORDER CLOSING CASE WITHOUT PREJUDICE

Initial decision by GEORGE BIDDLE, Trial Examiner

This proceeding regularly came on to be considered by the above-named trial examiner theretofore duly designated by the Commission, upon the complaint of the Commission, the answer of respondent, testimony and other evidence introduced in support of the complaint, and a motion to close the case without prejudice filed by the attorney in support of the complaint.

Respondent is charged with falsely advertising that a chemical solution sold by it to beauty shops for use in giving "permanent waves" is harmless both to the operator and the person receiving the "wave." Typical of the advertisements are:

2. Absolutely harmless.
3. You need not wear gloves.
7. Foolproof. Tried, tested, 100% perfect.

Nearly 5,800 pages of testimony has been taken, the last hearing being held October 11, 1945. Several operators testified to having received severe burns on their hands from handling the product and some 50 women testified to having first or second degree burns after their hair was treated. The great majority of the latter injuries would

appear to be due to carelessness on the part of the operator. The record does not disclose whether the solution has been submitted by the Commission to disinterested dermatologists for the purpose of determining its effect upon the skin.

Counsel supporting the complaint and his immediate superiors are satisfied that respondent has discontinued the advertisements complained of, that they will not be resumed, and that the public interest does not require at this time the further prosecution of this proceeding and the necessarily large expense incident thereto. After considering the whole record, I am not in a position to dispute their conclusion. Accordingly, the motion, to which respondent consents, is granted and

It is ordered, That this case be, and the same hereby is, closed without prejudice to the right of the Commission to reopen the same and resume trial thereof in accordance with its regular procedure.

Mr. D. E. Hoopingarner and *Mr. William L. Taggart* for the Commission.

Mr. Adolph A. Rubinson and *Marshall & Marshall*, of Chicago, Ill., and *Mr. Gilbert Weiss*, of St. Louis, Mo., for respondent.

CANDY BROTHERS MANUFACTURING Co., INC., UNIVERSAL MATCH CORP., ADOLPH H. ROSENBERG AND JOHN FEINSTEIN. Complaint, January 20, 1943. Order, October 24, 1950. (Docket 4889.)

Charge: Advertising falsely or misleadingly, misbranding or mislabeling, and using misleading product name or title as to association, connection, or affiliation with, endorsement, sponsorship, or approval of, and conformance to standards of, Red Cross; in connection with the manufacture and sale of cough drops, under the trade name and brand "Red Cross" and advertising paper book matches.

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 Candy Bros. Manufacturing Co., Inc., a corporation; Universal Match Corp., a corporation; Adolph H. Rosenberg, individually and as president and a director of Universal Match Corp. and a director of Candy Bros. Manufacturing Co., Inc.; and John Feinstein, individually and as president and a director of Candy Bros. Manufacturing Co., Inc., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Candy Bros. Manufacturing Co., Inc., is a corporation organized and doing business under and by virtue

of the laws of the State of Missouri, having its principal offices and place of business located at 122 South Eighth Street, St. Louis, Mo. Respondent company was incorporated under the laws of the State of Missouri on November 1, 1937. Respondent corporation had succeeded a nonincorporated common-law trust or agency of commerce which had operated under the same name under the laws of the State of Missouri since October 1, 1920, the common-law trust in turn having succeeded a Missouri corporation which had operated under the name Candy Bros. Manufacturing Co. for some years prior to 1920, each company having been engaged in the manufacture and sale of cough drops. In the year 1936, the then existing business of Candy Bros. Manufacturing Co., operating as a common-law trust, was acquired by respondent Universal Match Corp., whereupon the present Candy Bros. Manufacturing Co., Inc., was organized under the laws of the State of Missouri on November 1, 1937, as alleged.

Respondent Candy Bros. Manufacturing Co., Inc., for more than 5 years last past, has been engaged in the manufacture, offering for sale, sale and distribution of cough drops under the trade name "Red Cross", and causes and has caused its said cough drops, when sold by it, to be transported from its said place of business in the State of Missouri to the purchasers thereof at their respective points of location in the various States of the United States other than the State of Missouri, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said cough drops in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent Universal Match Corp. is a corporation organized and doing business under and by virtue of the laws of the State of Delaware, having its principal offices and place of business located at Short Street and the Wabash Railroad tracks in the city of St. Louis, Mo., with a regional sales office located in the Boatman's Bank Building, 314 Broadway, in said city of St. Louis. Respondent Universal Match Corp. was incorporated in the said State of Delaware on March 31, 1937. The original Universal Match Corp. was incorporated under the laws of the State of Missouri on November 19, 1925, being thereafter merged with and succeeded by the Delaware corporation. Upon the creation and organization of the latter in the year 1937, Universal Match Corp. acquired the stock and business of the former Universal Match Corp. Respondent Universal Match Corp. is now and for more than 5 years last past has been engaged in the manufacture, offering for sale, sale, and distribution of paper match books to be used for advertising purposes. Respondent causes its said paper match books, when sold by it, to be transported from its said

place of business in the State of Missouri to the purchasers thereof at their respective points of location in the various States of the United States other than the State of Missouri. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said paper match books in commerce between and among the various States of the United States and in the District of Columbia. Respondent Universal Match Corp. owns the entire capital stock of corporate respondent Candy Bros. Manufacturing Co., Inc.

Respondent Adolph Rosenberg is president of Universal Match Corp. and chairman of the board of directors of Candy Bros. Manufacturing Co., Inc. His principal office and place of business is located at Short Street and the Wabash Railroad tracks, St. Louis, Mo. Respondent Adolph H. Rosenberg is also president of Cash Bros. Drug Co., a Florida corporation located at Jacksonville, Fla., to which more detailed reference will be hereinafter made.

Respondent John Feinstein is president of Candy Bros. Manufacturing Co., Inc., and has his principal office and place of business located at 122 South Eighth Street, St. Louis, Mo. Said individual respondents, acting in their official capacities and in cooperation and conjunction with each other, direct and control the respective policies, affairs, and operations of Universal Match Corp. and Candy Bros. Manufacturing Co., Inc. in carrying out the joint acts, practices, and common enterprises hereinafter described.

PAR. 3. World history records the conclusion of four International Red Cross Conventions. Each one was negotiated and concluded at Geneva, Switzerland, and the dates of such conventions were respectively, August 22, 1864, October 20, 1868, July 6, 1906, and July 27, 1929.

The Government of the United States ratified and adhered to the first, adopted the provisions of the second as a *modus vivendi* to govern the conduct of the Spanish-American War, and was a party signatory to the last two, officially ratifying and adopting the various provisions thereof and agreeing to observe the same. Each of these conventions stated the purpose for which it was being concluded, each described the cross that was to be the sign and emblem of the convention, and each defined and explained the privileges and prerogatives of those qualified to use the emblem. The third convention, that of 1906, provided specifically that its distinctive flag or emblem could only be displayed over the sanitary formations and establishments which the convention provided should be respected, and the 1929 convention provided that neither the emblem of the Red Cross on a white ground, nor the words "Red Cross" or "Geneva Cross" could be used, whether in time of peace or war, except to protect or designate

sanitary formations and establishments and the personnel and material protected by the convention. By virtue of nearly identical provisions in the 1906 and 1929 conventions each signatory government or power agreed to take or to recommend to its legislature such measures as might be necessary to prevent the use of the Red Cross emblem or the name of the Red Cross or Geneva Cross for commercial purposes in case their legislation might not then be adequate to accomplish such purpose, and agreed further, that after such legislation should go into effect it should be unlawful to use a trade-mark or commercial label contrary to such provision.

On August 8, 1864, an international diplomatic conference was convoked at Geneva, Switzerland, attended by representatives of 12 European governments. The outcome of this conference was the first red cross convention, namely the Geneva Convention of August 22, 1864, for the "Amelioration of the Condition of the Wounded in Time of War."

The purpose of the 1868 Red Cross Convention were thus stated:

The governments * * * desiring to extend to armies on the sea the advantages of the Convention concluded at Geneva the 22d of August 1864, for the amelioration of the condition of wounded soldiers in armies in the field and to further particularize some of the stipulation of the said convention. * * *

The purposes sought to be accomplished by the 1906 Red Cross Convention were:

Being equally animated by the desire to lessen the inherent evils of warfare as far as is within their power and wishing for this purpose to improve and supplement the provisions agreed upon at Geneva on August 22, 1864 for the amelioration of the condition of the wounded in armies in the field.

The purposes stated in the 1929 convention were:

* * * equally desirous of diminishing, so far as lies within their power, the evils inseparable from war and wishing to perfect and complete, for this purpose, the provisions agreed upon at Geneva, August 22, 1864, and July 6, 1906, to ameliorate the condition of the wounded and the sick of armies in the field, have decided to conclude a new convention for this purpose. * * *

The flag or emblem designated and prescribed for use in connection with these four red cross conventions was historically described as follows:

The Convention of 1864, article VII:

A distinctive and uniform flag shall be adopted for hospitals, ambulances and evacuations. It must on every occasion be accompanied by the national flag. An arm-badge (brassard) shall also be allowed for individuals neutralized, but the delivery thereof shall be left to military authority.

The flag and the arm badge shall bear a red cross on a white ground.

Convention of 1868, article XII:

The distinctive flag to be used with the national flag, in order to indicate any vessel or boat which may claim the benefits of neutrality, in virtue of the principles of this convention, is a white flag with a red cross. * * *

Article XIII:

The hospital ships * * * shall be recognized and protected by the belligerents.

They shall make themselves known by hoisting, together with their national flag, the white flag with a red cross. The distinctive mark of their staff, while performing their duties, shall be an armet of the same colors. The outer painting of these hospital ships shall be white, with red strake.

Convention of 1906, chapter VI, Distinctive Emblem, article 18, and convention of 1929, chapter VI, Distinctive Sign, article 19:

Out of respect to Switzerland the heraldic emblem of the red cross on a white ground, formed by the reversal of the federal colors, is continued as the emblem and distinctive sign of the sanitary service of armies.

Convention of 1906, chapter VI, article 19, and Convention of 1929, chapter VI, article 20:

(The) This emblem appears (shall appear) on flags and brassards as well as upon all material appertaining to the sanitary service, with the permission of the competent military authority.

Convention of 1906, chapter VI, article 20, and Convention of 1929, chapter VI, article 21:

The personnel protected * * * will wear attached to the left arm a brassard bearing a red cross on a white ground. * * *

The use to which this emblem of the red cross on a white ground was to be restricted was defined as follows:

Convention of 1906, chapter VI, article 21, and Convention of 1929, chapter VI, article 21:

The distinctive flag of the convention can only be displayed over the sanitary formations and establishments which the convention provides shall be respected, and with the consent of the military authorities. * * *

Article 27 of chapter VII of the 1906 convention, entitled "Repression of Abuses and Infractions," provided as follows:

The signatory powers whose legislation may not now be adequately engaged to take or recommend to their legislatures such measures as may be necessary to prevent the use, by private persons or by societies other than those upon which this convention confers the right thereto, of the emblem or name of the Red Cross or Geneva Cross, particularly for commercial purposes by means of trade-marks or commercial labels.

The prohibition of the use of the emblem or name in question shall take effect from the time set in each act of legislation, and at the latest five years after this convention goes into effect. After such going into effect, it shall be unlawful to use a trade-mark or commercial label contrary to such prohibition.

Article 30 of the convention provided that it should become operative as to each power, 6 months after the date of deposit of its ratification. Article 31 provided that the convention, when duly ratified, should supersede the convention of August 22, 1864, in the relations between the contracting States, the 1864 convention to remain in force between the parties who signed it but who might not ratify the 1906 convention.

Article 33 of the 1906 convention provided that each of the contracting parties should have the right to denounce the convention, but that this denunciation should only become operative one year after a notification in writing should have been made to the Swiss Federal Council, which should forthwith communicate such notification to all the other contracting parties, such denunciation to become operative only in respect to the power giving it.

The Government of the United States adhered to the original Red Cross convention of 1864 on March 1, 1882. The convention of July 6, 1906, was ratified by the Senate December 19, 1906, ratified by the President January 2, 1907, ratification was deposited February 9, 1907, and the convention was proclaimed August 3, 1907. The 1906 convention became operative as to the United States 6 months from February 9, 1907, that is, in August 1907. This convention was never denounced by the United States either in whole or in part.

Articles 28 to 30 inclusive, of chapter VIII of the convention of July 27, 1929, deal with "The Repression of Abuses and Infractions." Article 28 provides that the governments of the high contracting parties "whose legislation may not now be adequate shall take or shall recommend to their legislatures such measures as may be necessary at all times:

(a) to prevent the use by private persons or by societies other than those upon which this convention confers the right thereto, of the emblem or the name of the Red Cross or Geneva Cross, as well as any other sign or designation constituting an imitation thereof, whether for commercial or other purposes.

Subparagraph (b) of article 28 obligates each State to enact legislation prohibiting the use of the arms of the Swiss confederation or any imitation thereof as a trade-mark, label, or in any way contrary to commercial ethics or under conditions wounding Swiss national pride. It is provided in subparagraph (c) that these respective prohibitions shall take effect from the time set in each act of legislation and at the latest 5 years after the convention goes into effect, and that after such going into effect it shall be unlawful to take out a trade-mark or commercial label contrary to such prohibitions.

Article 25 of the 1929 convention stipulates that the provisions of the convention shall be respected by the high contracting parties under all circumstances.

The United States Senate ratified this convention January 7, 1932; it was ratified by the President on January 16, 1932, ratifications were deposited at Geneva February 4, 1932; and on August 4, 1932, the convention was proclaimed by President Hoover "to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States of America and the citizens thereof."

Thus the United States in 1906 and in 1929 respectively, if it had not already done so, obligated itself by solemn treaty to enact legislation prohibiting commercial use and exploitation of the Red Cross name and emblem.

The United States on June 20, 1936, carried out the obligation undertaken in paragraph 28 (b) of the convention of July 27, 1929, as to the Swiss flag, by enacting a law prohibiting the commercial use of the coat of arms of the Swiss confederation.

Nearly all countries of the world have now adhered to the Geneva convention as revised in 1906 and 1929 by diplomatic conferences. Conferences held at The Hague in 1899 and 1907 extended to sea warfare the principles of the Geneva Conventions. The white flag bearing the red cross has now become the protecting symbol of the Red Cross throughout the world.

Red Cross societies have been established in all civilized countries as a result of the international conferences at Geneva.

From 1866 on down to the present time, the Red Cross Service has been employed in ministering to sick and wounded military forces throughout the world. The ministrations of this service, particularly in the United States, have also been extended to cover relief and succor to victims of great peacetime disasters.

PAR. 4. The introduction and development of the Red Cross movement into the United States were chiefly due to the zeal and activities of Clara Barton, known as the founder of the American branch of the organization. The American National Association of the Red Cross was incorporated in July 1881 under the laws of the District of Columbia. Among the objects sought to be attained as stated in the original articles of this first American incorporation of the Red Cross were: to secure by the United States the adoption of the treaty of August 22, 1864; to obtain recognition by the Government of the United States, and to hold itself in readiness for communicating therewith at all times, to the end that its purposes might be more wisely and effectually carried out; to organize a system of national

relief and apply the same in mitigating sufferings caused by war, pestilence, famine and other calamities.

The second American incorporation of the Red Cross, this time under the name The American National Red Cross, occurred on April 29, 1893, and again under the laws of the District of Columbia. This corporation, as set forth in its preamble, was instituted to carry on the benevolent and humane work of the Red Cross in accordance with the articles of the international treaty of Geneva, Switzerland, entered into on the 22d day of August 1864, "and also in accordance with the broader scope given to the humane work of said treaty by the American Association of the Red Cross, and known as the American amendment, whereby the sufferings incident to great floods, famines, epidemics, conflagrations, cyclones, or other disasters of national magnitude may be ameliorated by the administration of necessary relief; and being desirous of continuing the noble work heretofore performed by the American Association of the Red Cross, incorporated in the District of Columbia for the purpose of securing the adoption of the said treaty of Geneva by the United States, for benevolent and charitable purposes and to cooperate with the *Comite International de Secours aux Militaires Blesses*." Among the stated objects of this Red Cross association in addition to the purposes set forth in its preamble were: To garner and store materials, articles, supplies, moneys, or property of whatsoever name or nature, and to maintain a system of national relief and administer the same in the mitigation of human suffering incident to war, pestilence, famine, flood, or other calamities; to hold itself in readiness for communication and cooperation with the Government of the United States, or any department thereof.

On June 6, 1900, the Red Cross was incorporated by Act of Congress as the American National Red Cross. The act recited that whereas a permanent organization or agency was needed in every nation to carry out and execute the humane objects and purposes contemplated by the Geneva Convention of 1864, with the power to adopt and use the distinctive flag and arm badge provided in article 7 of that Convention, which should be the sign of the Red Cross, it was believed that the importance of the work demanded a reincorporation by the Congress of the United States. The new corporation succeeded to all the rights and property which had been hitherto held, and to all the duties which had theretofore been performed, by the American National Red Cross as a corporation organized under the laws of the District of Columbia, which organization was thereby declared dissolved.

Under the 1900 act it was made a misdemeanor for any person "to falsely and fraudulently hold himself out as, or to represent or pre-

tend himself to be a member of or an agent for the American National Red Cross for the purpose of soliciting, collecting or receiving money or material; or for any person to wear or display the sign of the Red Cross, or any insignia colored in imitation thereof, for the fraudulent purpose of inducing the belief that he is a member of or an agent for the American National Red Cross."

The 1900 act further provided that the American National Red Cross should on the first day of January of each year transmit to Congress an itemized report of all receipts and expenditures and of its proceedings during the preceding year and should also give such information concerning its transactions and affairs as the Secretary of State might from time to time require, and that in respect of all business and proceedings in which it might be concerned in connection with the War and Navy Departments of the Government it should make reports to the Secretary of War and to the Secretary of the Navy, respectively. Congress reserved the right to repeal, alter, or amend this act at any time.

The United States being one of the signatory powers of the Treaty of Geneva guaranteeing the neutrality of persons caring for the sick and wounded and all supplies for the same, and the American National Red Cross being the official organization in the United States existing under this treaty, and so recognized by the International Red Cross Committee of Geneva, it became important to place the American organization under Government supervision, which the charter of June 6, 1900, had not provided. All the well-organized, foreign Red Cross societies had already been placed under government control, being generally subordinate to the war or navy departments of such governments. This was particularly true in the case of Great Britain, France, Germany, Austria, Italy, and Japan.

The American National Red Cross was nationally incorporated by an act of Congress of January 5, 1905, which repealed the prior congressional act of June 6, 1900. The act of 1905 undertook to give statutory protection to the Red Cross emblem which was then being used by the American National Red Cross and the medical societies of the Army and Navy. Among other powers confirmed was that "to have the right to have and to use, in carrying out its purposes hereinafter designated, as an emblem and badge, a Greek Red Cross on a white background, as the same has been described in the Treaty of Geneva, August twenty-second, Eighteen Hundred and Sixty-Four, and adopted by the several nations acceding thereto." The society was authorized to act in matters of relief arising under that convention by furnishing volunteer aid to the sick and wounded of armies in time of war, in accordance with the spirit and conditions of the Geneva

Conference, and a provision in the 1905 act extended the national and international relief to be carried on by the society to that of investigating the sufferings caused by pestilence, famine, fire, floods and other great national calamities, and to devising and carrying on measures for preventing the same.

Section 4 of the act of 1905 also made it unlawful for any person within the jurisdiction of the United States "to falsely and fraudulently hold himself out as, or represent or pretend himself to be, a member of, or an agent for, the American National Red Cross, for the purpose of soliciting, collecting or receiving money or material; or for any person to wear or display the sign of the Red Cross or any insignia colored in imitation thereof for the fraudulent purpose of inducing the belief that he is a member of, or an agent for, the American National Red Cross." This section then proceeded to prohibit commercial use of the Red Cross name and emblem by declaring it to be unlawful "for any person or corporation, other than the Red Cross of America, not now lawfully entitled to use the sign of the Red Cross, hereafter to use such sign or any insignia colored in imitation thereof for the purposes of trade or as an advertisement to induce the sale of any article whatsoever." This section further provided that any one violating its provisions should be guilty of a misdemeanor and be liable to a fine of not less than \$1 nor more than \$500, or imprisonment for a term not exceeding 1 year, or both, for each and every offense, the fine so collected to be paid to the American Red Cross. The act of January 5, 1905, like the preceding act of June 6, 1900, contained a provision that Congress should have the right to repeal, alter or amend the act at any time.

By act of June 23, 1910, Congress amended section 4 of the Red Cross Statute of 1905 so as to read:

SEC. 4. That from and after the passage of this Act it shall be unlawful for any person within the jurisdiction of the United States to falsely or fraudulently hold himself out as or represent or pretend himself to be a member of or an agent for the American National Red Cross for the purpose of soliciting, collecting, or receiving money or material; or for any person to wear or display the sign of the Red Cross or any insignia colored in imitation thereof for the fraudulent purpose of inducing the belief that he is a member of or an agent for the American National Red Cross. It shall be unlawful for any person, corporation, or association other than the American National Red Cross and its duly authorized employees and agents and the army and navy sanitary and hospital authorities of the United States for the purpose of trade or as an advertisement to induce the sale of any article whatsoever or for any business or charitable purpose to use within the territory of the United States of America and its exterior possessions the emblem of the Greek Red Cross on a white ground, or any sign or insignia made or colored in imitation thereof, or of the words "Red Cross" or "Geneva Cross" or any combination of these words: *Provided, however,* that no

person, corporation, or association that actually used or whose assignor actually used the said emblem, sign, insignia, or words for any lawful purpose prior to January fifth, nineteen hundred and five, shall be deemed forbidden by this Act to continue the use thereof for the same purpose and for the same class of goods. * * *

This amending act retained the same penalties that had been previously enacted into section 4 of the Red Cross Act of January 5, 1905.

PAR. 5. In pursuance of the organic act of 1905 chartering the American National Red Cross "under Government supervision" the organization became and has continued to be a great charitable association, quasigovernmental in character and in respect of the duties assigned to it. Under that act the society was created as a permanent organization to carry out the purposes of the Geneva Treaty, especially to send supplies and to execute the humane objects contemplated by the treaty.

Under section 5 of the organic act the President of the United States names not only the chairman of the central committee or governing body of the organization but also designates certain members of the committee, one each to be named by him from the Departments of State, War, Navy, Treasury, and Justice.

This organic act designates the Secretary of War to have authority and supervision over the organization and its accounts. A copy of the society's annual report to the Secretary of War must also be transmitted to Congress.

In pursuance to its bylaws the President of the United States shall, upon his acceptance, be ex officio president of the American National Red Cross. He shall preside at the annual meetings and make such appointments and perform such duties as may be prescribed.

Under section 12 of the act the Secretary of War was authorized to permit the Red Cross to erect and maintain on any military reservation within the jurisdiction of the United States, buildings, etc.

The American Red Cross being a quasigovernmental organization, operates under congressional charter, is officered in part, at least, by governmental appointment, disburses its funds under the security of a government audit, and is designed by Presidential order for the fulfillment of certain treaty obligations into which the Government has entered. The American Red Cross owes to the Government which it serves the distinct duty of discharging all those functions for which it was created.

The American Red Cross from its inception in the United States has always been financed and supported and maintained by the general public, including the period of time from the year 1881 on down to the present time. The American Red Cross is now and has always represented, typified and constituted the organized effort of the Amer-

ican public in connection with the amelioration of the condition of the sick and wounded in time of war and the relief and succor of those suffering from national disasters. The American Red Cross has been designated frequently by Congress to disburse public funds appropriated from the United States Treasury for use in the relief of national disasters.

The American Red Cross has been and is a great charitable institution, of both national and world-wide reputation. It has experienced a tremendous growth and development through the years of its history. Its individual membership now comprises nearly 30,000,000 persons; was over 20,000,000 at the close of the World War. It has sent its trained representatives into the United States and throughout the world to aid and succor those who have suffered from such national calamities as war, epidemics, fire, flood, volcanic eruptions, earthquakes, mine disasters, and hurricanes.

The American Red Cross has expended and continues to expend hundreds of millions of dollars on behalf of stricken humanity. In one Mississippi River flood 300,000 homeless individuals were cared for by the American Red Cross. Its chief function at the present time is to serve and it is serving as a medium of communication between the American Armed Forces and the people back home. To that end the American Red Cross maintains field directors in every Army and Navy establishment and has its personnel attached to and as a part of all of the American Army task forces which are now operating in foreign countries.

PAR. 6. The Red Cross name and emblem as provided by the Geneva Convention of 1864 soon became heralded throughout the world. Various manufacturers and commercial houses in the United States were quick to capitalize on its popularity and public appeal. In a few years following the conclusion of the Geneva Convention, American manufacturers began to use trade-marks employing the Red Cross name and emblem, and articles of commerce bearing the Red Cross name and emblem began appearing all over the United States. This practice began as early as 1872, soon became indiscriminate, and has continued. The first registered trade-mark employing the Red Cross name and emblem covered wines, liquors, beers and mineral waters. Then followed throughout the succeeding years Red Cross marks covering such products as hermetically sealed goods, hydraulic hose, oysters, fruits, and vegetables; domestic lye, medicine for skin diseases, Portland cement, bitters, flour, spices, coffee, baking powder, hard soap, crackers, candy; stoves, ranges and furnaces; flavoring extracts, cough syrups, velvets and plushes; wood wool and padding; vinegar, tools, meat extracts, sausage coloring, cotton fabrics; tripe, hocks,

feet and tongues; yarns and thread, kindling wood, pills, malt liquors, button fasteners; boots, shoes and shoelaces; bathrobes, white flour; rubber goods, sheep casings, salt, condensed milk, bicycles, thermometers, peanuts, stationery; pile remedies, elastic goring, anti-septic dressing, plasters, macaroni, brooms, wheeled vehicles, bottles and syringes, shears and scissors, disinfectants, windmills, spoons, whiskey; brushes, insect powder, fishnetting; shirts, collars and cuffs; musical instruments, wiring, olive oil, advertising cabinets, surgical silk, coal, fabric hose, skin preparations, canned fish, mineral paint, cereals, laundry blueing, toilet paper, toothbrushes, beef extract; mattresses, suspensory bandages, catheters, and bougies; safety pins, metal absorbents, fertilizers, washboards, and numerous other articles claimed to be of the same respective class of goods as that for which the user of the Red Cross mark employed it, such use also being claimed to be for the same purpose.

The widespread indiscriminate commercial use of the Red Cross name and emblem early resulted in general confusion and misunderstanding on the part of the public concerning the activities, aims and purposes of the American Red Cross. This situation has continued. Members of the consuming public became convinced thereby that the American Red Cross, herein referred to as the Red Cross, manufactured or was financially backing the manufacture of, products sold under its name, and derived financial benefit therefrom, and that the Red Cross was endorsing, sponsoring or approving products sold in connection with the use of its name and emblem. Great and increasing misconception and confusion on the part of the public have developed with reference to the commercial use of the Red Cross name and emblem, and as to the connection between such commercial use and the Red Cross, resulting in serious detriment to the work the Red Cross is doing on behalf of the general public. Instances and questions involving alleged misuses of the Red Cross name and emblem have become increasingly numerous.

PAR. 7. About the year 1936 respondent John Feinstein, now president of respondent, Candy Bros. Manufacturing Co., Inc. and formerly handling advertising accounts for Universal Match Corp. and Candy Bros. Manufacturing Co., Inc., contacted individual respondent Adolph H. Rosenberg, president of Universal Match Corp., and informed the latter that Candy Bros. Manufacturing Co., Inc., was disposed to sell its business of manufacturing Red Cross cough drops. As a result of negotiations thus initiated, Universal Match Corp., which had desired to obtain control of one or more companies asserting a legal right to make commercial use of the Red Cross name and emblem, purchased the capital stock, business and good will of Candy

Bros. Manufacturing Co., Inc., caused the then existing corporation to be dissolved and on November 1, 1937, as hereinbefore related, organized a new corporation of the same name, of which respondent John Feinstein became president.

Candy Bros. Manufacturing Co., Inc., at this time and for some time prior to 1936 had employed as a trade-mark in connection with the advertising, marking and branding of the cough drops sold by it a trade-mark consisting of a simulated Greek cross with equidistant arms of very narrow proportions, the words "Trade Mark" being superimposed on the horizontal arm of the cross. In the four corners or angles of the cross appeared the words: "Red Cross Cough Drops." On March 30, 1937, following the sale of its corporate stock to Universal Match Corp., but prior to its reorganization, Candy Bros. Manufacturing Co., Inc., registered at the United States Patent Office a trade-mark simulating a Greek red cross with equidistant arms of narrow proportions, the words "Red Cross" appearing in heavy type in the upper right and left corners of the cross. This application recited that the mark had been used for "Cough Drops, a Medical Preparation, in class 6, Chemicals, Medicines and Pharmaceutical Preparations." Said mark, as will be hereinafter shown, has since been abandoned by respondent Candy Bros. Manufacturing Co., Inc., for a red cross mark which is a facsimile of the mark or emblem of the American Red Cross.

On or about February 7, 1940, respondent, Universal Match Corp., acquired by purchase the outstanding shares of the capital stock of two Florida corporations, namely, Cash Bros. Co. and Pure Drug Products, Inc., moving the businesses of said companies from Jacksonville, Fla., to St. Louis, Mo. Said Cash Bros. Drug Co. had been incorporated under the laws of the State of Florida on or about November 7, 1916, for the purpose of conducting the business of manufacturing drug products to be sold under a trade-mark employing the words "Red Cross" and an emblem consisting of a Greek red cross. Said Cash Bros. Drug Co. for many years subsequent to 1916 employed the words "Red Cross" and a Greek red cross, which is a facsimile of the emblem of the American Red Cross Society, in connection with the advertising, branding, labeling and marking of the following products sold by it: "Red Cross Cough Syrup; Red Cross Chill and Fever Tonic; Red Cross Liniment and Rub; Red Cross Laxative Tablets; and Red Cross Liv-O-Med (liver medicine)."

Said Pure Drug Products, Inc., was incorporated in June 1932, under the laws of the State of Florida to function as the sole and exclusive distributor of all Red Cross products put out by Cash Bros. Drug Co. Prior to their acquisition by Universal Match Corp. in 1940,

and subsequent to January 5, 1905, Cash Bros. Drug Co. and Pure Drug Products, Inc., or their alleged predecessors in interest, undertook to assign, transfer or convey to others their asserted right to the commercial use of the Red Cross name and emblem in connection with the advertising, marking, branding, trade-marking and labeling of drug and pharmaceutical products sold or to be sold in commerce.

PAR. 8. In the course and conduct of their aforesaid business, as described in paragraphs 1 and 2 herein, respondents Universal Match Corp., and Candy Bros. Manufacturing Co., Inc., acting in conjunction with each other and under the guidance and direction of individual respondents Adolph H. Rosenberg and John Feinstein, for the purpose of inducing the sale between and among the various States of the United States of cough drops through the use of a Red Cross name and emblem have made and are now making various false, misleading and confusing advertising representations concerning their said cough drops. In advertisements appearing in nationally known newspapers, magazines and trade papers of general interstate circulation, by radio continuities broadcast from radio stations which have power to and do convey the programs emanating therefrom to listeners thereto located in the States of the United States other than the State of Missouri, by letterheads, invoices, window signs and posters circulated in commerce, by sample material distributed among wholesale drug, candy and tobacco jobbers and to retail drug, grocery and candy stores throughout the United States, on labels, cartons or containers in which respondents' said cough drops are distributed in commerce among and between the various States of the United States and in the District of Columbia, by the interstate distribution of advertising paper book matches, to which more detailed reference will be hereinafter made, and by other means in commerce, respondents have used, and now use, and presently display and have displayed for more than five years last past, the emblem of the American National Red Cross and the words "Red Cross."

Respondent, Candy Bros. Manufacturing Co., Inc., manufactures and sells three types of cough drops, namely, "Old Reliable," "Menthol" and "Horehound." On the top and one end of cartons and packages for said varieties of cough drops, and on the two sides of the smaller individual packages or boxes for cough drops, appears a large red cross, standing, conspicuously alone. Beneath the bottom arm of the red cross, on one side of the carton or container in very small and inconspicuous type, appears the wording, "Trade Mark Reg. U. S. Pat. Off." Beneath the trade-mark legend there is printed in either heavy black or red type the words "Red Cross * * * Cough Drops" with a statement of the flavor or type of cough drop

in the center of such legend. This label also appears either below or to the right of the cross which contains no trade-mark legend. On the top end of small boxes or containers for cough drops appear two representations of the Geneva cross, that is, a Greek red cross on a white ground, and between the crosses the direction, "Open This End." On the bottom end of the small box or container only appears the label "Manufactured by Candy Bros. Mfg. Co., St. Louis, Missouri, U. S. A., Open Other End." A legend "Red Cross Cough Drops" appears also on the narrow side of boxes of containers. On the top of display cards appears a large facsimile of the Geneva cross, or emblem of the American Red Cross, with the legend "Trade Mark Reg. U. S. Pat. Off." beneath it and the words "Red Cross * * * Cough Drops" beneath. On one end of the large carton appears a facsimile of a large Geneva cross with the type or flavor of the cough drops printed immediately beneath it.

PAR. 9. Following the acquisition of the control of respondent Candy Bros. Manufacturing Co., Inc., by respondent Universal Match Corp., respondent Candy Bros. Manufacturing Co., Inc., acting under the direction of Universal Match Corp. and of individual respondents Adolph H. Rosenberg and John Feinstein, embarked upon an extensive campaign of advertising, which included radio advertising in addition to newspaper and trade journal insertions. At the outset radio advertising was limited to short announcements of a cooperative character carried in the name of local dealers in St. Louis and Detroit. In the fall of 1941, respondent Candy Bros. Manufacturing Co., Inc., embarked upon an elaborate program of radio advertising in connection with which 35 radio stations over the United States were employed in interstate advertising of its said Red Cross cough drops. In the course of said radio broadcasts made over such stations, the following, among other representations made by respondent, are typical:

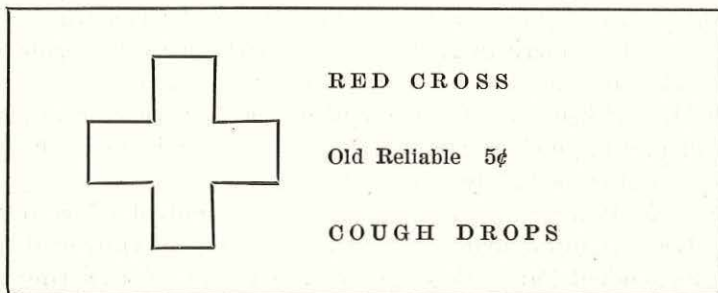
For quick relief and minor coughs and throat irritations use RED CROSS
COUGH DROPS * * * Insist on RED CROSS COUGH DROPS * * *
RELIEVE THAT TICKLE, ONLY A NICKEL! * * * Millions used. Re-
member, for that cold, irritated cough, get famous RED CROSS COUGH DROPS
* * *

* * * * *

* * * Three delicious flavors. * * * Remember, get famous RED
CROSS COUGH DROPS for husky, * * *

In none of said radio advertising has the name of respondent Candy Bros. Manufacturing Co., Inc., been identified, mentioned or suggested as the manufacturer of the cough drops, which were invariably, and with emphasis, announced and coupled with the words "Red Cross."

Respondent Candy Bros. Manufacturing Co., Inc., for more than 2 years last past has further distributed many thousand samples of Red Cross cough drops among leading cities of the United States, effecting such distribution through retailers and advertising crews. Said free samples, consisting of two Red Cross cough drops or tablets, are and have been encased in a cellophane-covered paper container, red in color, on which there is superimposed on a white ground the following design and legend:



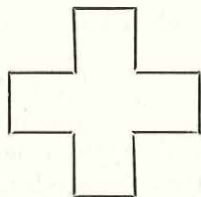
Respondent Candy Bros. Manufacturing Co., Inc., for some years prior to 1941 employed, and continuously since said date, acting in cooperation and conjunction with and under the direction and control of corporate respondent Universal Match Corp. and of individual respondents Adolph H. Rosenberg and John Feinstein, has employed and now employs and causes the Red Cross name and emblem to be employed in connection with the sale and distribution in commerce of paper book matches sold and distributed under the following plan:

Corporate respondent Universal Match Corp. manufactures and sells and distributes to wholesalers and retailers throughout the United States paper book matches. Said paper book matches are either resold by said wholesalers and retailers or distributed by them free to those who purchase various products, particularly tobacco goods. Pursuant to an agreement concluded between respondent Candy Bros. Manufacturing Co., Inc., and Universal Match Corp., respondent Candy Bros. Manufacturing Co., Inc., has purchased advertising space on paper book match covers from respondent Universal Match Corp. for use in connection with the advertisement, sale and distribution of Red Cross cough drops. Said advertising space on said paper book match covers is sold to respondent Candy Bros. Manufacturing Co., Inc., at a stipulated price and the paper book match covers containing the desired advertising material are sold by respondent Universal Match Corp. at prices averaging from \$4.50 to \$5 per case of 2,500 book matches each. In connection with the sale and distribution of

said paper book matches, the cough drop manufacturer and the match manufacturer are represented by the same sales agent or representative. Said advertising matches so distributed enjoy a large trade and strong consumer appeal by reason of their manifest usefulness and their attractive design. During the period from January 1939 to December 31, 1941, respondent, Candy Bros. Manufacturing Co., Inc., used 265,105,500 books of matches, and since 1939 Universal Match Corp. has been the sole and only source of book matches used by respondent Candy Bros. Manufacturing Co., Inc.

Said paper match books are prepared in two principal sizes, one holding 20 matches and one 10 matches, and generally white in color. On the two outer covers of the books and on the inner side, opposite the matches, appears a conspicuous Geneva red cross with heavy type printing matter above and below, as follows:

RED CROSS



COUGH DROPS

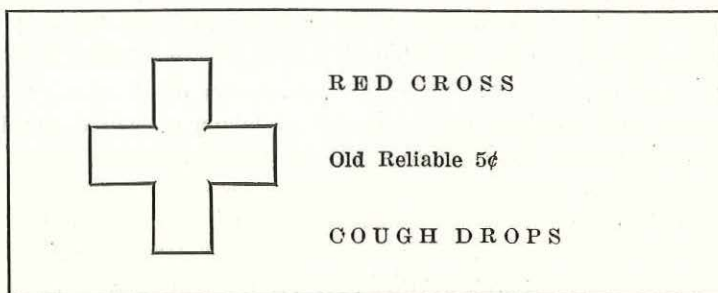
Between the two labels on the outer covers of these match books appears the line: "Famous for Over Fifty Years."

The above advertising material is printed in both red and black letters on the said match books, the Greek red cross standing alone in every instance. The name of the manufacturer for whose benefit the said match books are distributed, namely, Candy Bros. Manufacturing Co., Inc., does not appear on the smaller or 10-match type of match book and is not readily visible on the larger type of match book, due to the fact that it is printed at the bottom of the book behind two rows of matches.

Prior to January 1940, when the capital stock of respondent Candy Bros. Manufacturing Co., Inc., and that of Cash Bros. Drug Co. and Drug Products, Inc., was acquired by respondent Universal Match Corp., respondent Candy Bros. Manufacturing Co., Inc., employed on cartons or boxes of cough drops, on individual boxes or containers of cough drops, and on match books advertising cough drops, a trademark showing a red cross with equidistant arms but of very narrow proportions, in the four corners or quarters of which appeared the four words "Red Cross Cough Drops." Superimposed across the

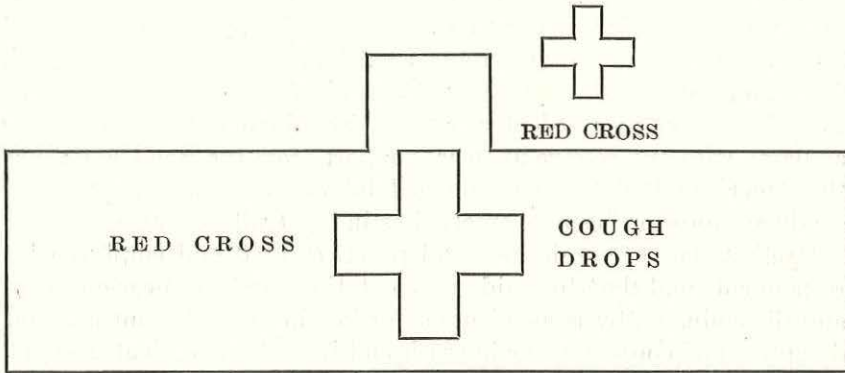
horizontal arm of the red cross the words "Trade Mark" were printed in spaced white lettering. The red cross emblem now employed by respondent Candy Bros. Manufacturing Co., Inc., is at substantial variance with the mark employed by Candy Bros. Manufacturing Co., Inc., prior to 1940. The former narrow proportioned arms have been widened, the descriptive words "Red Cross Cough Drops" have been eliminated from its four corners, and it also fails to carry the words "Trade Mark" on the horizontal arm of the cross. The red cross now employed by respondent Candy Bros. Manufacturing Co., Inc., is a Greek Red Cross standing conspicuously alone, and it is a facsimile of the official emblem of the American Red Cross, printed in a red color that is an exact duplicate of the shade of red used by the American Red Cross on all pamphlets, letterheads, or other printed matter. It is likewise a duplicate or facsimile of the Greek Red Cross which has been employed over a period of years by Cash Bros. Drug Co. and Pure Drug Products, Inc., the stock of which said companies was acquired by corporate respondent Universal Match Corp. in January 1940, as hereinbefore related.

In newspaper advertising carried for the account of respondent Candy Bros. Manufacturing Co., Inc., in newspapers of interstate circulation both types of the hereinabove described red crosses and the words "Red Cross Cough Drops" have been carried in 1- and 2-inch one-column display advertisements. On letterheads employed by said respondent in connection with the operation of its interstate business, appears a pictorial representation of a cough drop box on which the following wording and design appears in connection with a red Greek cross on a white ground with black type lettering:



PAR. 10. During the progress of a Red Cross membership drive in cities of an eastern State in the latter part of the year 1941, sales representatives for respondent Candy Bros. Manufacturing Co., Inc., furnished to wholesale confectioners and others for use in window display photographs of an attractive young lady attired in a costume

resembling that of a Red Cross nurse and displaying a tray across the front side of which appeared a placard of the following design:



The young lady as depicted wore a nurse's costume of pure white, white shoes, a long dark cape thrown back in front so as to fully display the nurse's white costume, stockings to match the cape, and on her head was a nurse's white cap with a regulation red cross at the top of it and below this the words "Cough Drops."

Further, at the instigation and under the guidance and direction of sales representatives of respondent Candy Bros. Manufacturing Co., Inc., young ladies similarly attired passed out samples of Red Cross cough drops in stores and at office buildings in eastern cities of the United States during Red Cross membership drives in the year 1941, and said cities on such occasions were flooded with matches advertising Red Cross cough drops, thereby creating confusion and deception among members of the public and engendering the mistaken impression that the American Red Cross was engaged in the sale of, or was sponsoring, endorsing and approving respondents' Red Cross cough drops.

PAR. 11. Through the use of the above described acts, practices and representations, and others not herein set out, all of which involve the use by respondents of the red cross name and emblem in advertising, trade-marking, branding and selling their said cough drops and book matches advertising the same, respondents variously represent and imply and have represented and implied to customers and to prospective customers:

That there is some connection between the American National Red Cross Society, herein referred to as the Red Cross, and corporate respondents; that the Red Cross is financially interested in the sale of respondents' said cough drops and book matches and obtains a

royalty or percentage thereon; that respondents' said cough drops are endorsed, approved, or sponsored by the Red Cross, and that both said cough drops and book matches are put on the market with the approval of the Red Cross; that respondents' said cough drops and book matches are used by the Red Cross; that respondents' said cough drops and book matches are manufactured in factories operated by the Red Cross; that respondent companies are financially connected or affiliated with and receive financial support from the Red Cross; that the American Red Cross is engaged in business and operates and conducts stores or business enterprises in the United States.

PAR. 12. The aforesaid acts and practices used and employed by respondents and the aforesaid representations and implication made and disseminated by respondents as aforesaid are false, misleading, deceptive and confusing for in truth and in fact respondents are not connected or associated with the Red Cross in any way, financially, contractually, or otherwise. The Red Cross has not endorsed, sponsored or approved respondents' aforesaid products sold and distributed under the Red Cross name and emblem; the Red Cross is not now engaged in and has never been engaged in any commercial enterprise with respondents or otherwise; the Red Cross is not now and never has been interested directly or indirectly in the sale of any product or products sold by respondents under a Red Cross brand or otherwise; the Red Cross does not prescribe and has never prescribed any sanitary or other standard or specification for any article of commerce produced by respondents; no article of commerce manufactured or distributed by respondents is now or ever has been sold with the approval of the Red Cross, and the Red Cross has not been requested to give and has not given respondents permission to use the Red Cross name and emblem for commercial purposes.

In truth and in fact, the American Red Cross has never been engaged in any kind of commercial enterprise directly or indirectly, has never been engaged directly or indirectly in the sale of any product, has never prescribed any sanitary or other standard or specification for any article of commerce not intended for its own use; no article of commerce is now or ever has been sold with the approval of or been sponsored by the Red Cross, and the Red Cross has never given respondents or any other manufacturer, wholesaler, retailer or other dealer, permission to employ the Red Cross name or emblem as a trademark or otherwise, in advertising, trade-marking, branding, labeling or marking any product. Nor has there ever been any connection or business relationship between respondents and the American Red Cross.

PAR. 13. Furthermore, respondents' use of the Red Cross name and emblem is not and does not constitute a lawful use thereof in that, among other things:

Whatever rights corporate respondents Universal Match Corp. and Candy Bros. Manufacturing Co., Inc., may assert or claim in connection with the commercial use of the sign, insignia, or emblem of the Red Cross and of the words "Red Cross," including whatever such rights are or may be claimed through contracts or agreements with or beneficial ownership of Cash Bros. Drug Co. and Pure Drug Products, Inc., are predicated upon and are claimed and asserted through and by virtue of assignments, contracts, transfers or corporate property succession undertakings entered into and concluded by respondents subsequent to January 5, 1905, the date of the national incorporation of the American National Red Cross Society, and subsequent even to the date of June 23, 1910, the date of the act of Congress amending the said act of January 5, 1905.

Respondents herein, acting in concert with each other in carrying out the business aims, plans and program of the common enterprise hereinbefore described, through the medium of said alleged assignments, contracts, transfers, or corporate property succession undertakings have appropriated to their own commercial ends and purposes the Red Cross name and emblem that had theretofore been adopted and employed on behalf of the general public by the Red Cross organization in the United States in carrying out relief work in time of war or national distress, and neither respondents nor any of their alleged assignors in truth and in fact ever sought or obtained from the American Red Cross permission for such use.

Corporate respondents Universal Match Corp. and Candy Bros. Manufacturing Co., Inc., and individual respondents Adolph H. Rosenberg and John Feinstein, further, by their activities, as hereinbefore related, in connection with the use of the Red Cross name and emblem have placed and are now placing in the hands of distributors and outlets over the United States an instrument with which they may mislead, confuse and deceive, have misled, confused and deceived, purchasers and prospective purchasers of cough drops and paper match books.

Respondents further, and quite apart from any considerations involving the validity or legality of alleged assignments or agreements relating to the use of the Red Cross name and emblem, are not now using in marking or labeling their said cough drops and book matches the Red Cross name and emblem as formerly employed by the predecessor corporation, Candy Bros. Manufacturing Co., Inc. Respond-

ents, as hereinbefore alleged, have changed said mark in substantial material aspects, widening and shortening the arms of the Red Cross so that it is now a precise facsimile of the official emblem of the American Red Cross, removing the words "Trade Mark" from the horizontal arms of the cross and placing a substitute trade-mark label at the foot of only some of the red crosses used, and in very small inconspicuous lettering when so used, and have removed from the four angles or corners of the original red cross the words formerly appearing there and reading "Red Cross Cough Drops."

Respondents in truth and in fact now employ, and since January 1940 have employed, a red cross emblem which is a facsimile of and suggests only the emblem of the American Red Cross, without any suggestion of a trade-mark containing, or built around the use of, said emblem.

Furthermore, the extension of the use of the Red Cross name and emblem so as to apply the same to safety matches as well as cough drops is not and never has been a use for the same purpose and for the same class of goods, and is within itself an unlawful use of said name and emblem.

PAR. 14. Respondents' aforesaid acts, practices and representations, in connection with the sale of their aforesaid products, have had and now have the capacity and tendency to, and do, mislead and deceive purchasers and prospective purchasers of respondents' said products into the erroneous and mistaken belief that respondents have some association, connection or affiliation with the Red Cross, that respondents' products are approved, sponsored or endorsed by the Red Cross, that the Red Cross engages in commercial enterprises and is interested financially in the sale of respondents' products, and that the use by respondents of the Red Cross name and emblem indicates that respondents are manufacturing their said products in accordance with standards or specifications prescribed by the Red Cross. By reason of said beliefs, engendered as above stated, a substantial number of the consuming public have been and are being induced to purchase substantial quantities of respondents' said products.

The acts and practices of respondents and the implications and results flowing therefrom including the manner in which respondents have employed the trade-marks hereinbefore described, are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce, and are in violation of public law and of the Federal Trade Commission Act.

Order approving stipulation and dismissing complaint without prejudice, follows:

This matter came on to be heard by the Commission upon the motion of counsel supporting the complaint that the Commission approve the stipulation as to the facts and agreement to cease and desist executed by the respondents and dismiss the complaint herein without prejudice to the right of the Commission to issue another complaint and institute such further proceedings against the respondent as may be warranted.

It appears that said stipulation as to the facts and agreement to cease and desist covers substantially all the acts and practices charged in the complaint as being in violation of the Federal Trade Commission Act.

The Commission being of the opinion that in the circumstances the public interest does not require further corrective action at the present time:

It is ordered, That the stipulation as to the facts and agreement to cease and desist be, and the same hereby is, accepted and approved.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to issue another complaint and institute such further proceedings against the respondents as may be warranted if the practices which the respondents have agreed to discontinue should be resumed.

Mr. Marshall Morgan and Mr. Randolph W. Branch for the Commission.

Sievers & Reagan and Mr. Alfred W. Petchaft, of St. Louis, Mo., for respondents.

SCHNER-BLOCK CO., INC., AND CHARLES SCHNER, JR. Complaint, July 13, 1949. Order and opinion, October 24, 1950. (Docket 5679.)

Charge: Advertising falsely or misleadingly, misbranding or mislabeling, and using misleading product name as to nature and qualities of product; in connection with the wholesale distribution and sale of plastic buttons designated "Aquaperl" and also described as "Synthetic Pearl."

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 Schner-Block Co., Inc., a corporation, and Charles Schner, Jr., individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Schner-Block Co., Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 386 Fourth Avenue, New York, N. Y. The individual respondent, Charles Schner, Jr., is president of corporate respondent with his office and principal place of business located at 386 Fourth Avenue, New York, N. Y.; and controls and directs the acts, policies, and business affairs of said corporation.

PAR. 2. The respondents are now and since about July 1, 1948, have been engaged in the wholesale distribution and sale of plastic buttons in commerce among and between the various States of the United States and the District of Columbia.

Said respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said buttons in commerce among and between the various States of the United States and in the District of Columbia. 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 their buttons, respondents have designated them by the name "Aquaperl"; the said name has been used by respondents in various ways, including its use on containers for the said buttons, on labels, in advertising circulars and invoices; in like manner respondents have used the words "Synthetic Pearl" to describe the said buttons.

PAR. 4. Through the use of the designation "Aquaperl," respondents have represented directly and by implication, that the said buttons are pearl buttons, i. e., buttons made from the shells of mollusks; and through the use of the description "Synthetic Pearl" respondents have represented, directly and by implication, that the said buttons possess the attributes and qualities of genuine pearl buttons.

PAR. 5. The said representations are false and misleading. In truth and in fact the said buttons are not pearl buttons, but are made of plastic; the said plastic does not possess the attributes and qualities of the shells from which pearl buttons are made, nor do the respondents' buttons possess the attributes and qualities of pearl buttons made from shells.

PAR. 6. The use by the respondents of the false and misleading statements and representations hereinabove set out in offering for sale and selling their products has had and now has the capacity to, and does, mislead and deceive a substantial portion of the purchasing and consuming public into the erroneous and mistaken belief that such false statements and representations are true, that said buttons are pearl buttons, or possess the attributes and qualities of pearl buttons,

and into the purchase of substantial quantities of respondents' buttons on account of such mistaken and erroneous belief induced as aforesaid.

PAR. 7. Respondents' said practices as herein set out places in the hands of sellers of respondents' buttons, and of articles in which said buttons are used, means and instrumentalities for the misleading and deceiving of members of the buying and consuming public into the false and erroneous belief that said buttons are pearl buttons, or possess the qualities and attributes of pearl buttons, and into the purchase thereof in reliance upon such erroneous belief.

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

Complaint dismissed by the following order:

This matter came on to be heard in regular course upon the complaint, respondents' joint answer, testimony, and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision and the exceptions thereto, and briefs in support of and in opposition to the complaint (oral argument not having been requested).

Having duly considered the matter, the Commission, for the reasons set forth in the accompanying opinion, is of the view that the allegations of the complaint have not been sustained by the greater weight of the evidence.

It is ordered, That the complaint in this proceeding be, and the same hereby is, dismissed.

OPINION OF THE COMMISSION

AYRES, *Commissioner*:

The complaint issued by the Commission on July 13, 1949, charges that, in connection with the wholesale distribution in commerce of certain plastic buttons, respondents designate such products by the name "Aquaperl," and also as "Synthetic Pearl," and further alleges that these words have the capacity to, and do mislead a substantial portion of the consuming public into the erroneous belief that the buttons are made of pearl obtained from the shells of mollusks and that such products possess the attributes and qualities of pearl buttons.

The sole product involved in this proceeding is a plastic button containing so-called essence of pearl. Essence of pearl is derived from fish scales and has no connection with mollusks from which genuine pearl buttons are made. Respondents' product has an appearance very closely resembling that of pearl buttons and is sold under the trade name "Aquaperl." When "Aquaperl" appears as a product

name on buttons sold by respondents, it is accompanied by the description "Synthetic Pearl" enclosed in parentheses and in relatively fine print. Respondents' only advertising of these buttons has consisted of circulars and sample cards.

Sales by respondents to other button jobbers and to garment manufacturers are in bulk. The boxes in which the buttons are packed for sale bear the name "Aquaperl," and the words "Synthetic Pearl." The buttons sold to garment manufacturers are attached to shirts and other garments, and these labels never reach the eye of the ultimate consumers. There is no evidence in the record tending to indicate that the garment manufacturers who purchase from respondents use these terms in promoting the sale of their merchandise or that the ultimate consumer ever knows that the buttons on the finished garments have, at any time, been designated with the term "Aquaperl" and with the descriptive words "Synthetic Pearl." The record contains no evidence as to how the buttons in question are resold by jobbers purchasing them in bulk, and there is nothing to indicate that the jobbers pass the respondents' designations "Aquaperl" and "Synthetic Pearl" on to their customers or that through them these terms ever come to the attention of the ultimate consumer.

These plastic buttons are sold also by respondents to syndicate chain stores for retail sale to the ultimate consumer. When so sold by respondents, the buttons have been sewed to cards which bear the trade name "Exquisit" instead of the name "Aquaperl" or the words "Synthetic Pearl." They, therefore, are not identified when sold to the ultimate consumer by syndicate chain stores with the designations which are in controversy here.

The record discloses but one instance in which an advertisement for Aquaperl buttons appeared in a publication. This was inserted with the permission of respondents by one of their jobber customers in *Woman's Wear Daily*, a trade publication which circulates principally among garment manufacturers. The jobber, who sponsored such advertisement, appeared as a witness in this proceeding and testified that he sells only to the garment trade and does not at any time make sales to ultimate consumers. *Woman's Wear Daily*, according to this witness, has no circulation among the consuming public.

It is, of course, well settled that a company is responsible for putting into the hands of others an instrument by which they may deceive ultimate consumers. In such cases, however, there should be a showing that the deceptive instrument has been used by someone in such a way as to leave a reasonable implication that deception may result from its use. In this case, the record makes it clear that members of the trade, including jobbers and garment manufacturers who buy

such buttons, have not been confused or misled by the expressions under attack here and that members of the trade are not likely to be deceived by them. Since these are the only classes which, according to the record, come in contact with the questioned designations, it is not reasonable to infer that deception probably has resulted from their use.

Based upon the clear meaning of the word itself, the Commission is of the opinion, however, that "Aquaperl," if used as a designation for respondents' plastic buttons in connection with the sale thereof to the consuming public, may have the capacity and tendency to mislead a substantial portion of the consuming public into the belief that buttons so designated are pearl buttons made from the shells of mollusks. In such circumstances, the Commission doubts that explanation or qualification of the designation "Aquaperl" would suffice to eliminate the confusing and deceptive impressions which such word may engender. For present purposes, however, these are moot questions inasmuch as the evidence in this proceeding does not indicate that the product named "Aquaperl" ever reaches the buying or consuming public. The accompanying order of the Commission, accordingly, provides for a dismissal of the complaint in this proceeding.

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

Mr. Jesse D. Kash for the Commission.

SPORT SHOES, INC. Complaint, January 13, 1950. Order, October 27, 1950. (Docket 5732.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to source or origin of product through failing to disclose foreign source of latter; in connection with the sale of complete roller skating outfits, namely skates which are attached to shoes.

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 Sport Shoes, 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. Respondent Sport Shoes, Inc., is a Delaware corporation with its principal office and place of business at 2043 Milwaukee Avenue, Chicago, Ill.

PAR. 2. Said respondent has been for several years last past engaged in the business of selling complete roller skating outfits, namely, skates which are attached to shoes.

PAR. 3. Respondent causes its said product when sold to be shipped from its place of business in the State of Illinois to jobbers and dealers located in various other States of the United States. Said jobbers and dealers, in turn, sell said roller skating outfits to the general public. 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. Its volume of business in such commerce is substantial.

PAR. 4. In the course and conduct of its business respondent purchases shoes imported from Mexico in bulk quantities. A great number of these shoes are stamped "Made in Mexico" on the ball of the sole thereof, and when said roller skates are attached to the shoes, the stamp, brand or imprint "Made in Mexico" is completely covered up and concealed. The skates are a domestic product and carry the stamping "Made in U. S. A." and "Chicago" and the marking on the edge of the wheel of said skates varies with the type of wheel used but all wheels carry the word "Chicago." The cartons in which the respondent's roller skating outfits are packaged have a label pasted on one end which bears the name of the respondent "Sport Shoes, Inc.," and following it, the word "Chicago," but no statement showing that the shoes are of Mexican origin. Respondent also sells said roller skating outfits by salesmen, who, when making sales thereof do not disclose to the purchasers that the shoes to which the skates are attached are of Mexican origin.

PAR. 5. In the course and conduct of its business and for the purpose of inducing the sale of its product in commerce, the respondent in December 1947 made certain statements and representations concerning said product by means of an advertisement, or more than one, inserted in a magazine of national circulation which magazine is distributed primarily to dealers but which may be read by members of the purchasing public. Among and typical of such statements and representations are the following:

* * From top to toe they're built for hard, tough wear. Each shoe is of Goodyear Welt construction! You'll sell them fast and with complete confidence. Your customers—and you too—will see they're the outstanding shoe value in all America. * * Goodyear Welt construction. Top grain leather. With Chicago roller skates attached. * * Sport Shoes, Inc., 2045 Milwaukee Avenue, Chicago, Illinois.

PAR. 6. By virtue of the practice, heretofore and now established, of imprinting and otherwise labeling or marking products of foreign origin, and their containers, with the name of the country of their origin, in legible English words, in a conspicuous place, and as required by law, a substantial portion of the buying and consuming public has come to rely, and now relies, upon such imprinting, label-

ing or marking, and is influenced thereby, to distinguish and discriminate between products of foreign and domestic origin, including foreign-made and imported shoes. When products composed in whole or substantial part of imported articles are offered for sale and sold in the channels of trade in commerce, throughout the United States without such imprinting, labeling or marking upon the products and their containers and without disclosing in the advertising of such products the material fact that they are of foreign origin, they are taken to be, accepted and purchased as products wholly of domestic manufacture and origin. The advertisement above set out does not make such disclosure and for this reason is misleading and deceptive.

At all times material to this complaint, there has been, and now is, among said members of the buying and consuming public, including purchasers and users of shoes, in and throughout the United States, a substantial and subsisting preference for products which are wholly of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin and from products which are in substantial part made of materials or parts of foreign manufacture or origin.

PAR. 7. The aforesaid practices have had and now have the tendency and capacity to mislead and deceive purchasers into the false and erroneous belief that said roller skating outfits are wholly of domestic manufacture and origin and into the purchase thereof in reliance upon such erroneous belief.

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.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, the attached initial decision of the trial examiner did, on October 27, 1950, become the decision of the Commission.

Commissioner Spingarn not participating.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

Initial decision by HENRY P. ALDEN, Trial Examiner

This proceeding came on to be considered by the above-named trial examiner, theretofore duly designated by the Commission, upon the complaint of the Commission and a memorandum submitted June 19, 1950, to the Commission by the Chief of the Division of Litigation recommending that the case be dismissed; and it appearing to the

trial examiner that the respondent Sport Shoes, Inc., is and for the past several months has been out of business and that there is not sufficient public interest to justify proceeding further in the case.

It is ordered, That the complaint in this proceeding be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings should future facts warrant.

Mr. Morton Nesmith for the Commission.

JOSEPH GORDON DOING BUSINESS AS DAWN PRODUCTS Co. Complaint, July 1, 1947. Order, November 6, 1950. (Docket 5504.)

Charge: Advertising falsely or misleadingly and misrepresenting directly as to dealer being a manufacturer, prices, and money raising programs and misrepresenting prices as being wholesale; in connection with the sale, principally, of flavoring extracts, cosmetics, silver polish, furniture polish, and other household preparations, to and through religious, patriotic, charitable, and similar societies and organizations, for resale to the public.

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 Joseph Gordon, doing business as Dawn Products Company, 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, Joseph Gordon, is now, and since about January 1944, has been, engaged in the business of selling merchandise, consisting principally of flavoring extracts, cosmetics, silver polish, furniture polish, and other household preparations, to religious, patriotic, charitable, and similar societies and organizations, for resale to the public, under the plan and by the methods hereinafter set forth. His principal place of business has been and is at 2147-2149 West Lake Street, Chicago, Ill.

Pursuant to such sales and as a part thereof, respondent ships and causes to be shipped, and has shipped and caused to be shipped, such merchandise from his said place of business, and from other points, to the purchasers thereof, many of whom were and are located in States of the United States other than the points of origin of such shipments.

PAR. 2. By means of the popular and emotional appeal thereby obtained, respondent contacts and selects, and has contacted and selected, various societies and organizations of the character mentioned in Paragraph 1 hereof in cities and towns throughout the States of the United States as instrumentalities through which, and as fronts by

means of which, he sells and has sold his various products to members of the consuming or purchasing public, principally housewives.

Among the organizations so contacted and so selected to sell respondent's products are and were the Women's Relief Corps, Royal Neighbors of America, War Wives Club, Sons of Union Veterans, American Legion Auxiliary, and others. Underlying the entire sales plan of respondent is the basic approach that the entire profit derived from the sale of the products goes to charity, patriotic and other similar causes.

PAR. 3. Respondent's plan of sale is as follows:

He instructs and trains persons to be known as, and to act as, "supervisors" and enters into a written contract with them whereby he grants to them a "right and license" "to use and operate" his "plan" of sale, limited as to time and exclusive as to a defined territory and to "buy for resale strictly according to said Plan, such products as the seller (respondent) may, from time to time, offer for sale." The supervisor is bound not to deviate from the plan; not to use it for the sale of any products except those furnished by respondent; to submit to respondent for review and approval all printed matter, forms, agreements and advertising; to pay respondent for said products one-half the price at which the products are to be sold at retail, which retail price is fixed by respondent at \$1.00 per unit. The contract further provides that the supervisor shall have a right to return, in whole or in part, such products "as may not be taken up by the supervisor's customers"; shipment from the respondent to the supervisor to be on a c. o. d. basis and invoiced to him at 50 percent of the retail price fixed by respondent. The agreement also provides that the supervisor shall devote his full time and efforts exclusively to the "resale" of respondent's products and produce a sales volume of not less than \$250 per week "computed at the retail prices."

PAR. 4. When respondent or a supervisor shall have successfully solicited a society or organization of the character referred to in Paragraph Two hereof, hereinafter referred to as the sponsoring organization, respondent presents and enters into a written contract, entitled "Introductory Campaign Agreement," with the sponsoring organization, whereby respondent agrees to supply "useful and popular household items at wholesale, for resale or retail to be productive of funds intended for use in Welfare, Patriotic and Charitable work" by the sponsoring organization, "said wholesale price to (be) 50 percent of retail." The contract further provides that respondent guarantees the sponsoring organization a net profit of \$10 for each 100 items sold; that respondent will recommend a capable and efficient supervisor to conduct the sales campaign and that the sponsoring

organization shall pay the supervisor \$10 from each 100 items sold; that assistance by the organization in the sales campaign is not required; that respondent will give the sponsoring organization full credit for unsold merchandise returned; that the sponsoring organization "can rely on recommended Supervisor to hire and train persons of the local community" to solicit orders for the merchandise to be sold.

PAR. 5. After the execution of this contract and at an agreed time, a supervisor selected and trained and recommended by respondent takes complete charge of the sales campaign, advertises and conducts it in the name of the sponsoring organization, rents office and work quarters, prepares, subject to approval by respondent, and disseminates advertisements and other forms of publicity of and concerning the sale; employs solicitors and instructs and trains them to solicit orders; instructs the solicitors, in accordance with instructions received from respondent, to represent to the public and to prospective purchasers, and the respondent and the supervisor and the solicitors do represent to the public and prospective purchasers, that the profits from the sale are to be used in the sponsoring organization's work. Respondent represents to the public, to the sponsoring organization and to the solicitors that he is the manufacturer of the products he sells, which representation the solicitors pass on to the public.

The merchandise to be sold is ordered by the supervisor from the respondent, is shipped, or caused to be shipped, collect on delivery, to the sponsoring organization in care of the supervisor and is invoiced to the sponsoring organization and the supervisor. The shipment is received by, and the collect charges paid by, the supervisor and no representative of the sponsoring organization ever has knowledge of the amount of the c. o. d. charges or invoice. The price charged the public is \$1 per unit, which is five or six times the usual price of products of the same character and quality.

PAR. 6. By the methods and practices and in the manner hereinbefore alleged, respondent represents and causes to be represented to the sponsoring organization and to the public that he is the manufacturer of the products he sells; the price paid by the sponsoring organization for the merchandise is a wholesale price and that all the profits from the sale go to the sponsoring organization. In truth and in fact, the respondent does not manufacture any of the products he sells, but buys them from various manufacturers and wholesalers; the price charged by respondent and paid by the sponsoring organization is not a wholesale price but is the wholesale price plus a profit to respondent of many times the wholesale price, and all the profits derived from the sale do not go to the sponsoring organization but 50 percent of the price paid by the public goes to the respondent, and the

sponsoring organization rarely, if ever, receives more than 10 percent of the price paid by the public.

PAR. 7. The representations, acts and practices of the respondent, as hereinabove set forth, are prejudicial to the public and constitute the use by respondent of unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Complaint dismissed by the following order:

This matter came on to be heard by the Commission in regular course upon the complaint, answer of the respondent, testimony and other evidence, recommended decision of the trial examiner with exceptions thereto, and briefs and oral argument of counsel.

The complaint herein charges respondent with the use of unfair and deceptive acts and practices in commerce in connection with the offering for sale, sale, and distribution of his merchandise through false and misleading representations that he is the manufacturer of the products he sells; that the prices at which he sells are wholesale prices; and that all the profits from sales go to religious, patriotic, charitable, and similar societies and organizations.

The Commission having duly considered the matter and it appearing that the charges of the complaint are not sustained by the evidence in the record:

It is ordered, That the complaint herein be, and the same hereby is, dismissed.

Commissioner Mason not participating.

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

Mr. Edward F. Downs for the Commission.

Dale, Lytton, Haffner & Grow, of Chicago, Ill., for respondent.

THOMAS A. WALSH, JR., AND MARJORIE C. WALSH TRADING AS THOMAS A. WALSH MANUFACTURING Co. Complaint, April 26, 1949. Order, November 6, 1950. (Docket 5654.)

Charge: Aiding, assisting and abetting unfair or unlawful act or practice through supplying lottery devices and using or selling lottery schemes or devices in merchandising; in connection with the manufacture and sale of devices commonly known as push cards and punchboards.

COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act and by virtue of authority vested in it by said act, the Federal Trade Commission, having reason to believe that Thomas A. Walsh, Jr., and Marjorie C. Walsh, individuals and partners trading as Thomas A. Walsh Manufacturing Co., hereinafter referred to as respondents, have violated the provisions of said act, and it

appearing to the Commission that a proceeding by them in respect thereof would be in the public interest, hereby issues this complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondents, Thomas A. Walsh, Jr., and Marjorie C. Walsh, are individuals and partners trading and doing business under the name Thomas A. Walsh Manufacturing Co., with their office and principal place of business located at 201 South Tenth Street, in the city of Omaha, Nebr. Respondents are now and for more than 3 years last past have been engaged in the manufacture of devices commonly known as pushcards and punchboards, and in the sale and distribution of said devices to manufacturers of, and 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 the Territories of the United States, and to dealers in various articles of merchandise located within the several States of the United States, in the District of Columbia, and in the several Territories of the United States.

Respondents cause and have caused said devices when sold to be transported from their place of business in the State of Nebraska to purchasers thereof at their points of location in the various States of the United States, other than Nebraska, in the District of Columbia, and in the several Territories of the United States. 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, in the District of Columbia, and in the several Territories of the United States.

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 manufacturers of and 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 disc 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 these 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 pushcard 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, whole-

sale 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 or 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 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.

Record closed by the following order:

This matter came on to be heard by the Commission upon motion to dismiss the complaint, filed on September 18, 1950, by the respondents, and answer thereto, filed on September 28, 1950, by counsel supporting the complaint, which answer does not oppose dismissal of the complaint without prejudice to the right of the Commission to reopen the matter and proceed in regular course in the event such proceedings appear necessary.

The complaint in this matter charges respondents with unfair and deceptive acts and practices through the sale and distribution of lottery devices. Respondents filed an answer admitting the material allegations of fact and waiving further procedure except the right of appeal, subject to the condition that the Commission take no action herein until its final determination of the matter of *Superior Products Company, Inc.*, Docket 5561.

It now appears that the respondent Thomas A. Walsh Manufacturing Co. is no longer engaged in any business whatsoever, that all of its assets have been sold and disposed of, and that neither said company

nor the partners thereof, the individual respondents herein, in any combination or any form, intend to resume the business of manufacturing or selling lottery devices.

The Commission having duly considered the motion and the record herein and being of the opinion that in the circumstances the public interest does not require further corrective action in this matter at this time, and being of the further opinion that this case should be closed without prejudice to the right of the Commission to reopen the same should future facts warrant such action, instead of the complaint herein being dismissed as requested by the respondents:

It is ordered, That this case be, and the same hereby is, closed without prejudice to the right of the Commission to reopen the same should future facts warrant such action.

Commissioner Mason not participating.

Before *Mr. Frank Hier*, trial examiner.

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

WASHINGTON BREWERS INSTITUTE, BREWERS INSTITUTE OF OREGON, CALIFORNIA STATE BREWERS INSTITUTE, IDAHO BREWERS INSTITUTE, THE OFFICERS AND MEMBERS THEREOF, AND BECKER PRODUCTS CO. Complaint, January 17, 1949. Order, November 20, 1950. (Docket 5633.)

Charge: Entering into, and carrying out, an understanding and planned common course of action to suppress and eliminate competition and to create a monopoly in said respondent members and in said individual respondent in the manufacture and sale of beer and other malt liquors among and within the States of Washington, Oregon, Idaho, Utah, and California, through cooperatively working out uniform price-posting schedules and furnishing the same to respondent Institutes for posting with the State alcohol beverage control boards of the various States in which respondents operate; through cooperating with each other and with the various State control boards to police the industry in order to prevent price cutting, and in other ways as in the complaint set out.

COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that the Washington Brewers Institute, a corporation, its officers and members; the Brewers Institute of Oregon, a corporation, its officers and members; the California State Brewers Institute, a corporation, its officers and members; Idaho Brewers Institute, a corporation, its officers and members; and Becker Products Co., a corporation, hereinafter referred to as respondents, have violated the provisions of section 5 of said act,

and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent Washington Brewers Institute is a nonprofit corporation, organized and existing under the laws of the State of Washington, with its principal office and place of business located in the Hoge Building, Seattle, Wash. The Institute is composed of approximately nine corporations located in the States of Washington and Oregon, which said corporations are engaged in the manufacture, sale and distribution in interstate commerce of beer and other malt liquors.

The names and addresses of the present officers of said respondent Institute who, in their individual capacities, and as such officers of said respondent Institute, are named as respondents herein, are: Emil G. Sick, chairman, 3100 Airport Way, Seattle, Wash.; William H. Mackie, vice chairman, 3100 Airport Way, Seattle, Wash.; Gus V. Uhr, treasurer, 615 Columbia Street, Vancouver, Wash.; and Herbert J. Durand, secretary, 284 New Washington Hotel, Seattle, Wash.

The names and addresses of the members of said respondent Washington Brewers Institute, who, individually and as such members of said respondent Washington Brewers Institute are named as respondents herein are: Sick's Seattle Brewing & Malting Co., a corporation, 3100 Airport Way, Seattle, Wash.; Sick's Century Brewery, a corporation, 610 Westlake Avenue North, Seattle, Wash.; Sick's Spokane Brewery, Inc., a corporation, 829 West Broadway, Spokane, Wash.; Columbia Breweries, Inc., 2120 South C. Street, Tacoma, Wash.; Olympia Brewing Co., a corporation, Olympia, Wash.; Interstate Brewery Co., a corporation, 615 Columbia Street, Vancouver, Wash.; Bohemian Breweries, Inc., 1402 West Second Avenue, Spokane, Wash.; Pioneer Brewing Co., a corporation, Walla Walla, Wash.; and Blitz-Weinhard Co., 1133 West Burnside Street, Portland, Ore.

PAR. 2. Respondent Brewers Institute of Oregon is a nonprofit corporation, organized under the laws of the State of Oregon, with its principal office and place of business located in Suite 8-J, Multnomah Hotel, Portland, Ore. The membership of said Brewers Institute of Oregon is composed of approximately 14 corporations who are located in various parts of the States of Oregon, Washington, and California, and who are engaged in the manufacture, sale, and distribution in interstate commerce of beer and other malt liquors.

The names and addresses of the officers of said respondent Brewers Institute of Oregon who, in their individual capacities and as such officers of said respondent Institute are named as respondents herein, are John M. Pipes, chairman and treasurer, Suite 8-J, Multnomah Hotel, Portland, Ore., and George F. Paulsen, secretary, Suite 8-J, Multnomah Hotel, Portland, Ore.

The names and addresses of the members of said respondent Brewers Institute of Oregon who, individually and as such members of said respondent Brewers Institute of Oregon are named as respondents herein, are: Acme Breweries, a corporation, San Francisco, Calif.; Blitz-Weinhard Co., 1133 West Burnside Street, Portland, Oreg.; Bohemian Breweries, Inc., 1402 West Second Avenue, Spokane, Wash.; Columbia Breweries, Inc., 2120 South C. Street, Tacoma, Wash.; Golden Age Brewery, Inc., Spokane, Wash.; Interstate Brewery Co., a corporation, 615 Columbia Street, Vancouver, Wash.; Olympia Brewing Co., a corporation, Olympia, Wash.; Regal Amber Brewing Co., a corporation, 675 Treat Street, San Francisco, Calif.; Henry W. Collins, an individual trading as William Roche Brewing Co., Pendleton, Oreg.; Sick's Seattle Brewing & Malting Co., a corporation, 3100 Airport Way, Seattle, Wash.; Sick's Brewing Co., a corporation, 260 South Commercial Street, Salem, Oreg.; Rainier Brewing Co., a corporation, 1550 Bryant Street, San Francisco, Calif.; Golden West Brewing Co., a corporation, Oakland, Calif.; and Pioneer Brewing Co., a corporation, 350 South Second Avenue, Walla Walla, Wash.

PAR. 3. Respondent California State Brewers Institute is a non-profit corporation, organized and existing under the laws of the State of California, with its principal office and place of business located at 155 Montgomery Street, San Francisco, Calif. The membership of said respondent California State Brewers Institute is composed of approximately 10 corporations located in various parts of the State of California and engaged in the manufacture, sale, and distribution in interstate commerce of beer and other malt liquors.

The names and addresses of the officers of said respondent California State Brewers Institute who, individually and as such officers of said respondent California State Brewers Institute are named as respondents herein, are: Karl F. Schuster, president, 762 Fulton Street, San Francisco, Calif.; Wm. P. Baker, first vice president, 675 Treat Street, San Francisco, Calif.; Eugene S. Selvage, second vice president, 2601 Newhall Street, San Francisco, Calif.; Stewart McKee, third vice president, 666 Gibbon Street, Los Angeles, Calif.; Joseph Golbie, treasurer, 1550 Bryant Street, San Francisco, Calif.; James G. Hamilton, secretary, 155 Montgomery Street, San Francisco, Calif.; and B. G. Lewis, secretary, southern division, Los Angeles, Calif.

The names and addresses of the members of said respondent California State Brewers Institute, who individually and as such members of said respondent California State Brewers Institute are named as respondents herein, are: Acme Breweries, a corporation, 762 Fulton Street, San Francisco, Calif.; Aztec Brewing Co., a corporation, San Diego, Calif.; Regal Amber Brewing Co., a corporation, 675 Treat Street, San Francisco, Calif.; General Brewing Corp., 2601 Newhall Street, San Francisco, Calif.; Stewart McKee & Co., a

corporation, 666 Gibbon Street, Los Angeles, Calif.; Rainier Brewing Co., a corporation, 1550 Bryant Street, San Francisco, Calif.; Grace Bros. Brewing Co., a corporation, Second and Davis Streets, Santa Rosa, Calif.; Maier Brewing Co., a corporation, 440 Aliso Street, Los Angeles, Calif.; Pacific Brewing & Malting Co., a corporation, 1025 Cinnabar Street, San Jose, Calif.; and San Francisco Brewing Corp., 470 Tenth Street, San Francisco, Calif.

PAR. 4. Respondent Idaho Brewers Institute is a nonprofit corporation, organized and existing under the laws of the State of Idaho, with its principal office and place of business located at 111 North Sixth Street, Boise, Idaho. The membership of said respondent Idaho Brewers Institute is composed of approximately four corporations located in the States of Idaho, California, and Washington, which said members are engaged in the manufacture, sale, and distribution in interstate commerce of beer and other malt liquors.

The name and address of the president and secretary of said respondent Idaho Brewers Institute, who, individually and as such president and secretary of respondent Idaho Brewers Institute, is named as respondent herein, is Stephen T. Collins, 111 North Sixth Street, Boise, Idaho.

The names and addresses of the members of said respondent Idaho Brewers Institute who, individually and as such members of said respondent Idaho Brewers Institute are named as respondents herein, are: Acme Breweries, a corporation, 762 Fulton Street, San Francisco, Calif.; Bohemian Breweries, Inc., 111 North Sixth Street, Boise, Idaho; Bohemian Breweries, Inc., Spokane, Wash.; and East Idaho Breweries, Inc., 635 South First Avenue, Pocatello, Idaho.

PAR. 5. Respondent Becker Products Co. is a corporation, organized and existing under the laws of the State of Utah, with its principal office and place of business located at 1900 Lincoln Street, Ogden, Utah. Said respondent Becker Products Co. is engaged in the manufacture, sale, and distribution in interstate commerce of beer and other malt liquors. Said respondent also operates, in addition to its Ogden, Utah, plant, a branch plant located at Evanston, Wyo.

PAR. 6. The members of said respondent Institutes heretofore named in paragraphs 1 to 4, both inclusive, and the individual respondent named in paragraph 5 are located in various States of the United States. The members of said respondent Institutes and the individual respondent are engaged in the business of manufacturing, selling, and distributing beer and other malt liquors to purchasers located in States other than the State in which said respective respondents are located, causing said products, when so sold, to be transported from their respective places of business to the purchasers thereof, and there has been and now is a course of interstate trade and commerce in said products between the members of said re-

spondent Institutes and said individual respondent and the purchasers of said products located throughout the several States of the United States.

Respondent Institutes hereinbefore mentioned in paragraphs 1 to 4, both inclusive, have served and do now serve as State organizations, and have cooperated and do now cooperate with each other, with their respective members, and with the individual respondent hereinbefore named in paragraph 5 in their various activities, as hereinafter set out. The respondent hereinbefore named in paragraph 5 is not a member of any of said respondent Institutes, but said respondent has cooperated with said respondent Institutes in their various activities. Said respondent members of said respondent Institutes named in paragraphs 1 to 4, both inclusive, and said nonmember respondent named in paragraph 5 hereof are now and have been, during all of the times mentioned herein, engaged in competition with other members of the industry in making and seeking to make sales of their said products in said commerce, and but for the facts hereinafter alleged would now be in free, active, and substantial competition with each other in their respective selling areas.

PAR. 7. Said respondent members of said respondent Institutes, acting in cooperation with each other and through and in cooperation with said respondent Institutes and said nonmember respondent for more than 12 years last past, and particularly since January 1, 1936, have entered into an understanding, agreement, combination, conspiracy, and planned common course of action among themselves and with and through said respondent Institutes and said individual respondent to restrict, restrain, and suppress competition in the sale and distribution of beer and other malt liquors to customers located throughout the several States of the United States, as aforesaid, by agreeing to fix and maintain uniform prices, terms, and discounts at which said beer and other malt liquors are to be sold, and to cooperate with each other in the enforcement and maintenance of said fixed prices, terms, and discounts by exchanging information through said respondent Institutes as to the prices, terms, and discounts at which said respondent members of said Institutes and said individual respondent have sold and are offering to sell said beer and other malt liquors to customers and prospective customers.

PAR. 8. Pursuant to said understanding, agreement, combination, conspiracy, and planned common course of action, and in furtherance thereof, the respondents have done and performed, and still do and perform, among others, the following acts and things:

Have fixed the prices at which beer and other malt liquors are to be offered for sale in accordance with the type of the product and the method of packaging; have cooperatively worked out uniform price-posting schedules and furnished the same to respondent Institutes for

posting with the State alcohol beverage control boards of the various States in which the respondents operate; have agreed upon uniform discounts to be allowed to purchasers of beer and other malt liquors; have standardized the packaging of beer and other malt liquors; have agreed to uniform allowances for the return of empty containers; have discussed and agreed upon uniform zoning areas for the pricing of said beer and other malt liquors; have cooperated with each other and with the various State control boards to police the industry in order to prevent price-cutting, and have disciplined offending members.

PAR. 9. The results of the acts and practices of the said respondent members of said respondent Institutes and of said Individual respondent, as hereinabove set out in paragraph 8, has been and now is to substantially lessen, restrict, restrain, and suppress price competition in the interstate sale of beer and other malt liquors throughout the several States of the United States, and empowers the said respondents to control the market and to enhance the prices of said products above the prices which would prevail therefor under normal, natural, and open competition between said respondents; and also to tend to create a monopoly in said respondent members and in said individual respondent in the manufacture and sale of beer and other malt liquors among and within the States of Washington, Oregon, Idaho, Utah, and California.

PAR. 10. The acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public, have a dangerous tendency to and have actually hindered and prevented price competition between and among respondents in the sale of beer and other malt liquors in interstate commerce, and have placed in the respondents the power to control prices, have increased the price of beer and other malt liquors paid by the purchasers thereof, and, consequently, the prices paid by the public, have created in the respondents a monopoly in the sale of beer and other malt liquors among and within the States of Washington, Oregon, Idaho, Utah, and California, and have unreasonably restrained such commerce in beer and other malt liquors and constitute unfair methods of competition within the intent and meaning of section 5 of the Federal Trade Commission Act.

Complaint dismissed without prejudice by the following order:

This matter coming on to be heard by the Commission upon a motion, filed on behalf of the respondent, Washington Brewers Institute, requesting that the complaint in this proceeding be dismissed, and the answer to such motion filed by counsel in support of the complaint; and

It appearing to the Commission that the illegal activities described in the complaint have not been engaged in by the respondents since May 5, 1941, on which date most, if not all, of said respondents were indicted for conspiracy to violate Sections 1 and 3 of the Sherman Act; and

The Commission having been informed that the States of Washington, Oregon, California, and Idaho possess such laws, rules, and regulations as are necessary to enable said States to prevent the respondents from again engaging in the acts and practices alleged in the complaint to be in violation of the Federal Trade Commission Act, and that the authorities of said States are enforcing said laws, rules, and regulations in such a manner as to accomplish that result; and

The Commission being of the opinion that in these circumstances the public interest does not require a continuation of this proceeding:

It is ordered, That the complaint herein be, and it hereby is, dismissed, without prejudice, however, to the right of the Commission to institute a new proceeding or to take such further or other action against the respondents, or any of them, at any time in the future as may be warranted by the then existing circumstances.

Commissioner Mason not participating.

Mr. Earl W. Kintner and *Mr. J. D. Sharp* for the Commission.

Mr. W. J. Lindberg and *Lenihan & Ivers*, of Seattle, Wash., for Washington Brewers Institute and its officers and members.

Skeel, McKelvy, Henke, Evenson & Uhlmann, of Seattle, Wash., also for Olympia Brewing Co.

Chadwick, Chadwick & Mills, of Seattle, Wash., also for Emil G. Sick, William H. Mackie, Sick's Seattle Brewing & Malting Co., Sick's Century Brewery, Sick's Spokane Brewery, Inc. and Sick's Brewing Co.

Mr. D. Elwood Caples, of Vancouver, Wash., also for Gus V. Uhr and Interstate Brewery Co.

Bogle, Bogle & Gates, of Seattle, Wash., also for Columbia Breweries, Inc.

Paine, Lowe & Coffin, of Spokane, Wash., also for Bohemian Breweries, Inc., and

Coleman & Coleman, of Everett, Wash., also for Pioneer Brewing Co.

Mr. John M. Pipes, of Portland, Oreg., for Brewers Institute of Oregon, John M. Pipes and George F. Paulsen.

Mr. Moe M. Tonkon and *Mr. David S. Pattullo*, of Portland, Oreg., for Henry W. Collins.

Laing, Gray & Smith, of Portland, Oreg., for Blitz-Weinhard Co.

Mr. Robert Weinstein, of Spokane, Wash., for Golden Age Brewery, Inc.

Mr. E. R. Hoerchner and *Brobeck, Phleger & Harrison*, of San Francisco, Calif., for California State Brewers Institute and various officers and members thereof.

Hoffman, Davis & Martin, of San Francisco, Calif., for San Francisco Brewing Corp.

Mr. Norman A. Eisner, of San Francisco, Calif., for Acme Breweries and Karl F. Schuster.

Burke, Marshall & Burke and *Sheppard, Mullin, Richter & Balthis*, of Los Angeles, Calif., for Stewart McKee & Co.

Morrison, Hohfeld, Foerster, Shuman & Clark, of San Francisco, Calif., for Golden West Brewing Co.

Mr. C. Stanley Skiles, of Boise, Idaho, for Idaho Brewers Institute and Stephen T. Collins.

Jones, Pomeroy & Jones, of Pocatello, Idaho, for East Idaho Breweries, Inc.

Howell, Stine & Olmstead, Ogden, Utah, for Becker Products Co.

Mr. Smith Troy, attorney general, and *Mr. Joseph P. Lavin*, assistant attorney general of the State of Washington, of Olympia, Wash. for State of Washington, intervenor.

Mr. George Neuner, attorney general, and *Mr. John K. Crowe*, assistant attorney general of the State of Oregon, of Portland, Oreg., for State of Oregon, intervenor.

Mr. Robert E. Smylie, attorney general, and *Mr. Don J. McClennahan*, assistant attorney general of the State of Idaho, of Boise, Idaho, for State of Idaho, intervenor.

Mr. Fred N. Howser, attorney general, and *Mr. J. Albert Hutchinson*, deputy attorney general of the State of California, of San Francisco, Calif., for State of California, intervenor.

ARDEN JEWELRY MANUFACTURING CO., INC., FRED ABROMS AND LEO WEINER. Complaint, February 18, 1946. Order, November 28, 1950. (Docket 5422.)

Charge: Neglecting, unfairly or deceptively, to make material disclosure as to imported product or parts as domestic; in connection with the wholesale distribution and sale of domestic and imported merchandise of various kinds, including imitation pearls and alabaster base beads for the manufacture of imitation pearls made into necklaces and other articles of jewelry.

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 Arden Jewelry Manufacturing Co., Inc., a corporation and Fred Abroms and Leo Weiner, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Arden Jewelry Manufacturing Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island, with its office and prin-

cipal place of business located at 99 Stewart Street, Providence, R. I. Individual respondents Fred Abroms and Leo Weiner are president and treasurer, respectively, of respondent corporation. Acting in their said official capacities, said individual respondents formulate and control, and have formulated, directed and controlled the respective acts, policies and business affairs of said corporation.

PAR. 2. The 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 pearls and alabaster base beads for the manufacture of imitation 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 their said products, when sold, to be transported from their said place of business in the State of Rhode Island to purchasers thereof located in various other States of the United States and in the District of Columbia.

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

PAR. 3. In the course and conduct of their said business in connection with the sale and distribution of their said imitation pearl necklaces and other articles of jewelry, respondents have purchased large quantities of imitation pearls and base beads of foreign origin for the manufacture of imitation pearl necklaces from importers engaged in the sale and distribution of said products in the United States.

Respondents operate a factory where they cause domestic base beads as well as base beads of foreign origin to be finished by dipping or spraying said products in a solution, thereby completing the manufacture of said base beads into imitation pearls. After said processing as aforesaid, respondents sell and distribute their imitation pearls made into necklaces in commerce, together with other articles of jewelry.

Respondents also process large quantities of base beads of foreign origin for others who are likewise engaged in the sale and distribution in commerce of imitation pearls made into necklaces and other articles of jewelry.

PAR. 4. At the time of the importation into the United States of the above-enumerated products, and at the time the said respondents received 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 word "Spain" or the words "Made in Spain" or marked with other word or words indicating the country of origin.

After said products are received in the United States, the respondents cause the words or marks indicating their foreign origin to be removed therefrom and thereafter sell and distribute the 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 purchaser 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. 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, 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 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, 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

other articles of jewelry, and all of 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 uninformed retailers of respondents' imitation 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 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.

Complaint dismissed by the following order:

This matter came on for final consideration by the Commission upon the complaint, respondents' answer thereto, testimony, and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, recommended decision of the trial examiner, and brief of counsel supporting the complaint, no brief having been filed by respondents and oral argument not having been requested.

The complaint herein charges respondents with the use of unfair and deceptive acts and practices in connection with the offering for sale, sale, and distribution of imitation pearl necklaces and other articles of jewelry of Japanese, Spanish, or other foreign origin without disclosing the foreign origin of such products. It appears from the record herein that the respondents do not import imitation pearls, but that they do import alabaster or glass beads. After importation, such alabaster or glass beads are put through a process by which they are converted into imitation pearls and thereafter used in necklaces and other articles of jewelry.

Similar facts to those disclosed by the record herein were before the Commission in the matter of *L. Heller & Son, Inc., et al.*, Docket 5358.¹ In that matter the Commission determined that the imported alabaster or glass beads are only one of the raw ingredients used in the manufacture of imitation pearls and that the imitation pearls so manufactured and necklaces and other articles of jewelry made therefrom are products of American manufacture, and that under these circumstances, disclosure of the foreign origin of the imported alabaster or glass beads should not be required when selling necklaces or other articles of jewelry containing such imitation pearls. The

¹ 47 F. T. C. 34.

reasons for such determination are fully set forth in the opinion of the Commission in that matter. The reasons therein set forth are controlling in this matter.

The Commission having duly considered the matter and being now fully advised in the premises:

It is ordered, That the complaint herein be, and the same hereby is, dismissed.

Commissioner Mason not participating.

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

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

Mr. Bernard B. Abedon, of Providence, R. I., for respondents.

NATIONAL COAT AND SUIT INDUSTRY RECOVERY BOARD, ITS OFFICERS, EXECUTIVE BOARD MEMBERS AND MEMBERS, ET AL. Complaint, September 26, 1941. Order, December 1, 1950. (Docket 4596.)

Charge: Combining, agreeing, and cooperating to control and regulate the misses', women's, children's and infants' coat and suit industry in the United States in the interest of the respondents, and to restrain trade therein and monopolize the same through establishing so-called uniform standards of fair commercial practices relating to discounts, consignments, delivery charges, advertising subsidies, returns, cancellations, cut, make and trim, incomplete garments, and group showings; through requiring display of respondent board's label on all garments made by members, along with observance of the conditions attached thereto; and through policing and enforcing in coercive and various ways compliance therewith;

Capacity, tendency, and effect of which agreements and conspiracies, and policies, practices, and acts and things done in pursuance thereof were:

To tend to monopolize in the respondent manufacturers the business of manufacturing, selling, and distributing women's, misses', children's and infants' coats, jackets, caps, wraps, riding habits, knickers, suits, ensembles, and skirts in most of the trade areas of the United States;

To tend to monopolize in the respondent manufacturers the opportunity to secure skilled labor for the manufacturers of such garments;

To establish fixed and maintained prices, discounts and various terms and conditions attending the sale of such merchandise in all parts of the country;

To lessen, suppress and restrain competition in the sale of the merchandise, and to suppress, discriminate against and eliminate contractors, submanufacturers and small manufacturers who are or have been engaged in, or who desire to engage in, the manufacture and sale of such merchandise; and

To burden, hamper and interfere with the normal and natural flow of trade in commerce in such merchandise throughout the various States.

Complaint against respondent board, fourteen associations of coat and suit manufacturers, officers thereof as such and as representative of the different members thereof, and the International Ladies Garment Workers Union, their officers, etc., follows:

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

PARAGRAPH 1. Respondent National Coat & Suit Industry Recovery Board, hereinafter referred to as respondent Recovery Board, is a corporation, organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its office and principal place of business located at 132 West Thirty-first Street, New York City. The following named individuals are officers of said respondent corporation, and as such are designated as respondents herein:¹

¹ The Commission on November 7, 1941, approved stipulation substituting certain respondents, as follows:

"Whereas the respondents named in the complaint herein, namely, Associated Garment Industries of St. Louis, Inc., and Manufacturers and Wholesalers Association of San Francisco, are not and have not been affiliated with the respondent Recovery Board, and have not participated in any of the practices complained of in the complaint; and

"Whereas it appears that Milton J. Levy, Esq., attorney at law, of New York City, is authorized to and hereby does enter his appearance herein as attorney for the parties to be substituted for the above-named respondents as hereinafter set forth;

"It is therefore stipulated and agreed by and between W. T. Kelley, chief counsel for the Commission, and Allen C. Phelps and George W. Williams, attorneys for the Federal Trade Commission, and Milton J. Levy, attorney for the substituted respondents hereinafter named, that, subject to the approval of the Federal Trade Commission, the following parties be named as respondents in this matter, to wit:

"(a) Associated Suit & Cloak Manufacturers Association of St. Louis, a corporation, and its officers and members:

"Robert Dorfmont, acting chairman,

"Molly Grossman, secretary-treasurer; individually, and as the above officers and as representatives of the entire membership of Associated Suit and Cloak Manufacturers Association of St. Louis;

"(b) Associated Coat and Suit Manufacturers of San Francisco, an unincorporated association, and its officers and members:

"Samuel Bohne, chairman,

"Samuel Farb, vice chairman,

"Capen A. Fleming, executive director; individually, and as the above officers, respectively, and as representatives of the entire membership of Associated Coat and Suit Manufacturers of San Francisco, in the place and stead of the following parties named as respondents in the complaint, herein to wit:

"(a) Associated Garment Industries of St. Louis, Inc., a corporation, and its officers and members:

"Robert Dorfmont, acting chairman,

"Molly Grossman, secretary-treasurer; individually, and as the above officers and as

Gustave I. Aronow, vice chairman, Samuel L. Deitsch, treasurer, Alexander Printz, chairman, F. Nathan Wolf, secretary.

The following named individuals are members of the executive board of said respondent, which is its governing board, and as such are designated as respondents herein:

Gustave I. Aronow, Charles Baker, Morris Bialis, David Dubinsky, Samuel L. Deitsch, Joseph L. Dubow, Julius Edelson, Israel Feinberg, John Frumkes, Morris Goldman, Samuel Klein, Philip Kramer, Louis Levy, Isidore Nagler, Alexander Printz, Henry Rothman, Seymour M. Rivitz, Bernard D. Rosenberg, Milton G. Rosenfeld, Sol Schott, Charles Sussman, Max E. Weinstock, Adolph G. Zalkus.

The membership of the respondent National Coat & Suit Industry Recovery Board is made up of numerous corporations, partnerships, and individuals engaged in the manufacture, sale or distribution of clothing and merchandise, such as women's, misses', children's, and infants' coats, jackets, capes, wraps, riding habits, knickers, suits, ensembles and skirts, who have either signed a certificate of compliance with the board's constitution and bylaws, or, who are members of associations, including those associations hereinafter named as respondents in paragraphs 2 to 16, inclusive, which, by virtue of their bylaws, are empowered to bind and have bound their members to the board.

The membership of said respondent National Coat & Suit Industry Recovery Board changes from time to time by the addition and withdrawal of members so that all of the members of said organization at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein. Therefore, the officers and executive board members hereinbefore named as respondents as such officers and board members are also made respondents as being truly

representatives of the entire membership of Associated Garment Industries of St. Louis, Inc.;

"(b) Manufacturers and Wholesalers Association of San Francisco, an unincorporated association, and its officers and members:

"Samuel Bohne, chairman,

"Samuel Farb, vice chairman,

"Capen A. Fleming, executive director; individually, and as the above officers, respectively, and as representatives of the entire membership of Manufacturers and Wholesalers Association of San Francisco.

"It is further stipulated that the changes necessary to effect the above substitution of parties shall be made in the record of this proceeding, and that the attorney for said substituted respondents shall and hereby does waive service of the complaint herein and notice of hearing thereon upon the said substituted respondents, and agrees that this action may proceed against them in all respects as it could have done had such substituted respondents been named in the complaint and served in the first instance. It is further agreed that all of the allegations of the complaint pertinent to the respondents for whom such substitution has been made shall be considered as relating to said substituted respondents in the same manner as though the latter had been named as respondents in the original complaint."

representative of all the members of said association, including those members not herein specifically named.

PAR. 2. Respondent Industrial Council of Cloak, Suit & Skirt Manufacturers, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York and having its principal office and place of business located at 225 West Thirty-fourth Street, New York City. The following named individuals are officers of said respondent corporation, and as such are designated as respondents herein :

Samuel L. Deitsch, president, Jacques Linker, vice president, Albert Rauch, secretary, George Jablow, treasurer, Samuel Klein, executive director.

The membership of said respondent corporation changes from time to time by the addition and withdrawal of members, so that all of the members of said association at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein. Therefore, the officers hereinbefore named as respondents as such officers are also made respondents as being truly representative of all the members of said corporation, including those members not herein specifically named.

PAR. 3. Respondent Merchants' Ladies' Garment Association, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, and having its office and principal place of business at 225 West Thirty-fourth Street, New York City. The following named individuals are officers of said respondent corporation, and as such are designated as respondents herein :

Gustave I. Aronow, president, Harry Appel, first vice president, Joseph L. Dubow, executive director.

The membership of said respondent corporation changes from time to time by the addition and withdrawal of members so that all of the members of said association at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein. Therefore, the officers hereinbefore named as respondent as such officers are also made respondents as being truly representative of all the members of said association, including those members not herein specifically named.

PAR. 4. Respondent Infants' & Children's Coat Association, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 225 West Thirty-fourth Street, New

York City. The following named individuals are officers of said respondent corporation, and as such are designated as respondents herein:

Henry Rothman, president; Max P. Sonberg, vice president; Simon A. Penzner, secretary; Morris B. Kahn, treasurer; Charles Baker, executive director.

The membership of said respondent corporation changes from time to time by the addition and withdrawal of members, so that all of the members of said association at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein. Therefore, the officers hereinbefore named as respondents as such officers are also made respondents as being truly representative of all the members of said association including those members not herein specifically named.

PAR. 5. Respondent American Cloak & Suit Manufacturers' Association, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 450 Seventh Avenue, New York City. The following named individuals are officers of said respondent corporation, and as such are designated as respondents herein:

S. Schott, president; L. Goldspinner, vice president; A. Finkelstein, secretary; J. Krasner, treasurer; Charles M. Sussman, executive director; Benjamin Schiller, manager.

The membership of said respondent corporation changes from time to time by the addition and withdrawal of members so that all of the members of said association at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein. Therefore, the officers are also made respondents as being truly representative of all the members of said association, including those members not herein specifically named.

PAR. 6. Respondent Boston Cloak Manufacturers' Association is a voluntary unincorporated trade association, having its office and principal place of business located at 260 Tremont Street, Boston, Mass. The following named individuals are officers of said respondent association, and as such are designated as respondents herein:

Louis Greenberg, president; Morris Speck, vice president; Maurice Baker, treasurer; Bernard D. Rosenberg, executive secretary.

The membership of said respondent association changes from time to time by the addition and withdrawal of members, so that all of the members of said organization at any given time cannot be spe-

cifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein. Therefore, the officers hereinbefore named as respondents as such officers are also made respondents as being truly representative of all the members of said association, including those members not herein specifically named.

PAR. 7. Respondent Boston Coat & Suit Manufacturers Association is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, having its principal place of business located at 75 Kneeland Street, Boston, Mass. The following named individual is an officer of said respondent corporation, and as such is designated as a respondent herein: Seymour M. Rivitz, secretary.

The membership of said respondent corporation changes from time to time by the addition and withdrawal of members, so that all of the members of said corporation at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein. Therefore, the officer hereinbefore named as respondent as such officer is also made respondent as being truly representative of all the members of said association, including those members not herein specifically named.

PAR. 8. Respondent Philadelphia Cloak & Suit Manufacturers Association is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, having its principal place of business located at 248 North Eleventh Street, Philadelphia, Pa. The following named individuals are officers of said respondent corporation, and as such are designated as respondents herein: Julius Edelson, president; S. D. Bass, secretary.

The membership of said respondent corporation changes from time to time by the addition and withdrawal of members, so that all of the members of said corporation at any given time cannot be named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein. Therefore, the officers hereinbefore named as respondents as such officers are also made respondents as being truly representative of all the members of said association, including those members not herein specifically named.

PAR. 9. Respondent Cleveland Apparel Manufacturers Association, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Ohio, having its office and principal place of business located at 405 Cleveland Film Ex-

change Building, Cleveland, Ohio. The following named individuals are officers of said respondent corporation, and as such are designated as respondents herein: A. H. Dettelbach, president; William Printz, vice president; William Altman, vice president; S. N. Berland, secretary; N. N. Goodman, treasurer.

The membership of said respondent corporation changes from time to time by the addition and withdrawal of members so that all of the members of said corporation at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein. Therefore, the officers hereinbefore named as respondents as such officers are also made respondents as being truly representative of all the members of said association, including those members not herein specifically named.

PAR. 10. Respondent Chicago Cloak & Suit Manufacturers Industrial Council is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, having its office and principal place of business located at 110 South Dearborn Street, Chicago, Ill. The following named individual is an officer of said respondent corporation, and as such is designated as a respondent herein: Max E. Weinstock, president.

The membership of said respondent corporation changes from time to time by the addition and withdrawal of members, so that all of the members of said corporation at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein. Therefore, the officer hereinbefore named as respondent as such officer is also made respondent as being truly representative of all the members of said association, including these members not herein specifically named.

PAR. 11. Respondent Associated Garment Industries of St. Louis, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, having its office and principal place of business located at 1315 Railway Exchange Building, St. Louis, Mo. The following named individuals are officers of said respondent corporation, and as such are designated as respondents herein: Robert Dorfmont, acting chairman; Molly Grossman, secretary-treasurer.

The membership of said respondent corporation changes from time to time by the addition and withdrawal of members, so that all of the members of said corporation at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make

it impracticable to name them all individually as respondents herein. Therefore, the officers hereinbefore named as respondents as such officers are also made respondents as being truly representative of all the members of said association, including those members not herein specifically named.

PAR. 12. Respondent Kansas City Garment Manufacturers Association is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, having its office and principal place of business located at 908 Broadway, Kansas City, Mo. The following named individuals are officers of said respondent corporation, and as such are designated as respondents herein: Hyman Brand, president; E. D. Carlson, secretary; Max Morgan, treasurer.

The membership of said respondent corporation changes from time to time by the addition and withdrawal of members, so that all of the members of said corporation at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all as individual respondents herein. Therefore, the officers hereinbefore named as respondents as such officers are also made respondents as truly representative of all the members of said association, including all those members not herein specifically named.

PAR. 13. Respondent Los Angeles Coat & Suit Manufacturers' Association is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, having its office and principal place of business located at 846 South Broadway, Los Angeles, Calif. The following named individuals are officers of said respondent corporation, and as such are designated as respondents herein: A. G. Zalkus, president; Harold O. Silbert, vice president; E. M. Hackel, secretary-treasurer; Lee Gerstein, executive secretary.

The membership of said respondent corporation changes from time to time by the addition and withdrawal of members, so that all of the members of said corporation at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all as individual respondents herein. Therefore, the officers hereinbefore named as respondents as such officers are also made respondents as being truly representative of all the members of said association, including all those members not herein specifically named.

PAR. 14. Respondent Manufacturers & Wholesale Association of San Francisco is a voluntary unincorporated trade association, having its principal place of business located at 74 New Montgomery Street, San Francisco, Calif. The following named individuals are officers of said association and as such are designated as respondents

herein: Samuel Bohne, chairman; Samuel Farb, vice chairman; Capen A. Fleming, executive director.

The membership of said respondent association changes from time to time by the addition and withdrawal of members so that all of the members of said corporation at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all as individual respondents herein. Therefore, the officer hereinbefore named as respondent as such officer is also made respondent as representing all the members of said association, including all those members not herein specifically named.

PAR. 15. Respondent Associated Cloak & Suit Manufacturers of Portland is a voluntary unincorporated trade association, having its office and principal place of business located at 708 Pittock Block, Portland, Oreg. The following named individual is an officer of said respondent corporation, and as such is designated as a respondent herein: Abe Eugene Rosenberg, secretary.

The membership of said respondent association changes from time to time by the addition and withdrawal of members so that all of the members of said corporation at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all as individual respondents herein. Therefore, the officer hereinbefore named as a respondent as such officer is also made a respondent as being truly representative of all the members of said association, including all those members not herein specifically named.

PAR. 16. Respondent members of the Recovery Board who have executed certificates of compliance with the Board, and respondent members of the corporations and associations named as respondents in paragraphs 2 to 15 above, hereinafter referred to as manufacturer respondents, are individually engaged in the manufacture, sale or distribution of the garments and merchandise described in paragraph 1 hereof, with their several shops, plants, and facilities located in many different States of the United States. Most of said individual respondents cause their said merchandise, when so sold, to be transported from the State wherein it is manufactured across State lines into or through other States. Many of said individual respondents import into the States in which their several establishments are located from other States, cloth, fabrics and materials of various kinds used in the manufacture of said merchandise. There has been and now is a continuous current of interstate trade and commerce in said raw materials between the sellers thereof and said individual respondent and in said clothing between said individual respondents and the

purchasers of such merchandise, located throughout the various States of the United States.

PAR. 17. Said manufacturer respondents are in competition with one another in the manufacture, sale, and distribution of said described merchandise in the various localities and trade areas in the United States in which they respectively operate, except insofar as their said competition has been hindered, lessened, and restrained, or potential competition among them forestalled, by the practices and methods of said respondents and other respondents, hereinafter set forth. There are other corporations, partnerships, firms, and individuals, engaged in the manufacture, sale, and distribution of such clothing, in the various localities and trade areas of the United States, in competition with one another and with one or more of said manufacturer respondents, except insofar as such competition has been hindered, lessened, and restrained, or potential competition among them forestalled, by the use of said respondents and other respondents of the practices and policies hereinafter described.

PAR. 18. Respondent International Ladies' Garment Workers' Union is an unincorporated union of workers in the garment industry, having its principal office and place of business located at 3 West Sixteenth Street, New York City. The following named individuals are officers of said respondent corporation, and as such are designated as respondents herein: David Dubinsky, president-general secretary; Luigi Antonini, first vice president; Frederick F. Umhey, executive secretary.

Said respondent Union is governed and its policies directed and controlled by a General Executive Board. The members of said board, who are likewise designated as respondents herein, are:

Morris Bialis,	Louis Levy,
Joseph Breslaw,	Isidore Nagler,
Max Cohen,	Salvatore Ninfo,
Anthony Cottone,	Samuel Otto,
Israel Feinberg,	Myer Perlstein,
Harry Greenberg,	Rose Pesotta,
Jacob Heller,	Elias Reisberg,
Julius Hockman,	George Rubin,
Abraham W. Katovsky,	Samuel Shore,
Philip Kramer,	Harry Wander,
Charles Kreindler,	Charles S. Zimmerman.

The membership of said respondent association changes from time to time by the addition and withdrawal of members so that all of the members of said corporation at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all as individual respondents

herein. Therefore, the officers and general executive board members hereinbefore named as respondent as such officers, and board members are also made respondents as being truly representative of all the members of said association, including all those members not herein specifically named. The membership of said respondent International Ladies' Garment Workers' Union is made up of various local unions and their members, consisting of cloak and suit workers engaged in the manufacture of the garments described in paragraph 1 hereof.

Respondents named in this paragraph have been and are engaged in certain unfair acts, practices, and methods, hereinafter described, which hinder, lessen, and restrain competition in interstate commerce in said merchandise among the other respondents and among such other respondents and their competitors not designated as respondents herein.

PAR. 19. The various organizations, other than the Recovery Board, named as respondents herein, and the individual officers and members of said organizations and of the Recovery Board, have been and are concertedly cooperating with the Recovery Board and aiding and assisting it in effectuating the purposes for which it was organized, as hereinafter stated, and in imposing its policies upon all those connected with the coat and suit industry in the United States. The volume of business done by the individual manufacturer respondents belonging to or affiliated with the Recovery Board constitutes approximately 90 percent of the trade in such merchandise throughout the United States, and in many localities it constitutes 100 percent thereof. Respondents jointly have and do dominate and control the policies, practices, terms, and conditions upon which this class of merchandise has been and is manufactured and marketed in this country.

PAR. 20. Respondent Recovery Board was organized in 1935, and has adopted and effectuated a constitution and various bylaws. The constitution divides the coat and suit industry of the country into four areas, each of which is governed as to local matters within the area of a regional board. Each regional board is composed of representatives of the manufacturers, or employer groups, including respondent manufacturer associations and corporations, and of representatives of respondent International Ladies' Garment Workers' Union. The governing body of respondent Recovery Board is designated as the national executive board, and is composed of representatives of the regional boards and of the respondents American Cloak & Suit Manufacturers Association, Inc., the Industrial Council of Cloak, Suit & Skirt Manufacturers, Inc., the Merchants Ladies' Garment Association, Inc., the Infants' & Children's Coat Association, Inc., and the International Ladies' Garment Workers' Union. Under the constitution the national executive board is authorized to adopt bylaws and take whatever steps are necessary to effectuate the purposes of respondent Re-

covery Board, and it is provided in the constitution that the bylaws shall provide for the establishment and maintenance of uniform standards of fair commercial practice.

PAR. 21. Since the organization of respondent National Coat & Suit Industry Recovery Board, the respondents hereinabove named and described, and each of them, under varying circumstances and degrees of cooperation and willingness, and for differing periods of time, have entered into, acquiesced in, or observed various agreements and understandings to hinder and suppress competition in the interstate sale and distribution of the merchandise hereinabove referred to in the United States, and have joined in or participated in combinations and conspiracies to restrain such trade and to promote a monopoly therein among themselves. The primary purpose of such agreements, understandings, combinations, and conspiracies has been to control and regulate the misses', women's, children's, and infants' coat and suit industry in the United States in the interest of the respondents. To further this objective, respondents have sought to compel every coat and suit manufacturer in the country to become a member of respondent Recovery Board and to continue himself in good standing with such board. In furtherance of such objectives, respondent Recovery Board, aided and assisted by the other respondents, has imposed or attempted to impose upon all factors in the coat and suit industry, including one another, and including independent manufacturers, jobbers, wholesalers, selling agents, resident buyers and retailers, rules, regulations and requirements, hereinafter more particularly described, which were designed to bring about and which brought about various restraints and partial restraints upon the freedom of competitive action of many of such factors, and which hindered and suppressed competition in many of its phases in said industry. The nature, scope, purposes, results and effect of such agreements and conspiracies, together with the means used to effectuate the same, are hereinafter more particularly set forth.

PAR. 22. Pursuant to the said agreements and conspiracies and under its constitution, respondent Recovery Board, with the aid and cooperation of the other respondents, has adopted, promulgated, effectuated, and enforced certain so-called uniform standards of fair commercial practice, among which are the following:

It shall be deemed an unfair commercial practice for member concerns to contract to sell or to sell articles to anyone upon terms and conditions other than as are hereinafter provided.

In accordance with and pursuant to article VI of the constitution, any violation of the following shall be deemed to be unfair trade practices:

1. *Terms of discount.*—Terms of discount on seasonal merchandise shall not exceed 8 percent, 10 days, end of month, 7/10/30 end of month, 6/10/60 end of month, or net 5 days after last due date. Anticipation shall not be allowed at a rate in excess of 6 percent per annum.

2. *Consignment sales.*—No merchandise shall be sold on open order subject to return or on memorandum, consignment, or approval, nor on a guarantee of sale basis.

3. *Delivery charge.*—All sales shall be f. o. b. city of manufacture, except that city as used in this section shall mean the metropolitan area.

4. *Advertising subsidies.*—No member of the industry shall pay for any advertising which a retailer may utilize in connection with the sale of merchandise of such member of the industry.

5. *Returns.*—No return merchandise shall be accepted for credit other than for defects of manufacture, delay in delivery, or for nonconformity with order, but in no event shall such returns be accepted unless made within 5 working days of receipt.

6. *Cancellations.*—*a.* No member concern shall accept a cancellation save for failure to make delivery of garments within the time specified on the order.

b. Garments not shipped within the time specified in the order shall, nevertheless, remain on order until cancelled in writing and 3 working days of grace shall be granted for the completion of shipment after the receipt of such notice of cancellation.

7. *Cut, make, and trim.*—No member concern shall make garments from fabrics, trimmings, and/or other materials owned or supplied by a retail distributor or the agent, representative, or corporate subsidiary or affiliate of such retail distributor; nor shall he manufacture garments from fabrics, trimmings, and/or other materials, the purchase of which is made upon the credit of, or the payment for which, is guaranteed by such retail distributor, its agent, representative, corporate subsidiary, or affiliate of such retail distributor, except that manufacturers and/or contractors may make garments on the above basis for mail order firms designated as such by this body, provided that the mail order firm so designated shall designate and file with this body the number and names of the manufacturers and/or contractors actually required by them for any work and shall confine and distribute such work equitably to and among such named manufacturers and/or contractors, provided, further, that any mail order firm operating under this exception shall pay an allowance to the manufacturer and/or contractor for overhead.

8. *Incomplete garments.*—No member concern shall deliver coats to any retailer in incomplete form so that the retailer may complete the garment or attach fur thereto, nor shall any contractor or submanufacturer deliver coats to any jobber or manufacturer for completion in this manner, nor shall any jobber or manufacturer receive such incomplete garments.

9. *Group showing.*—No member concern shall submit any garments to group showings. No samples shall be left at any retail or buying office for comparison purposes.

PAR. 23. Pursuant to the said agreements and conspiracies, respondents have adhered to and made effective through cooperation and concerted action the following provisions of the constitution of the respondent Recovery Board:

All garments manufactured or distributed by members of this body shall bear a label of the Recovery Board to signify to purchasers of said garments the conditions under which they are manufactured.

Each label shall bear a registration number especially assigned to each member concern by the national executive board of the coat and suit industry.

The national executive board shall establish rules and regulations and set up appropriate machinery for the issuance of the label and the inspection, examination, and supervision of the practices of member concerns, using such labels in observing the provisions of this body, for the purpose of ascertaining the right of said member concern to the continued use of said label and of insuring to such individual member concern that the symbolism of such label will be maintained by virtue of the compliance with the practices herein contained by all other member concerns using such labels.

The charge to member concerns for such label shall not exceed an amount to defray actual cost of the label and the cost of maintaining this body and of the regional boards.

Pursuant to said agreements and conspiracies, respondent International Ladies' Garment Workers' Union has followed a policy, in agreement with the other respondents, of not permitting its members to work on any garment in the process of manufacture unless such garment was to bear, and did bear, when completed, one of the above-mentioned labels. The respondents by cooperative and concerted action have coerced and compelled recalcitrant members of respondent manufacturer associations, together with numerous independent coat and suit manufacturers not affiliated with or members of said respondent associations and not theretofore members of respondent Recovery Board, to purchase said labels from respondent Recovery Board and to attach them to all garments manufactured and sold by said manufacturers. Respondent Recovery Board pursued a policy of requiring manufacturers to agree to abide by the constitution and bylaws, including the above-described rules of fair commercial practice, of said Recovery Board, as a prerequisite to securing such labels.

By the means above outlined, respondent Recovery Board has sold many millions of said labels each year since 1935, and has exacted payments therefor from coat and suit manufacturers amounting to several hundred thousand dollars per annum. In addition, said respondent has imposed upon such manufacturers an additional expense of several hundred thousand dollars, representing the cost of attaching said labels to the garments manufactured for sale and distribution by such manufacturers.

PAR. 24. It is customary for most manufacturers of coats and suits to manufacture garments of various grades and to price the various grades for sale to retailers at a usual price level for each grade. As a result, there are and have been in the trade certain classifications of garments based upon the diverse prices at which each classification is sold by the manufacturers. For example, prior to 1937, garments selling at \$10.75 each represented a well-known and firmly established price level in the industry. Pursuant to said agreements and conspiracies, respondents, about 1937, acting through respondent

Recovery Board, increased some of said price levels to the extent of \$1 for each level and established and fixed a new price level at the increased figure. At the same time and in connection with such increase in the various price levels, respondents established and fixed the maximum amounts which coat and suit manufacturers were permitted to pay for cloth to be made into coats and suits selling at each price level and the maximum permissible cost of all materials required for garments in each classification.

PAR. 25. To effectuate said conspiracy, agreements, and understandings and to attain the ends thereof, said respondent Recovery Board, respondent manufacturer associations and their members and respondent labor union, acting concertedly and cooperatively, have done the following things, among others:

1. Adopted, effectuated, and enforced the above-mentioned so-called uniform standards of fair commercial practice and pricing policies.
2. Set up, under the constitution of said Recovery Board, committees, groups, and officials to enforce the terms and provisions of respondents' said program and agreements, and to discipline and penalize violators thereof.
3. Coerced coat and suit manufacturers into signing agreements to observe the constitution, bylaws, and so-called rules of fair commercial practice, adopted and to be adopted by respondent Recovery Board.
4. Coerced coat and suit manufacturers into agreeing to pay and paying charges set by respondent Recovery Board for the above-described labels, and into agreeing to attach such labels to all garments manufactured and distributed by them.
5. Coerced coat and suit manufacturers into agreeing to submit and submitting to investigations, examinations, and audits of their books, records, merchandise, premises, and practices by respondent Recovery Board to enable it to ascertain whether its constitution and bylaws were being observed and complied with.
6. Pursued a policy of investigating all complaints and information received relating to alleged violations of the requirements of respondents' said program and of respondent Recovery Board's so-called standards of fair commercial practices; of coercing such alleged violators into conforming to such requirements and practices; of publishing the names of recalcitrant members or others engaged in the industry, who failed or refused to submit to such coercion; of summoning such alleged violators to hearings before representatives of respondent Recovery Board, and of penalizing them by levying fines and assessments upon them, and by other means.
7. Pursued a policy of investigating business disputes between coat and suit manufacturers and retailer customers; of investigating the business methods and conduct of particular retailers; and of compil-

ing and publishing lists of retailers whose methods or conduct was considered to be unsatisfactory or inconsistent with the requirements of respondents' said so-called standards of fair commercial practices.

8. Placed unreasonable restrictions around the business relationships between coat and suit manufacturers and contractors and sub-manufacturers, and in many cases prevented contractual relations among them.

9. Respondents, during the period herein mentioned, have done and performed many other acts and things to carry out the purposes of and to further the objects of said agreements and understandings, to enforce and effectuate the same, and to impose the requirements thereof generally upon those engaged in the manufacture, sale, and distribution of said merchandise in the United States.

PAR. 26. The capacity, tendency, and effect of the aforesaid agreements and conspiracies and the policies, practices, and the acts and things done and performed by respondents in pursuance thereof are and have been:

1. To tend to monopolize in respondent manufacturers the business of manufacturing and of selling and distributing the above-described merchandise in most of the trade areas of the United States.

2. To tend to monopolize in respondent manufacturers the opportunity to secure skilled labor for the manufacture of such garments.

3. To establish, fix, and maintain prices, discounts and various terms and conditions attending the sale of such merchandise in all parts of the country.

4. To unreasonably lessen, suppress, and restrain competition in the sale of said merchandise throughout the United States and in the District of Columbia, and to deprive wholesalers, jobbers, selling agents, resident buyers, retailers, and the purchasing public of the advantages of price, terms, and conditions of sale, service, and other considerations which they would receive and enjoy under conditions of normal and unobstructed and free and fair competition in said trade and industry, and to otherwise operate as a restraint upon, obstruction to, and detriment to the freedom of fair and legitimate competition in such trade and industry.

5. To suppress, discriminate against, and eliminate contractors, submanufacturers and small manufacturers who are or have been engaged in, or who desire to engage in, the manufacture and sale of said merchandise.

6. To burden, hamper, and interfere with the normal and natural flow of trade and commerce in said merchandise from, into, and through the various States of the United States and the District of Columbia.

PAR. 27. The acts and practices of said respondents, as herein alleged, are all to the prejudice of the public; have a dangerous tend-

ency to hinder and prevent, and have actually hindered and prevented competition between and among said manufacturers in the sale of their said products in commerce within the intent and meaning of the Federal Trade Commission Act; and placed in the member respondents power to control and enhance prices and other terms and conditions in connection with the manufacture and sale of their said products; have a dangerous tendency to create in respondents a monopoly in said products in such commerce; have unreasonably restrained such commerce in their said products, and constitute unfair methods of competition and unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Complaint dismissed without prejudice by the following order:

This matter coming on for further consideration by the Commission upon its own motion; and

It appearing that the complaint originating the proceeding was issued September 26, 1941, and that the acts and practices alleged to have been in violation of the Federal Trade Commission Act all occurred more than 10 years ago under economic conditions which differed materially from those now prevailing; and

It further appearing that the record on which the case was submitted for decision is deficient in a number of respects, and that a correction of the deficiencies would involve a reopening of the proceeding and probably the receipt of substantial additional evidence, all at considerable expense to the Commission and to the respondents; and

The Commission being of the opinion that the public interest will be better served by a dismissal of the complaint than by a continuation of the proceeding, it being understood, however, that this action does not constitute an adjudication of any of the issues involved or prejudice the right of the Commission to conduct a further investigation into the respondents' business practices and to take such further action as the Commission may consider warranted as a result of such investigation, or otherwise:

Accordingly, it is ordered, That the complaint in this proceeding be, and it hereby is, dismissed without prejudice to the right of the Commission to take such further action against the respondents at any time in the future as may be warranted by the then existing circumstances.

Before *Mr. Andrew B. Duwall* and *Mr. Webster Ballinger*, trial examiners.

Mr. George W. Williams for the Commission.

Mr. Milton J. Levy, Klein & Weinberger, Goldwater & Flynn, Mr. Max H. Zuckerman, Mr. Emil Schlesinger and Willkie, Owen, Farr, Gallagher & Walton, of New York City, and *Mr. Max Uviller*, of Brooklyn, N. Y., for respondents.

THE PROCTER & GAMBLE Co. Complaint, April 2, 1943. Order, December 4, 1950. (Docket 4937.)

Charge: Advertising falsely or misleadingly as to comparative merits, competitive products, qualities, properties or results, safety and scientific or relevant facts, and disparaging or misrepresenting competitors or their products as to qualities, properties, or results and safety of products; in connection with the manufacture and sale of a liquid dentifrice designated as "Teel."

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

PARAGRAPH 1. The respondent is a corporation organized, existing, and doing business under the laws of the State of Ohio, with its principal office and place of business located in Cincinnati, Ohio.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the manufacture and sale of a liquid dentifrice designated as "Teel." Said dentifrice is a solution of glycerine, sugar, alcohol, water, and sodium alkyl sulphate, together with coloring, flavoring, and thickening agents. Its principal cleansing ingredient is sodium alkyl sulphate, which is a sulphated higher alcohol having detergent qualities similar to those of soap. "Teel" is advertised, sold, and offered for sale by respondent for daily home use as a dentifrice to be used with a toothbrush in the cleaning of teeth.

In the course and conduct of its business, the respondent causes said product, when sold, to be transported from its place of business in the State of Ohio 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 product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, during the times mentioned herein, has been

¹ The Commission on July 21, 1943, issued an order amending complaint, as follows:

"This matter coming on to be heard by the Commission upon the motion of Richard P. Whiteley, assistant chief counsel, and Merle P. Lyon, trial attorney, that the complaint in this proceeding be amended by inserting the word 'The' before the corporate name of the respondent wherever it appears in the complaint, and that the answer heretofore filed to the complaint stand as answer to the amended complaint, and it appearing that the correct name of the respondent is 'The Procter & Gamble Co.,' and the Commission having duly considered the matter, and being now fully advised in the premises;

"It is ordered, That the complaint herein be amended by inserting the word 'The' before the corporate name of the respondent wherever it appears in the complaint.

"It is further ordered, That the answer filed herein on May 15, 1943, stand as answer of the respondent to the complaint, as amended."

and is now in substantial competition with other corporations and with persons, firms, and partnerships engaged in the sale and distribution of tooth powders and tooth pastes intended and used for cleansing teeth, 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 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 product 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 its said product by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said product 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 advertisements disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements inserted in newspapers and periodicals, by circulars, leaflets, and pamphlets, by means of radio continuities and other advertising literature, are the following:

Scientific research has proved that this damage to teeth is caused by regular brushing with dentifrices containing abrasives. Recent clinical studies show that 8 out of 10 adults examined risk this tooth injury because the softer part of one or more teeth is left exposed with no hard enamel to protect it. This exposure is usually due to shrinking gums—a condition which becomes more serious as time goes on. Every dentifrice tested containing an abrasive will gradually cut cavities in this softer part of teeth. You can avoid this serious trouble by changing to Teel Liquid Dentifrice because it contains absolutely no abrasives of any kind.

Scientific Tests Show How Amazing New Liquid For Brushing Teeth Avoids This Injury. Millions are Risking This Injury to Their Teeth—Be Safe! Brush your Teeth The Liquid Way! New Liquid Dentifrice Cannot Injure Teeth—Contains Absolutely No Abrasives. Yes, literally millions of people are unknowingly causing serious damage to their teeth which Nature can never repair. This injury is caused—not by the tooth brush itself—but by regular brushing with dentifrices containing abrasives. Gradually as the months go by, these abrasives cut cavities into the soft part of teeth along the gum line exposed by shrinking gums, where there is no hard, protective enamel. In fact, among people who brush their teeth regularly, a very large percentage of all cavities along the gum line that require filling are probably the result of this injury. These startling facts—long known to many dentists—were recently confirmed by scientific research. Eminent independent scientists made laboratory tooth-brushing tests with a number of dentifrices containing abrasives. Every one cut cavities into the soft part of the teeth.

Millions of People Are Slowly Brushing Cavities in the Exposed Softer Parts of Their Teeth.

(Enlarged Photo of Three-Pronged Molar Tooth with Groove in Side) illustrating injury When Soft Part of Tooth is Exposed. 8 out 10 Adults Examined Risk this Damage. Naturally, you want to save your precious teeth from the injury pictured above. Liquid Dentifrice—because it contains no abrasives—cannot do this to your teeth.

See that cavity? Brushing did it. Serious Injuries Disclosed! Reporting on studies at leading research foundation clinic, a recognized dental authority says that of all patients regularly using tooth pastes or powders, 58 percent had actually brushed cavities into softer parts of teeth exposed by receding gums, and also that—8 out of 10 run this risk constantly.

Millions Abuse Teeth Right While They Try to Clean Them! New Safe Teel Way—Only One Extra Minute a Week! Teel Brightens Safely! You may be destroying your beauty—without even knowing it! In fact, according to dental research, the chances may be 8 in 10 you're inviting ugly cavities that may need filling. Most adults have receded gums—exposing softer parts of teeth. Gradually, cavities are worn in these soft parts by the abrasives in popular dentifrices. But—Teel protects teeth because it contains no abrasives. And—note particularly—Teel is the Only Leading Dentifrice That Contains No Abrasives. The new Teel way reveals sparkling beauty *fast*—makes your teeth look their loveliest. So refreshing too! So easy to use! Simply brush with Teel twice daily—then for one extra minute a week brush with Teel and plain baking soda. Get Teel Today. There's beauty in every drop.

HOW TO END this Important cause of TOOTH INJURY. Stop cutting cavities like this in your teeth by changing to liquid dentifrice—it cleans teeth utterly without abrasives.

Save Your Teeth From This Injury by Changing to Liquid Dentifrice—it beautifies teeth without abrasives.

Yes, it's Scientific Fact! Abrasives contained in dentifrices are causing millions of people to slowly injure their teeth. These abrasives consist of tiny, insoluble particles so small that you can't see or feel them. Yet they are so hard that, as you brush them back and forth, they gradually wear away the softer part of your teeth whenever this part is exposed by shrinking gums. You can save your teeth from this appalling injury simply by changing to the revolutionary new liquid dentifrice—Teel.

New Wonder-Liquid takes place of Tooth Paste and Powders . . . Cleans Teeth Safely.

Make This Test—it reveals any abrasive in your dentifrice. Tonight, put some of your regular dentifrice in a glass of water and stir thoroughly. Let it stand overnight. When you see a white sediment in the bottom of the glass, you know your dentifrice contains an abrasive. Teel, however, leaves no sediment, proving it contains no abrasives which could injure exposed, softer parts of your teeth along the gum line.

PAR. 5. Through the use of the statements hereinabove set forth and others similar thereto not specifically set out herein, respondent has represented and now represents, directly and by implication, that most of the popular tooth pastes and tooth powders contain abrasives and in the course of normal use cut cavities which require filling in the softer portions of the tooth structure exposed by receding gums; that abrasion caused by the use of such tooth pastes and powders is one of the most common causes of dental cavities along the gum line

which require filling; that a large proportion of the public are constantly exposing their teeth to serious damage and injury through the use of the tooth pastes and powders generally sold and used for tooth cleaning purposes; that Teel is a revolutionary discovery in dental science, cleans teeth "utterly" or to the highest degree, is a complete and satisfactory substitute for the popular brands of tooth pastes and powders; and that the insolubility, in water, of the ingredients in tooth pastes and powders is evidence of the presence of harmful abrasives.

PAR. 6. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact, while most dentifrices in common use contain abrasives, they do not as normally and customarily used, cut cavities, which require filling, in any portion of the tooth structure. Abrasion arising through the use of the popular brands of tooth pastes and powders does not commonly cause dental cavities which require filling, and no large proportion of the public expose their teeth to serious damage or injury by the use of tooth pastes and powders in popular use. Respondent's product is not a revolutionary discovery in dental science as liquid dentifrices possessing similar properties have been on the market for many years. Said product does not and cannot clean teeth "utterly" or to the highest degree as it cannot be depended upon to prevent the depositions of stains and mucin plaques on the teeth. It is not a complete and satisfactory substitute for tooth pastes and powders in common use since, having no abrasive qualities, it cannot as effectively clean teeth and is inferior as a cleansing and polishing agent to many of the popular brands of tooth pastes and powders on the market. Furthermore, the use of said product permits discoloration of the teeth, which can only be removed by a substance having abrasive qualities. It is not possible to determine whether a dentifrice contains harmful abrasives by means of the solubility test advocated by respondent. Practically all tooth pastes and tooth powders contain insoluble matter, but whether this matter is of such a nature as to be harmful by abrasive cannot be disclosed by this test and such test has no relation to, and is no satisfactory proof of, the superiority of respondent's product as compared with competitive tooth pastes and powders. In truth and in fact, a mild abrasive such as is contained in most tooth pastes and powders is desirable and necessary as an ingredient in a satisfactory and effective dentifrice.

The aforesaid statements contained in respondent's advertisements are not only false, misleading, and deceptive to the purchasing public, but unfairly defame and disparage the products of respondent's competitors in that it is represented that most widely sold and used tooth

pastes and tooth powders are harmful to the teeth, and are unsafe and dangerous to use, when such is not the fact.

PAR. 7. The use by the respondent of the foregoing false, misleading, deceptive, and disparaging representations has had and now has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing and consuming public into the erroneous and mistaken belief that said statements and representations are true and into the purchase of substantial quantities of respondent's product because of such erroneous and mistaken belief. As a result thereof, injury has been and is now being done by respondent to competition in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of the 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 and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Complaint dismissed without prejudice by the following order:

This matter coming on to be heard by the Commission upon a motion, filed by counsel in support of the complaint, requesting that this case be closed without prejudice to the right of the Commission to reopen the same and to take such further action in connection therewith at any time in the future as may be warranted; and

It appearing from the record that the complaint charges the respondent with having disseminated in advertising a number of false and deceptive statements and representations concerning its liquid dentifrice designated "Teel;" and

It further appearing from the aforesaid motion and from the affidavit attached thereto that the respondent by 1946 had discontinued the use of most of said advertising statements and representations, and that since October 1949 the preparation Teel has not been advertised at all; and

It further appearing that the respondent has disclaimed any intention of ever again using any of the challenged advertising representations in promoting the sale of Teel or any similar preparation, and has further stated that any future advertising which refers to the cleansing qualities of any such product will indicate prominently and plainly that said product should be supplemented by the use of soda or other abrasive material; and

The Commission being of the opinion that in these circumstances the public interest does not require a continuation of this proceeding at this time:

It is ordered, That the case growing out of the complaint herein be, and it hereby is, closed, without prejudice, however, to the right

of the Commission to reopen the same or to take such further or other action against the respondent at any time in the future as may be warranted by the then existing circumstances.

Before *Mr. J. E. Cox* and *Mr. John W. Addison*, trial examiners.

Mr. Joseph Callaway for the Commission.

Dinsmore, Shohl, Sawyer & Dinsmore, of Cincinnati, Ohio, for respondent.

JOSEPH A. KOVAC AND LUCILLE R. KOVAC, INDIVIDUALLY AND AS TRUSTEE FOR ELISE M. KOVAC AND JUDITH A. KOVAC DOING BUSINESS AS PURITY BRAND PRODUCTS, INC., ETC. Complaint, April 13, 1949.¹ Order, December 4, 1950. (Docket 5476.)

Charge: Advertising falsely or misleadingly and misrepresenting business status, advantages, or connections as to business being a Nation-wide wholesale or jobbing business; as to prices being wholesale; and as to proceeds of local operations and projects going entirely to the patriotic, or religious, or public welfare of the local organizations; in connection with the sale of merchandise, consisting of flavoring extracts, cosmetics, silver polish, furniture polish, and other household preparations.

AMENDED 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 Joseph A. Kovac, individually, and Lucille R. Kovac, individually and as trustee for Elise M. Kovac and Judith A. Kovac, partners doing business as Purity Products and Purity Brand Products, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Purity Products is the name and style of a partnership composed of Joseph A. Kovac, individually, and Lucille R. Kovac, individually and as trustee for Elise M. Kovac and Judith A. Kovac, with their principal place of business at 130 North Wells Street, Chicago, Ill. As such partners, respondents, since about September 12, 1942, have been engaged in the business of selling merchandise, consisting of flavoring extracts, cosmetics, silver polish, furniture polish, and other household preparations, to religious, patriotic, charitable, and similar societies and organizations, for resale to the public, under the plan and by the methods hereinafter set forth.

Respondent Purity Brand Products, Inc., is a corporation organized April 17, 1946, under, and now exists by virtue of the laws of the State of Illinois with its principal office and place of business at 17

¹ Amended.

North Wabash Avenue, Chicago, in said State. Marion M. Koenigs is its president, whose address is Bismarck Hotel, Chicago, Ill. Otto Donath is its vice president and treasurer, whose address is 4333 West Armitage, Chicago, Ill., and Thomas Riordan is its secretary, whose address is 10059 Damen Ave., Chicago, Ill.

The individual respondents named as members of respondent partnership own and control all the capital stock of respondent corporation and actively participate in the control of respondent corporation, in the election of its directors and officers and control of its policies and practices. The president and treasurer of respondent hereinabove named, were formerly employees of respondent partnership during the time it operated the business as hereinafter set forth.

Pursuant to the sales set forth in paragraph 1 and as a part thereof, respondents ship and cause to be shipped, and have shipped and have caused to be shipped, such merchandise from their said places of business, and from the respective places of business of various manufacturers from whom they purchase said merchandise, to the purchasers thereof, many of whom were and are located in States of the United States other than the points of origin of such shipments.

PAR. 2. By means of the popular and emotional appeal thereby obtained, respondents contact and select, and have contacted and selected, various patriotic, charitable, civic, and religious organizations in cities and towns throughout the States of the United States as instrumentalities through which, and as fronts by means of which, they sell and have sold their various products to members of the consuming or purchasing public, principally housewives living in said cities and towns of the various States of the United States. Among the organizations so contacted and so selected to sell respondent's products are Veterans of Foreign Wars, American Legion Post Auxiliaries, Spanish American War Veterans, Home Service Clubs, Service Star Legions, and others. Underlying the entire sales plan of respondents is the basic approach that the entire proceeds derived from the sale of products go to war veterans, charity, and other similar worthy causes.

Respondents' plan of sale is and has been as follows: Respondents place "distributors" in charge of defined areas or "regions." It is the duty of a distributor, among other things, to promote markets for and supervise the marketing of respondents' merchandise and to select and train sufficient supervisors of sales campaigns to supply respondents' need for same as hereinafter set forth. Respondents designate their customers as "campaigners," and they will be hereinafter so referred to.

An organization desiring to conduct a "campaign" enters into an agreement with respondents, on a printed form furnished by respondents, consisting of an offer by respondents, which the campaigner

accepts by signing, to sell the campaigner sufficient merchandise to conduct a designated sales campaign. One form of the agreement sometimes used provides that if the campaigner will (a) hire an experienced person to conduct the sales campaign, one who has proven reliable, competent and successful in the conduct of similar campaigns for others, and (b) give that person genuine cooperation and support, respondents will guarantee that the campaigner's net profit on Purity Brand Products will be not less than at the rate of \$11 for each one hundred (100) units (proportionately for fractions of 100 units) of merchandise sold by the campaigner. The campaigner is given the option of foregoing conditions (a) and (b), but in that event the net profit guarantee does not apply and respondent will forward price quotations prior to the start of your sales campaign. The campaigner indicates in its acceptance whether it accepts with or without the guarantee, and whether it wants respondents to recommend a campaign sales supervisor. This form does not quote the prices at which respondents will sell to the campaigner but gives the campaigner the "assurance that our prices will be then reasonable and competitive."

In another form of this agreement sometimes used, the profits guaranteed and the matter of prices at which respondents will sell to the campaigner are covered as follows: "If you will (a) hire a person we can recommend to take complete charge of your campaign—one who has proven competent, reliable and successful in conducting campaigns for others, (b) give that person full authority and your genuine cooperation and support, (c) adhere to the retail prices found effectual in other similar campaigns, and (d) retail none but merchandise purchased from us, we will sell you at 50 percent of those retail prices and guarantee your net profit will be not less than 10 percent of the gross receipts of your campaign. If less, we will make up the deficiency. If more, the excess over this 10 percent will also be yours. We are moved to make this generous proposal by your statement that your profits from this campaign will be used for _____, that the public will be so informed, * * *."

The next step is an agreement between the campaigner and a supervisor recommended by respondents, which agreement is on a printed form furnished by respondents. One copy of this agreement goes to respondents. The supervisor, usually a woman, undertakes to "assume full charge of all phases" of the campaign and, among other things, arranges for effectual means of selling contact with customer prospects, selects and trains sales and delivery personnel, makes the selections and types and items of merchandise to be sold, makes the purchases thereof, maintains adequate stocks and establishes the retail prices at which goods are to be sold, handles all financial details, and further undertakes "if need be to advance supervisor's own funds in

connection with the foregoing duties. Among other things, the campaigner agrees to refrain from interference or dictation as to the merchandising, selling and delivery methods or mediums or prices chosen by the supervisor so long as they are not violative of the spirit and intent of this agreement or violative of the law. As compensation, the supervisor is to receive \$2.50 for each full day devoted by the supervisor to actual selling * * * plus a sum equal to 10 percent of the retail price of each item of merchandise sold during that campaign. The supervisor is authorized to withhold her compensation from the proceeds of each sale as made.

PAR. 3. In actual practice, the supervisors are under the control of the distributors for their regions and of the respondents by reason of their dependence upon the recommendation of respondents for their employment as supervisors and by reason of additional compensation received from respondents as hereinafter set out. The supervisor takes full charge of the campaign; orders all merchandise for the sales campaign, receives it, collect-on-delivery, and pays the amount thereof; employs and trains all local sales people; fixes the retail selling price as directed by respondents through their distributors; incurs and settles all expenses of the sales campaign; disseminates all advertising and other publicity in the name of the campaigner, in form and substance as prepared and furnished by respondents. This advertising and other publicity represents that all profits of the campaign are to be used for the welfare, patriotic and other public purposes of the campaigner.

The price to the campaigner is always at the rate of \$0.55 per unit, and the retail price of the merchandise is always \$1.10 per unit. When the supervisor orders merchandise from the factory or other source of supply for a sales campaign, it is shipped to the campaigner collect-on-delivery, "care" the supervisor and, by direction of respondents, invoiced to the campaigner at the rate of \$0.55 per unit. The carrier is directed by the shipper, upon the authority of the respondents, to deliver it to the supervisor at a discount from the invoice, which discount varies with different supervisors. The supervisor collects the full amount of the invoice from the campaigner, and the difference between the amount she pays to take up the c. o. d. shipment and the amount of the invoice she collects from the campaigner constitutes secret compensation from the respondents in addition to the compensation she receives from the campaigner. The amount of the invoice less the supervisor's discount is remitted to respondents.

The prices which the manufacturer charges respondents for the merchandise are their usual prices to wholesalers or jobbers. The price at which the merchandise is invoiced to the campaigner constitutes a markup of from more than 200 percent to more than 870

percent, depending upon the product, on the price respondents pay the manufacturer. The usual markup by wholesalers and jobbers to the retailer on merchandise of this character and quality is between 10 percent and 40 percent.

PAR. 4. In their advertising to and contacts with prospective customers, respondents represent to them and lead them to believe that they are a large, national wholesale concern; that they have branches with warehouses as follows: Eastern Coast Office at New York City; Southeastern Office at Atlanta, Ga.; Pacific Coast Office at Los Angeles, Calif.; and Southwestern Office at Oklahoma City, Okla.; and that the prices charged the campaigner are wholesale prices.

PAR. 5. In truth and in fact, respondents' only business as hereinabove described, is with religious, patriotic, charitable and similar organizations, usually composed of and directed by women of little business experience. Respondents maintain no branch offices, and their so-called branch offices and warehouses are but the places of business of the manufacturers and other suppliers of the merchandise handled by them. The prices at which respondents sell campaigners are not wholesale prices but are many times the usual wholesale prices customarily charged for merchandise of the same quality and character, and the retail price fixed by the supervisor and at which the merchandise is sold to the public is many times, up to over 700 percent, more than the usual retail selling price of merchandise of similar kind and quality. Only a small part of the real profits from the sale go to the campaigner's purposes.

PAR. 6. In the manner and by the means hereinabove set forth, the respondents mislead their customers into the false belief that their business is a Nation-wide wholesale or jobbing business and that they sell their customers at wholesale prices, and mislead their customers and the purchasing public into the false belief that all proceeds from sales go to the patriotic or religious or public welfare of the local organizations.

PAR. 7. The representations, acts and practices of the respondents, as hereinabove set forth, are prejudicial to the public and constitute the use by respondents of unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Complaint dismissed by the following order:

This matter came on to be heard by the Commission in regular course upon the amended complaint, answer of the respondents, testimony and other evidence, recommended decision of the trial examiner with exceptions thereto, and briefs and oral argument of counsel.

The amended complaint herein charges the respondents with the use of unfair and deceptive acts and practices in commerce in connec-

tion with the offering for sale, sale, and distribution of their merchandise through false and misleading representations that their business is a Nation-wide wholesale or jobbing business; that the prices at which they sell are wholesale prices; and that all proceeds from sales go to patriotic, religious, or public welfare organizations.

The Commission having duly considered the matter and it appearing that the charges in the amended complaint with respect to respondents' sales plan or method of sale are not sustained by the evidence in the record, and that there is insufficient public interest in the charge in the amended complaint pertaining to the respondents' representations that they have warehouses or branch offices in various cities other than Chicago, Ill., to warrant corrective action solely on this charge, particularly since such representations appear to have been made only on stationery and invoices not coming to the attention of customers until after contracts had been executed:

It is ordered, That the amended complaint herein be, and the same hereby is dismissed.

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

Mr. Edward F. Downs for the Commission.

Riordan, Linklater & Butler and *Mr. Henry Junge*, of Chicago, Ill., for respondents.

CASIMIRO MUOJO, TRADING AS ALVI CO. AND AS ALVI, INC. Complaint, April 5, 1941. Original findings and order, August 7, 1941. 33 F. T. C. 935. (Docket 4484.) Order reopening proceeding and setting aside, etc., December 29, 1950.¹

Charge: Advertising falsely or misleadingly as to composition, qualities, properties or results and safety of product and neglecting, unfairly or deceptively, to make material disclosure as to safety of product; in connection with the sale of a certain hair dye cosmetic, variously designated as "Vitale Instantaneous Hair Dye," "Vitale Rapid Hair Coloring," "Vitale Rapid," "Vitale Hair Coloring," "Vitale Hair Dye," and as "Vitale."

Order reopening proceedings and setting aside findings as to the facts, conclusion and order to cease and desist follows:

This matter coming on to be heard by the Commission upon a motion filed April 20, 1950, by a member of the Commission's trial staff, requesting that this proceeding be reopened and that the order to cease and desist issued herein on August 7, 1941, be modified, which said motion was concurred in by the respondent; and

It appearing from the motion and from the record that the Commission, in its findings as to the facts, found, among other things, that the respondent's advertisements concerning his hair dye prep-

¹ See modified findings at p. 769.

aration variously designated as "Vitale Instantaneous Hair Dye," "Vitale Rapid Hair Coloring," "Vitale Rapid," "Vitale Hair Coloring," "Vitale Hair Dye," and as "Vitale," constituted false advertisements because of their failure to reveal that said preparation, when applied to the skin or to the face and head, is potentially dangerous by reason of its paraphenylenediamine content; and

It further appearing that on the basis of said findings as to the facts the Commission, in its order to cease and desist, prohibited, among other things, the dissemination by the respondent of any advertisement of the aforesaid preparation which fails to reveal the potential dangers thereof, with the proviso that advertisements relating to said preparation need contain only the statement "Caution: Use only as directed on label" if and when the label contains warnings of said dangers and adequate directions for preliminary tests; and

It further appearing that since the date of issuance of said order to cease and desist the Commission's policy with respect to the necessity of requiring disclosure of the potential dangers of coal tar hair dye preparations of the "para" type has been changed so that the respondent would not now be required to reveal in advertising the potential dangers of his hair dye preparation if the label thereon bears the statement:

Caution: This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. The product must not be used for dyeing the eyelashes and eyebrows; to do so may cause blindness.

and if the accompanying labeling bears adequate directions for such preliminary testing before each such application; and

It further appearing that the label on the container in which the respondent's preparation is sold does bear such a statement and that the accompanying directions are in all respects adequate to enable purchasers of the preparation to make the preliminary tests referred to in said statement; and

The Commission being of the opinion that in the circumstances it will be in the public interest for this proceeding to be reopened for the purpose of modifying its findings as to the facts and order to cease and desist to make them conform with the Commission's present policy:

It is ordered, That this proceeding be, and it hereby is, reopened for such purpose.

It is further ordered, That the Commission's findings as to the facts, conclusion, and order to cease and desist issued herein on August 7, 1941, be, and they hereby are, set aside.

Mr. B. G. Wilson for the Commission.

Mr. Alfred C. Ditolla, of New York City, for respondent.

UNITED ARTISTS CORP., EDWARD C. RAFTERY, MARY ROGERS, BETTER KNOWN AS MARY PICKFORD, CHARLES CHAPLIN, AND DAVID SELZNICK. Complaint, June 11, 1947. Order, December 29, 1950. (Docket 5500.)

Charge: Neglecting, unfairly or deceptively, to make material disclosure as to subsequent condensation or abridgement of original production; in connection with the continued advertisement, exploitation, and sale of the complete motion picture "The Life and Death of Colonel Blimp."

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 United Artists Corporation, a corporation, Edward Raftery, individually and as president of said corporation, and Mary Rogers, better known as Mary Pickford, Charles Chaplin, and David O. Selznick, individually and as controlling stockholders in said corporation, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent United Artists Corp., hereinafter referred to as respondent corporation, is, and at all times hereinafter mentioned has been, a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business at 729 Seventh Avenue, New York, N. Y.

Respondent Edward C. Raftery, is now, and at all times hereinafter mentioned has been, the president and general manager of respondent corporation, with his business address at 152 West Forty-second Street, New York, N. Y.

Respondents Mary Rogers, better known as Mary Pickford, Charles Chaplin, and David O. Selznick, whose respective places of residence are at Beverly Hills, Calif., constitute and have constituted substantially all the stockholders in respondent corporation and, acting in conjunction and cooperation with individual respondent Edward C. Raftery, direct and have directed the activities of respondent corporation and formulate and control, and have formulated and controlled, its policies, practices and affairs, including the advertising representations made in connection therewith.

PAR. 2. Respondents have been and are engaged in the business of distributing motion picture films. Such distribution is and has been carried on by respondents entering into contracts with motion picture exhibitors whereby, for a consideration, respondents "lease" picture films to exhibitors for showing in their respective theaters over a specified period. Pursuant to such contracts, the said films are shipped from respondent corporation's place of business in New York to its various branch offices, of which there are some 26, located in various

cities of the United States, for delivery to those exhibitors who have contracted for the showing of said films, who are located in the territories which the respective branch offices serve. In many instances the contracting exhibitors are located in States other than the State of New York and other than the State of the location of the branch offices from which said exhibitors receive delivery.

PAR. 3. In the course of their said business and for the purpose of inducing exhibitors to enter into contracts for the showing of such films, and for the purpose of inducing the public to patronize the theaters which show such films, respondents advertise and have advertised the said films by various means and through various media.

The first step, or one of the first steps, in advertising a film is its "premiere" showing, to which are invited, among others, critics and reviewers and representatives of motion picture magazines and other publications connected with and featuring matters of interest to exhibitors and to the motion-picture-going public, including representatives of the metropolitan daily newspapers. Further publicity is given the film by the National Board of Review of Motion Pictures, Inc., an independent, citizen organization claiming to represent the interests of the motion picture public. Said organization reviews films and disseminates information about selected pictures in advance of their general showing to the public. Its reviews and recommendations appear in various publications.

PAR. 4. In November 1944, respondents entered into a 5-year contract with General Film Distributors, Ltd., of Westminster, London, England, for the distribution by respondents in the United States of a British motion picture entitled "The Life and Death of Colonel Blimp," a story carrying the British Colonel Blimp through the Boer War and the First and Second World Wars. As produced and exhibited in England the said picture had a film length of about 14,676 feet, consuming about 2 hours and 30 minutes in the showing thereof.

Following the execution of the contract above mentioned, respondents put this picture through the usual publicity routine, had a premiere showing at which were invited representatives of the press who would give it publicity. The picture received almost universally favorable comment, which comments were collected and compiled and disseminated through various advertising media employed by respondents. By June 1945 respondents had obtained some six thousand contracts for the showing of said picture and about half of them had been "played off."

PAR. 5. About October 1945, without disclosing that such changes were being made, respondents cut out various portions of the film,

reducing its original length of approximately 14,700 feet, with a running time of 2½ hours, to a length of approximately 8,400 feet, with a running time of approximately 1½ hours, thereby substantially and materially changing the film and the story it carried. Thereafter respondents nevertheless continued to advertise and distribute the film without any announcement of the above-mentioned change and used in advertising the said cut and deleted film the highly favorable and laudatory comments which were contained in reviews originally made and disseminated of and concerning the complete original film.

PAR. 6. The aforesaid representations and implications made by respondents in connection with their failure to publicly announce and to reveal in their advertising material and other publicity that the film had been materially shortened and changed, as hereinbefore alleged, and the continued use by respondents of advertising material, comments and reviews made of and concerning the complete picture as originally produced, has had and does have the capacity and tendency to mislead and has misled exhibitors and members of the public into the erroneous and mistaken belief that said representations and implications so made and induced were and are true, and that the materially shortened and curtailed issue of the motion picture, "The Life and Death of Colonel Blimp" was and is the original, complete, full length picture of that name, when in truth and in fact, the picture so advertised, represented and described is a materially revised, shortened and abridged production of the said complete original picture.

PAR. 7. The acts and practices of the respondents as hereinabove alleged, are 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.

Record closed without prejudice by the following order:

This matter having come on to be heard by the Commission upon the joint motion of counsel supporting the complaint and counsel for the respondents to close the case growing out of the complaint herein, without prejudice to the right of the Commission to reopen the case or to take such action as future facts may warrant; and

It appearing to the Commission from said motion and the record herein that the respondents have voluntarily discontinued the acts and practices alleged in the complaint to be in violation of the Federal Trade Commission Act, with no apparent likelihood of a resumption thereof; and that there is insufficient public interest in the subject matter of the complaint to warrant a continuation of the proceeding:

It is ordered, That the case be, and the same hereby is, closed without prejudice to the right of the Commission to reopen the same should future facts warrant such action.

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

Mr. Edward F. Downs for the Commission.

O'Brien, Driscoll, Raftery & Lawler, of New York City, for respondents.

Mr. Richard Hungate, of Culver City, Calif., also appeared for David O. Selznick.

WILLIAM E. MOORE AND HARRY J. RICKERT. Complaint, August 16, 1949. Order, January 5, 1951. (Docket 5690.)

CHARGE: Misrepresenting directly or orally by self or representatives as to special or reduced prices, quality, value, preparation of product, terms and conditions, and sample, offer or order conformance, coercing dealing, failing to make material disclosures, and assuming or using misleading trade or corporate name as to individuals owning, operating, or controlling art studios; in connection with the sale of colored enlargements of photographs and frames and glasses therefor.

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 William E. Moore and Harry J. Rickert, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, William E. Moore, for some years prior to about January 1, 1948, traded and did business as an individual under the name of Imperial Art Co. with his business address at 411 Washington Trust Building, 529 Fifth Avenue, Pittsburgh, Pa. His present residence and mailing address is 210 Good Drive, Perrysville, Pa.

Respondent, Harry J. Rickert, prior to about January 1, 1948, traded and did business as an individual under the name of Rickert Art Co. with his place of business located at 6 East North Avenue, Room 6, Pittsburgh, Pa. His present mailing address is the same.

Since about January 1, 1948, the said respondents have traded and done business as individuals in a joint enterprise under the name of Rickert Art Co. with their place of business located at 6 East North Avenue, Room 6, Pittsburgh, Pa.

PAR. 2. Respondents during all of the times mentioned in paragraph 1 hereof were engaged in the solicitation for sale and the sale and distribution of colored enlargements of photographs and frames and glasses therefor. Respondents caused their said products, when sold, to be transported from the State of Pennsylvania to purchasers thereof located in various other States of the United States and said respond-

ents maintained a course of trade in said products, in commerce, between and among the various States of the United States.

PAR. 3. Respondents' products are sold by means of house-to-house solicitation and they have adopted and put into use a sales plan or method as follows:

(a) Respondents, and their duly authorized agents, when calling upon prospective purchasers, state that they are offering hand-painting enlargements of photographs for the special or reduced prices of \$3.98 or \$2.98 and inquire if the prospective customer does not have a photograph which he or she wishes to have enlarged and hand painted. In some instances respondents and their agents exhibit enlarged colored pictures as illustrative of the type of work done and state that if an enlargement is purchased it will be of the same quality as the samples exhibited. If a purchase is made, a part or all of the purchase price is collected and a receipt or certificate given. Respondents and their agents state that the photograph which is to be enlarged will be returned in good condition together with the enlargement in 3 weeks or a month and that another agent will call in a short time with the enlargement to obtain information as to the colors which the customer desires to be used.

(b) Subsequently, respondents or their agents call upon the customers, exhibit the enlargement, collect the balance due, and inquire as to the desire of the customers with respect to colors. At this point and for the first time respondents or their agents mention a frame and glass for the enlargement stating that if the enlargement is not framed it will become "discolored, faded, cracked, and worthless" and call to the attention of the customers for the first time that the enlargement is convex in shape, point out that it will not fit into a regular frame provided with regular flat glass and state that a frame and glass into which it will fit can be purchased only from respondents as such frames and glasses are not available at stores. At this time respondents and their agents represent further that it is necessary to purchase a frame with a convex glass for the further reason that the enlargement is baked into the frame and further represent that the glass is of a special construction and unbreakable. Respondents and their agents at this time exhibit sample framed colored enlargements and state that the colored enlargement and frame will be of the same quality as those exhibited.

(c) If a frame is ordered, a part or all of the purchase price is collected and afterward the framed colored enlargement is delivered and the balance due, if any, collected.

PAR. 4. The sales plan, as above outlined, used by respondents and the statements and representations made by them and their authorized agents in connection therewith, constitute misleading and deceptive