

FEDERAL TRADE COMMISSION DECISIONS



FINDINGS, ORDERS, AND STIPULATIONS

MAY 5, 1930, TO MARCH 23, 1931

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MEMBERS OF THE FEDERAL TRADE COMMISSION

AS OF MARCH 23, 1931

CHARLES W. HUNT., *Chairman.*

Took oath of office June 16, 1924, September 23, 1925,¹ and March 16, 1926.²

WILLIAM E. HUMPHREY.

Took oath of office February 25, 1925.

CHARLES H. MARCH.

Took oath of office February 1, 1929.

EDGAR A. McCULLOCH.

Took oath of office February 11, 1927.

GARLAND S. FERGUSON, Jr.

Took oath of office November 14, 1927, and January 9, 1928.²

OTIS B. JOHNSON, *Secretary.*

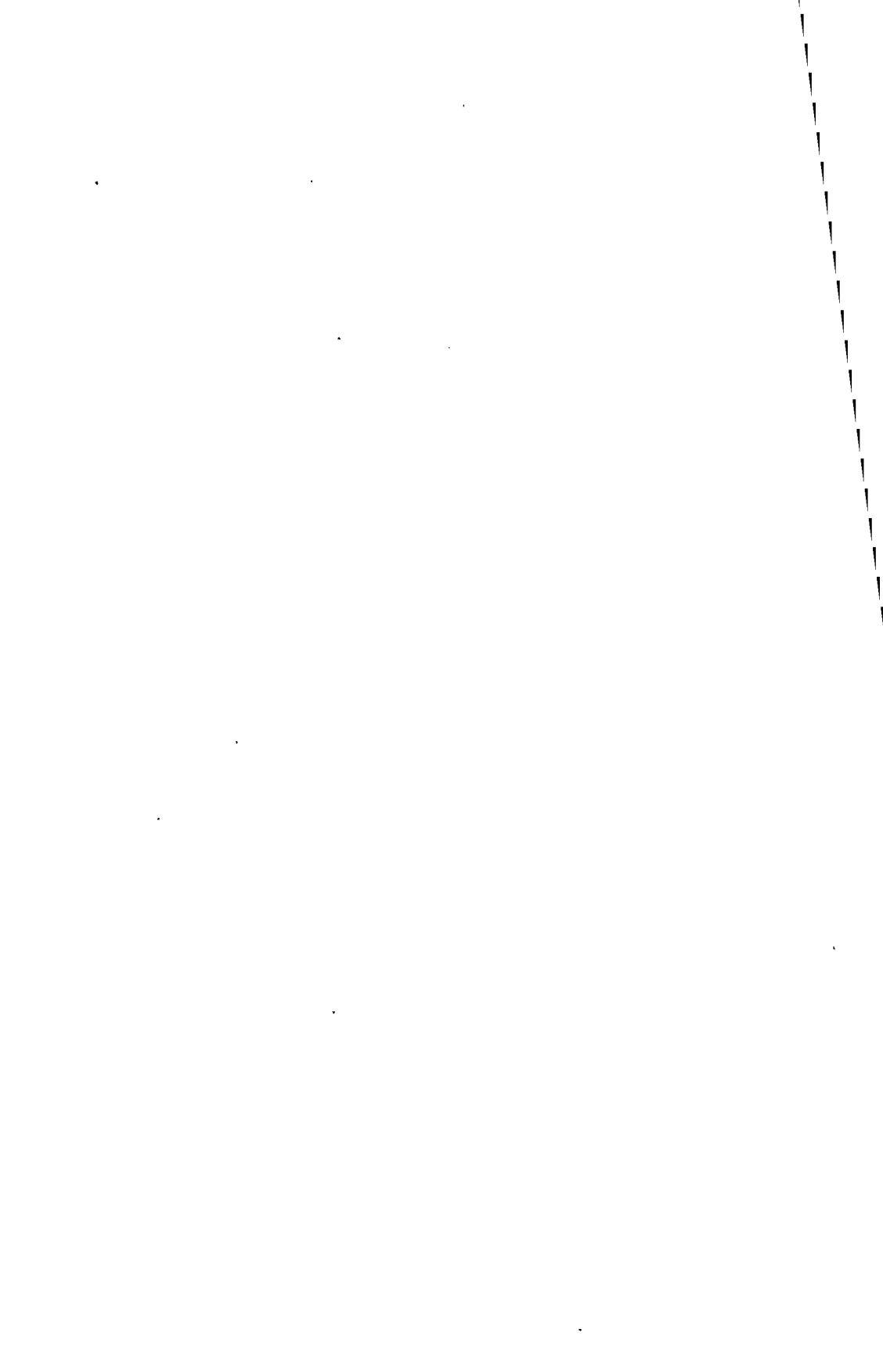
Took oath of office August 7, 1922.

¹ Recess appointment.

² Second term.

ACKNOWLEDGMENT

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



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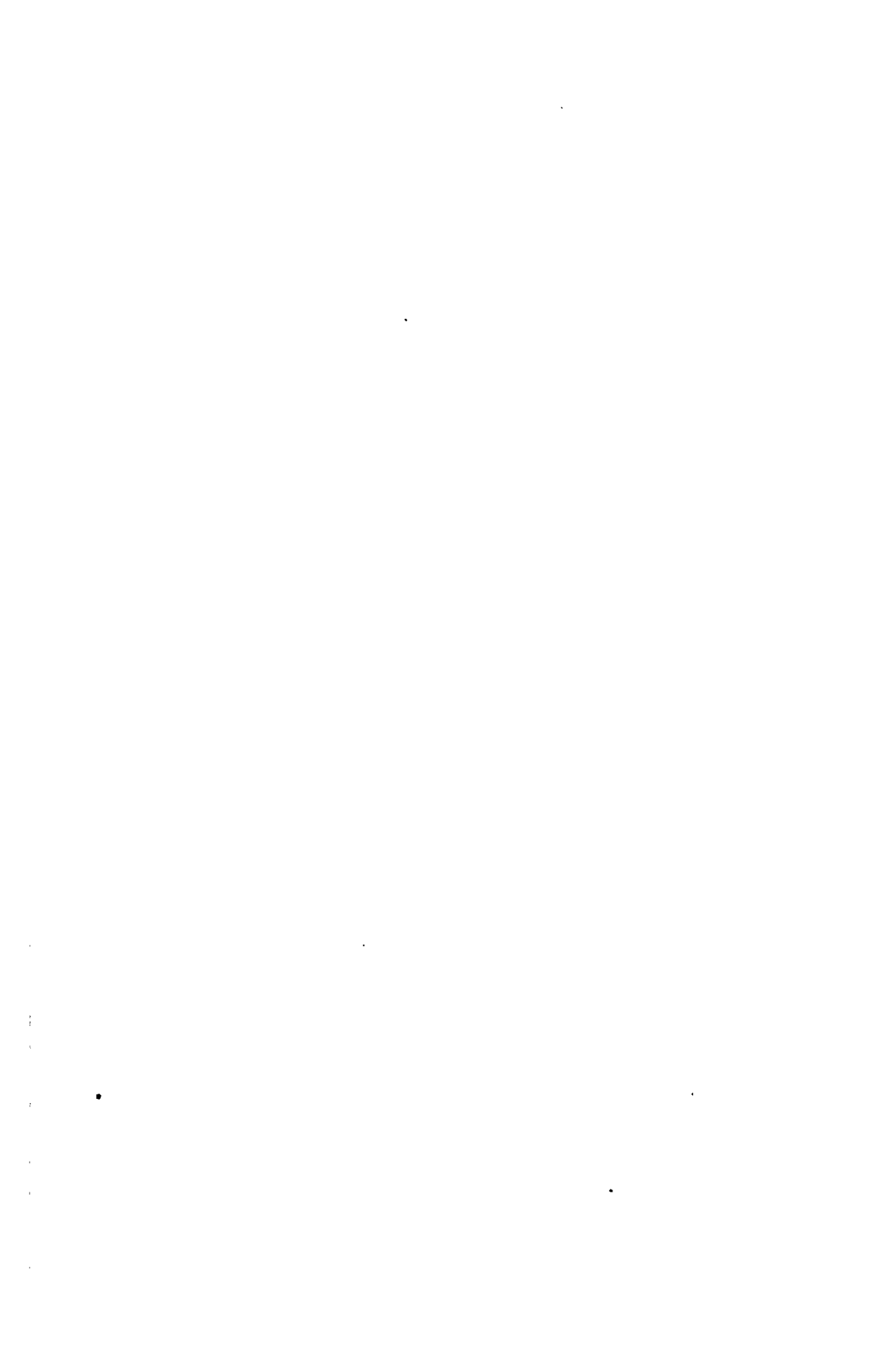
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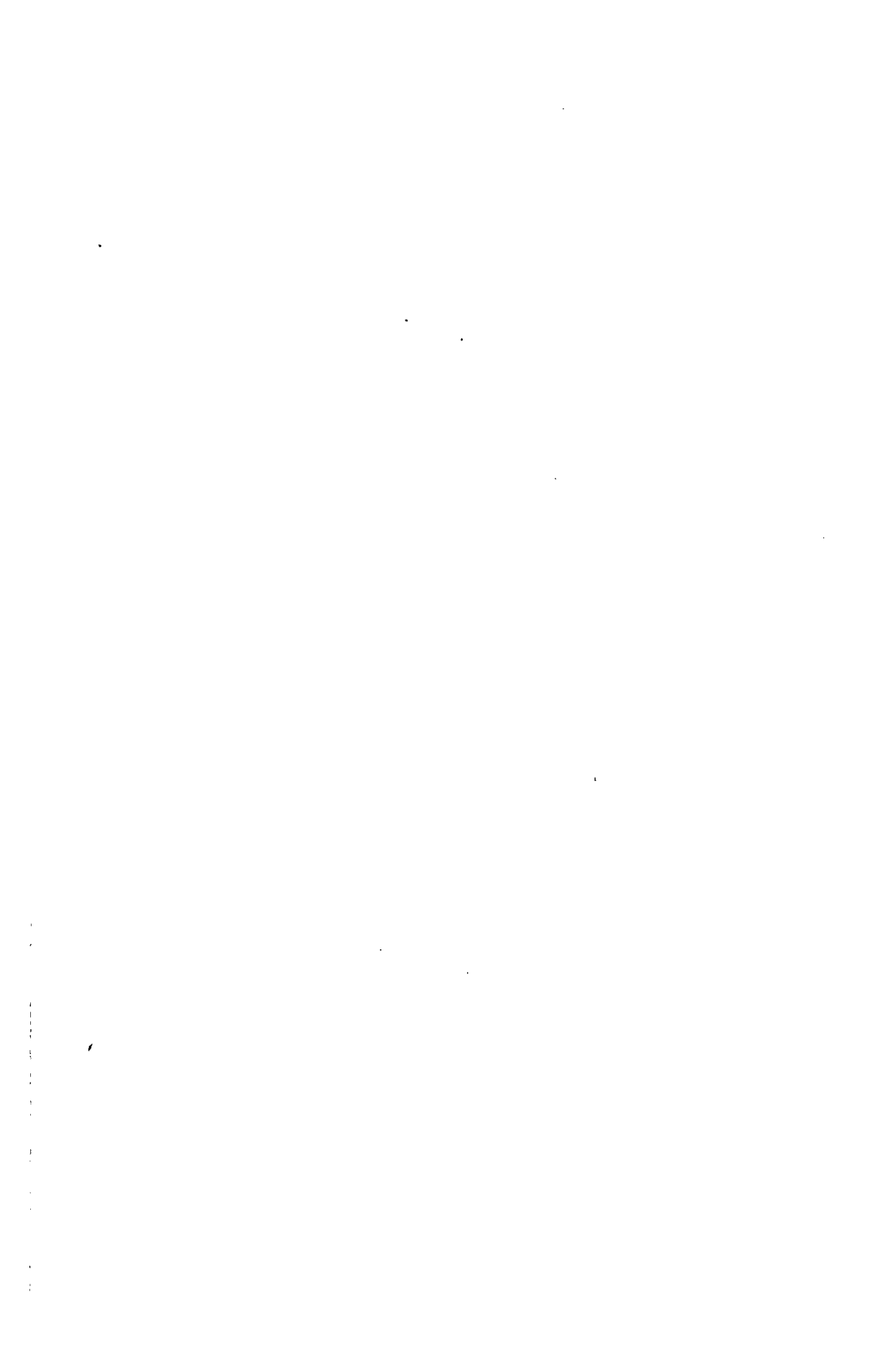
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FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, MAY 5, 1930, TO MARCH 23, 1931

IN THE MATTER OF ROBERTS TAILORING CO., INC.

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

Docket 1614. Complaint, May 1, 1929—Decision, May 5, 1930

Where a corporation engaged as The Robert Tailoring Co. in the manufacture, sale, and distribution to the consuming public, throughout the several States, of men's custom tailored suits, overcoats, and topcoats, made wholly of wool and so marketed, and of high quality, sold under a plan involving direct solicitation of the consuming public by traveling salesmen who exhibited samples and took the customer's measurements, and possessed of a valuable good will and high reputation; and thereafter a junior concern, engaged in purchasing cloth and other materials and in selling in competition with said corporation the men's suits, overcoats, and topcoats, which it caused to made up therefrom (excepting only certain large and small sizes, tailored by it to the customer's order), by other manufacturers, elsewhere, under contract, from its cloth, cut by it into standard ready-to-wear sizes, with sleeve and trouser ends unfinished to permit alterations, which it used to fill subsequent orders from customers, in accordance with measurements taken and supplied by its salesmen, and which were made of fabrics inferior to those employed by said corporation, and sold at a lower price,

- (a) Employed the corporate name, Roberts Tailoring Co., Inc., in soliciting in the same territory sale of its aforesaid pretended tailor-made suits; with the result that there was much confusion as to the identity of the two companies and their respective businesses, and with the capacity and tendency to cause such confusion in the minds of the purchasing and consuming public, and to mislead and deceive substantial numbers thereof into purchasing garments from it in the erroneous belief that they were dealing with and purchasing the products of, the aforesaid older corporation;
- (b) Featured its aforesaid name on all its business stationery, circulars and other advertising matter, and on its salesmen's kits, together with depiction of a bolt of cloth, spools of thread, tape measure, scissors, and a sewing tailor, and through its advertising matter and salesmen represented the latter as "tailoring salesmen", engaged in selling "tailoring", its merchandise as a "tailoring line", and itself as occupying the "tailoring field" and being a tailoring company, dealing in garments accurately tailored to measurements, made in its own factories, and under its own supervision; with the capacity and tendency to mislead and deceive substantial parts of the consuming public into the erroneous belief that it

was engaged in the business of making and marketing only garments cut and tailored to the respective measurements of the several purchasers, made by it in its own shops and under its personal supervision, and to cause the purchase thereof in such erroneous belief, and not as "ready-to-wear" garments; and

- (c) Falsely represented through advertising matter and salesmen that the cloth in its garments was "Virgin wool * * * 100 per cent", "Long wearing materials. Guaranteed 100 per cent all virgin wool", "All wool cashmeres. All wool topcoats", etc., notwithstanding the fact that all except 2 out of 17 or more different suitings sold by it had a substantial cotton content, running as high as approximately 50 per cent; with the capacity and tendency to mislead and deceive a substantial part of the purchasing public into the erroneous belief that its said garments were all made from cloth composed entirely of wool or virgin wool, and into purchasing the same by reason thereof;

With the capacity and tendency to unfairly divert trade from competitors and lessen the market for their products:

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

Mr. Henry Miller for the Commission.

Mr. Milton R. Kroopf, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation engaged in making or procuring to be made suits, topcoats and overcoats for boys and men and in the sale thereof directly to the retail purchasers or consumers through agents or salesmen in various places throughout the several States, and with office and principal place of business in New York City, with misrepresenting business status, simulating corporate name of competitor, and advertising falsely or misleadingly, in violation of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as alleged, engaged as above set forth, does business under a method pursuant to which it furnishes the cloth and other materials for the garments sold by it, employs certain persons to cut out the same for manufacture, thereafter procures the manufacture thereof at outside factories on a contract basis, and keeps a stock of various sizes on hand, thus made up though not completely finished, so as to permit alterations as required, from which stock (with the exception of sizes smaller than 35 inches chest measurement or larger than 44 inches, for which a charge of \$1.50 in addition to the established price of \$16.75 is made), it fills orders, as sent in, together with customers' measurements by its agents whom it supplies with samples, order blanks, etc.

1

Complaint

Respondent, as charged, in advertising its aforesaid garments in newspapers, magazines, periodicals, and other publications and in order blanks and in other blanks, catalogues, pamphlets, and so on, falsely states, represents, and promises that said garments are tailored to measure, manufactured in respondent's own factories under respondent's own personal supervision and are "Long wearing materials. Guaranteed 100 per cent. All virgin wool sunproof blue serge and 100 per cent virgin wool cheviot," the facts being that the garments in question, with the exceptions above noted, are not "Tailored to measurement," but are carried in stock and are not manufactured in respondent's own factories, but elsewhere, as above set forth, and that many of said garments are composed only in part of wool or virgin wool.

Respondent, further, as charged, carries on its aforesaid business under its corporate name of Roberts Tailoring Co., Inc., closely resembling the name of a competitor and older organization, namely the Robert Tailoring Co., of Ohio.

The use by respondent of such corporate name, along with the aforesaid statements and representations, has the tendency and capacity to and probably will mislead and deceive the public and prospective purchasers into the erroneous belief that respondent is engaged only in the business of making garments to the measurements of the purchasers whose orders are solicited, preferred by a considerable portion of the public to garments made up in advance, that the garments are made in respondent's own place of manufacture by its own employees under its own personal supervision and exclusively tailored or cut and made to the measurements of the customers, and are made of cloth or fabric composed entirely of wool or virgin wool, likewise preferred by a considerable portion of the public and many purchasers and prospective purchasers to garments composed in whole or in part of other materials.

The use by respondent, furthermore, as charged, of its corporate name, as above set forth, also has the tendency and capacity to and probably will deceive and mislead the public into believing respondent to be identical with said competing Ohio corporation, the Robert Tailoring Co., Inc., organized a number of years prior to it and possessed of a valuable good will, associated in the mind of the public and purchasers and prospective purchasers with its aforesaid corporate name and into purchasing respondent's garments as and for those of the aforesaid Ohio corporation, and to affect injuriously the public, prospective purchasers, said last-named company and respondent's competitors by inducing the purchase of respondent's garments as and for those of said company, cut and made exclusively to the measurements of the several purchasers and as and for garments

Findings

14 F. T. C

composed exclusively of wool or virgin wool, and to divert from said company and competitors of said respondent engaged in selling garments tailored to measurement or not, as the case may be and composed exclusively of wool or all virgin wool, or not, as the case may be, prospective purchasers who, without being so deceived or misled, might not have purchased garments or might have purchased garments from such competitors; all to the prejudice of the public and of respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on the 1st day of May, A. D. 1929, issued its complaint against Roberts Tailoring Co., Inc., respondent above named, and caused the same to be served upon respondent as required by law, in which complaint it is charged that respondent has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

Respondent having entered its appearance herein and filed answer to said complaint, hearings were had at which testimony was taken and evidence introduced by counsel for the Commission in support of the allegations of said complaint and by counsel for respondent in opposition thereto before an examiner of the Commission theretofore duly appointed. Said evidence including a transcript of the testimony taken, was filed of record in the office of the Commission, and thereafter briefs were submitted by counsel for the Commission and for the respondent.

Thereupon this proceeding came on regularly for decision, and the Federal Trade Commission, having duly considered the record and being now fully advised in the premises, makes this its report stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Roberts Tailoring Co., Inc., is a corporation organized under the laws of the State of New York in the month of August, 1927, and since that time engaged in carrying on the business hereinafter described, with its office and place of business in the City and State of New York. Said business is the purchase of cloth and other materials and procuring to be made therefrom certain articles of men's clothing, namely men's suits, with or without

1

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extra pairs of trousers, men's overcoats and men's topcoats, and the sale and distribution of such clothing directly to the consuming public throughout the various States of the United States under the merchandising plan described in paragraph 2 hereof.

PAR. 2. Respondent markets its clothing through canvassing salesmen, of which it employs about 1,200, who, as its salesmen, solicit and accept purchase orders for its clothing from members of the general consuming public throughout the several States and at respondent's standard selling price of \$16.75 for suit, topcoat, or overcoat, with an extra charge of \$1.50 for each garment larger than 44 inches in chest measure. Through sales promotional advertisements published from time to time in magazines of general circulation, respondent secures the services of, and informs, its salesmen of its merchandising plan and the basis on which its clothing are to be offered for sale and sold by such salesmen. For use in further promoting and accomplishing the sale of its garments respondent supplies each salesman with its advertising circulars, business cards, business stationery, and printed order forms on which to record the purchase orders and individual tailoring measurements of customers. For the same purpose respondent also furnishes each salesman with a kit or salesman's outfit containing necessary paraphernalia or equipment used by the salesman in selling its clothing to the consuming public. Among said paraphernalia or equipment are 20 to 29 different samples or swatches of the cloth used in the manufacture of said clothing, a card depicting styles in which said clothing may be purchased from respondent, and a tape measure with which to take the several tailoring measurements of customers. In making sales the contents of the kit are displayed to the respective customers who make their selections therefrom of the particular cloth and style in which the garments purchased are to be made. Such selections of cloth and style, as well as the several tailoring measurements of the respective purchasers taken by the salesmen, are recorded on the order form. When placing their purchase orders with respondent's salesmen, customers are required to pay to the salesmen \$3.50 on each suit, topcoat, or overcoat ordered as the initial payment on the purchase price, the balance thereof to be paid by the customer upon receipt of the garments from respondent. The initial payments so made by respondent's customers are retained by the salesmen as their commission and compensation for services rendered respondent as such salesmen or agents. The several purchase orders so received from customers are transmitted by the salesmen to, and are received by, respondent at its place of business in New York City, N. Y. Thereupon respondent undertakes to fill said orders and in

so doing causes its garments so ordered to be shipped and transported C. O. D. by United States parcel post from its place of business in New York City, N. Y., through and into other States of the United States to the respective purchasers thereof at their respective postal addresses in such other States. The balance due on the purchase price of said garments (covered by said C. O. D. charges) is collected from the purchaser by the local postmaster making delivery and by such postmaster is transmitted by United States postal money order to respondent in New York City, N. Y. Under the above-described merchandising plan respondent does an annual volume of business of approximately \$400,000, and receives and executes such purchase orders at a rate running at times as high as 300 per day. It sells and ships its garments from its place of business in New York City to customers in every State of the United States, and has ever since its organization in August, 1927, conducted said business in interstate commerce and in direct active competition with many persons, partnerships, and other corporations similarly engaged in offering for sale, selling, and distributing men's suits, topcoats, and overcoats to the consuming public in, between and among the several States of the United States.

PAR. 3. The aforesaid garments which respondent sells and supplies to its customers having chest measure between 34 and 44 inches both inclusive, are "ready-to-wear" or "ready-made" clothes and are manufactured in quantities and cut and made to the standard or conventional sizes and measurements used by the clothing industry to which to manufacture "ready-to-wear" or "ready-made" clothing intended to be kept in stock for sale to persons whom they may be found to fit. Said garments of respondent are so manufactured in advance of the receipt of the respective customer's purchase order and tailoring measurements, and are carried in stock by respondent with the ends of the sleeves and trouser legs left unfinished in order to facilitate alterations or adjustments to proper lengths of the respective consumer-customers as sales are made. Upon taking said garments from stock for shipment to its customers in fulfillment of purchase orders received by its salesmen as aforesaid the ends of the sleeves and trouser legs are finished by respondent to conform to the length required by the respective consumers as specified in the orders. The number of its customers to which respondent supplies said garments carried in stock and made in advance of the receipt of the customer's measurements and order and the proportion of respondent's business in such garments, are large and substantial. It is a practice of general following in the clothing industry for manufacturers of "ready-to-wear" or "ready-

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made" clothing to allow the ends of the trouser legs to remain unfinished in order to facilitate the work of the ultimate sellers in making necessary alterations to adjust the length of the trousers to the needs of the respective consumer after making his selection and purchase of the clothing. To some degree this practice appears to be followed even in the case of the ends of coat sleeves.

PAR. 4. In the manufacture of all of respondent's garments the work of cutting out the cloth used is done by respondent's employees at its place of business in New York City. The work of sewing said cloth into the garments, however, is not performed, except in few minor instances, by respondent's employees, nor at the respondent's place of business; but this work is performed for respondent by other or outside manufacturers under contract with respondent and by employees of such other manufacturers.

PAR. 5. From the date of its organization in August, 1927, until July, 1929, respondent conducted its business under its corporate name of Roberts Tailoring Co., Inc., which name it caused to be conspicuously printed on all its aforesaid business stationery, circulars and other advertising matter and on its salesmen's kits or outfits. Said name, where so printed on its business stationery and advertising matter, appears superimposed upon a background depicting a bolt of cloth, spools of thread, tape measure, scissors, and a tailor in the act of sewing cloth. Throughout the course of said business and by various means, particularly through its advertising matter and salemen, respondent caused representations to be made to the purchasing public to the effect that its salesmen are "tailoring salesmen"; that its merchandise is a "tailoring line"; that in its business it occupies the "tailoring field" and is a tailoring company; that its salesmen, in acting as such, are engaged in selling "tailoring"; that its garments are "tailored to measurements" and that in making said garments all tailoring measurements are accurately followed; and that all its garments are manufactured in its own factories and under its own personal supervision. The use by respondent of the word "tailoring" in its corporate name, under the circumstances hereinbefore set forth, and the use of the above-mentioned representations are calculated, have and had the capacity and tendency, to mislead and deceive substantial parts of the consuming public into, and to cause them to purchase garments from respondent because of, the erroneous beliefs that (a) respondent is engaged in the business of making and marketing only garments which in their manufacture are cut and tailored to the respective tailoring measurements of the several purchasers whose orders have first been obtained; that (b) all of said garments offered for sale and

sold by it are "tailor-made" or "tailored to measurement", to wit, garments cut and tailored to the several tailoring measurements of the respective consumer-customers; and that (c) said garments are so made by respondent in its own factories or shops and under its own personal supervision. Whereas, in truth and in fact, a large and substantial proportion of said suits, topcoats, and overcoats, to wit, those having chest measure between 34 and 44 inches, both inclusive, were not so made, but are "ready-made" or "ready-to-wear" garments which have been manufactured and carried in stock, as set out in paragraphs 3 and 4 hereof.

PAR. 6. Throughout the course and conduct of its business and in its advertising matter and through its salesmen, respondent caused the cloth from which the garments sold by it are manufactured to be represented and described in language as follows:

(I) Long wearing materials. Guaranteed—100 per cent. All virgin wool sunproof blue serge. 100 per cent. Virgin wool cheviot. Cravenetted topcoatings.

(II) Long wearing materials. Guaranteed 100 per cent all virgin wool sunproof blue serge—Fancy worsteds and cassimeres—100 per cent all wool cravenetted topcoatings. Special heavy weight fabrics for the Northwest including 100 per cent all wool heavy weight overcoating.

(III) 100 per cent virgin wool blue serge and blue cheviot. Guaranteed sunproof. Fancy worsteds. All wool cashmeres. All wool topcoats.

The cloth from which said overcoats and suits sold by respondent were manufactured, with the exception of one piece of blue serge suiting and one piece of cheviot suiting in the total of seventeen or more different pieces of suiting, contained, in addition to wool, large and substantial proportion of cotton, the cotton content running as high as approximately 50 per cent. Respondent did not disclose in connection with the above-mentioned representations and description of its cloth that a large part thereof was not composed wholly of wool. Said representations and description, so used by respondent, are and were misleading and deceptive and were calculated, have and had the capacity and tendency, to mislead and deceive a substantial part of the purchasing public, (a) into the erroneous belief that all of respondent's garments are made from cloth composed entirely of wool or virgin wool, and (b) into purchasing respondent's garments in and because of such erroneous belief.

PAR. 7. Another corporation having no affiliation whatever with respondent and named The Robert Tailoring Co., was organized in the year 1922 under and by virtue of the laws of the State of Ohio; and it has ever since and still is engaged in conducting, under its corporate name and with its principal office, place of business, and

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tailoring shops in the city of Cincinnati, Ohio, the business of manufacturing, selling, and distributing in interstate commerce to the consuming public throughout the several States of the United States, men's custom tailored suits, overcoats, and topcoats. Its plan of merchandising adopted upon its organization and followed throughout its business activities is similar to that later adopted and followed by the respondent as described in paragraph 2 hereof. The garments sold by it are "tailor-made" or "tailored to measurements" of cloth composed wholly of wool, and are marketed as such. They are of high quality and, upon receipt of purchase orders and individual tailoring measurements of consumer-customers, are cut and tailored to such individual measurements by said Ohio corporation's own employees in its own shops. The garments sold by it and those sold by respondent are competitive garments, and ever since respondent has been organized in August, 1927, said Ohio corporation and respondent have conducted their respective businesses of advertising, offering for sale, selling, and distributing their products in direct active competition with each other throughout the various States of the United States. Prior to respondent's incorporation in August, 1927, said Ohio corporation had created and enjoyed in the several States of the United States a valuable good will and high reputation as producing and marketing high quality clothes cut and tailored to the measurements of the respective consumers, which good will and reputation is associated in the minds of the purchasing public with its corporate name The Robert Tailoring Co. The respondent's adoption in August, 1927, and use as hereinabove described of its corporate name, Roberts Tailoring Co., Inc., in carrying on and conducting its business similar to and in competition with said business conducted by and in the name of The Robert Tailoring Co., was, by virtue of the similarity of said corporate names and businesses, misleading and deceptive, has resulted in much confusion in the identity of the two corporations and their respective businesses, and had the capacity and tendency to cause such confusion in the minds of the purchasing and consuming public and to mislead and deceive substantial numbers thereof into purchasing garments from respondent in the erroneous belief that in so doing they were dealing with and purchasing garments which are the product of said original or older corporation, namely, The Robert Tailoring Co. In July, 1929, respondent undertook to replace, for selling purposes only, the name Roberts Tailoring Co., Inc., theretofore used, with the name Lloyd Tailoring Co., Inc., being the corporate name of a subsidiary corporation organized under the laws of the State of New York and having a capital stock of the par value of \$10,000, all of which is owned by

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respondent. It now appears to be respondent's intention to use its corporate name, Roberts Tailoring Co., Inc., only for credit purposes, and in which to purchase cloth and other materials used in the manufacture of its clothing, and to discontinue the use of such corporate name, Roberts Tailoring Co., Inc., for conducting that part of its business activities related to the sale and distribution of its clothing to the consuming public. Respondent has since July, 1929, made the same use of the name Lloyd Tailoring Co., Inc., that it made of the name Roberts Tailoring Co., Inc., in connection with advertising, selling, and distributing its garments; and such use of the word "Tailoring" in said name Lloyd Tailoring Co., Inc., is with like deceptive and misleading capacity and tendency as set forth in paragraph 5 hereof with respect to said name Roberts Tailoring Co., Inc.

PAR. 8. Large and substantial parts of the purchasing and consuming public believe that men's suits, topcoats, and overcoats which have been "tailor-made" or "tailored to measurement", to wit, cut and made exclusively to the individual measurements of the respective consumers, are more valuable and more desirable than, and they prefer to purchase such garments instead of "ready-to-wear" or "ready-made" garments or garments cut and made to standard or conventional measurements in advance of purchase by the consumer. Likewise large and substantial parts of the consuming public believe men's garments made from cloth composed entirely of wool are of greater value and more desirable than, and they prefer to purchase such garments instead of, similar garments composed of cloth containing cotton in whole or in part.

PAR. 9. The misleading, deceptive, and confusing acts and practices of respondent hereinabove set forth have and had the capacity and direct tendency to unfairly divert trade from, and lessen the market for the products of, aforesaid competitors of respondent, and they are and were injurious and contrary to the interest of the public.

CONCLUSION

Respondent's misleading, deceptive, and confusing acts and practices in the conduct of its business, under the conditions and circumstances set forth in the foregoing findings as to the facts, are to the prejudice and injury of the public and respondent's competitors, are unfair methods of competition in interstate commerce and constitute a violation of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

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ORDER TO CEASE AND DESIST

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

It is now ordered, That respondent, its officers, agents, representatives, servants, and employees, do cease and desist, in the course and conduct of the business of selling men's suits, overcoats, topcoats, and other like garments or merchandise in commerce among the several States of the United States,

(1) From using the word "Tailoring" followed by the word "Company", or in combination with a word or words of like import, in the corporate name or trade name under which to carry on said business directly with the consuming public, unless (a) all of said garments, in their manufacture, are cut and made exclusively to or in accordance with the individual tailoring measurements of the respective consumers thereof; or unless (b) when only part of said garments are so cut and made, it be clearly and unequivocally disclosed in connection with such business and in all sales promotion activities that the certain other part of said garments are not so cut and made, but are cut and made to or in accordance with other measurements,

(2) From making or causing to be made any representation, statement or assertion, in any manner whatsoever to the effect that any of said garments are "tailored to measurements" or are tailor-made or are cut and made to or in accordance with the individual tailoring measurements of the respective consumers, unless such garments so represented are in fact cut and made exclusively to or in accordance with the individual tailoring measurements of the respective consumers,

(3) From making or causing to be made any representation, statement or assertion in any manner whatsoever to the effect that (a) any of said garments are all wool, when such is not true in fact; or that (b) any such garments are cut and made in respondent's own factories or shops under its own personal supervision, when such is not true in fact,

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(4) From advertising, representing, or describing said line of merchandise marketed by respondent by any of the statements quoted below, or by any statement or assertion of similar import:

(I) Long wearing materials. Guaranteed—100 per cent. All virgin wool sunproof blue serge. 100 per cent. Virgin wool cheviot. Cravenetted topcoatings.

(II) Long wearing materials. Guaranteed 100 per cent all virgin wool sunproof blue serge—Fancy worsteds and cassimeres—100 per cent all wool cravenetted topcoatings. Special heavy weight fabrics for the Northwest including 100 per cent all wool heavy weight overcoating.

(III) 100 per cent virgin wool blue serge and blue cheviot. Guaranteed sunproof. Fancy worsteds. All wool cashmeres. All wool topcoats;

unless (a) all of the merchandise so advertised, represented, or described is in fact made of cloth composed wholly of wool, or unless (b) when only part of said merchandise is made of all wool cloth as represented, said representations, advertisements, or descriptions be accompanied directly with representations, statements, or assertions clearly and unequivocally disclosing that cloth which does not contain wool exclusively or at all, as the case may be, is used for the manufacture of such garments as are not made of all wool cloth.

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

Syllabus

IN THE MATTER OF
CONSOLIDATED BOOK PUBLISHERS, INC.COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1538. Complaint, Oct. 11, 1928—Decision, May 6, 1930*

Where a corporation engaged in the sale and distribution, throughout the United States, of a set of books at retail, under the name "New World Wide Cyclopedia", and under a plan involving sending of lead letters to prospects and solicitation by salesmen of those returning the enclosed postal cards,

- (a) Advised the prospect in said letters, under the name "World Wide Educational Service", that it was distributing a few sets as an advertisement to obtain an original owners list in certain communities, that because of his standing his name was considered of special value as a local reference, and that it had set aside "without cost" to him a complete 8-volume set, and requested his opinion of the work in response to future queries, and that he treat the communication "as personal and confidential"; the facts being that it did not give away any sets as above represented, but sold the encyclopedia, together with the loose-leaf supplement and research service therein mentioned, for the purchase price of \$33.20, and employed said letters solely to obtain names of prospects, and that the name "World Wide Educational Service" was only a trade name used to conceal its character as a book-selling organization;
- (b) Employed an order blank in which the purchaser over his signature called upon it to deliver a set, to enroll him as a subscriber for its quarterly loose-leaf extension service for a 10-year period, and to enroll him as a member of its "Research Bureau" for a like period, and obligated himself for a total payment of \$33.20; the fact being that on the ground of mailing expense, additional amounts, not mentioned in said contract, and aggregating \$8 over and above the aforesaid contract price, were exacted;
- (c) Represented to prospects that subscribers to said loose-leaf service for 10 years, at a price of \$33.20, to cover cost of sending same four times a year during said period, would be given a set free, and that a few persons, of whom prospective subscriber was one, had been selected in each community to receive a set as a gift, said subscriber being expected, however, as an additional consideration to give an opinion, at some later date, of the work, for use in some future sales campaign; the facts being that there was no such selection of persons nor request for opinions, no such sales campaign was contemplated, and the figure named constituted its regular price for books, service, and other items, as above set forth, and was further misleading in its failure to include the aforesaid \$8 additional exacted;

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- (d) Featured its said research bureau and the added value to be afforded thereby, to prospects, representing same as covering 121 subjects within the field of human knowledge, rendering a service of inestimable value, and supplying the subscriber, for 10 years, with "information and advice on any subject," and as consisting of a staff of competent editors, all expert in their particular field; the facts being that it consisted only of an elderly man whose duties included preparation of material for aforesaid supplements, answering of questions sent to said "bureau", and the rendering of assistance in revisions of the encyclopedia, and that at times answers were prepared and sent in response to simple questions, by a sales promoter located in its office; and
- (e) Sold its said encyclopedia under the name "New World Wide Cyclopeda" and falsely represented same as a new and up to date publication; the facts being that said work was published prior to 1917 under another name; it purchased the plates thereof in said year, and had made no general revision thereof since;

With the tendency and capacity to mislead and deceive and with the effect of misleading and deceiving the purchasing public and inducing purchase by it of said publications in the belief that said representations and statements were true; and

- (f) Sold over 30,000 sets of its said work under the name "Times Encyclopedia and Gazetteer", with different binder but identical text and content material, to another company, for resale by it to the public, under contract obligating it to supply said company with loose-leaf supplements, for latter's customers, and printed for and supplied said company with sales and advertising literature, identical, excepting change in names, with those employed by it in sale of said "New World Wide Cyclopeda", and with a "research service", held out by the latter to the public as a research bureau; with the capacity and tendency to mislead and deceive the purchasing public and to cause members thereof to purchase the two sets as and for separate and distinct works:

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

Mr. G. Ed. Rowland for the Commission.

Campbell & Fischer, of Chicago, Ill., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Illinois corporation engaged in the sale and distribution of a set of books entitled "New World Wide Cyclopeda", in interstate commerce, and with principal office and place of business in Chicago, with offering deceptive inducements to purchase, through advertisements and agents, and with naming product misleadingly, in violation of the provision of section 5 of said act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged in the sale of said books through salesmen or representatives traveling through the United States and calling upon those theretofore solicited by mail, under the name "World Wide Education Service", to purchase its said "New World Wide Cyclopedia", and "Loose Leaf Extension Service", and replying to said request through use of the self-addressed card inclosed, makes false and misleading representations through agents, salesmen, representatives, and employees and, in some cases through advertisements, as follows:

That it will present free its said set of books to various individuals, upon the condition that they give prospective purchasers in their community their opinions concerning the merits thereof, provided, however, that they subscribe to the aforesaid loose-leaf extension service, published four times a year, for a period of 10 years, represented as costing only 83 cents an issue, but amounting to a total of \$33.20 for the entire transaction. Said figure is respondent's regular price for both the set and the service, is greatly in excess of the price at which respondent could furnish the latter alone to bona fide purchasers and misleads the purchaser into buying the two in the mistaken belief that he is receiving the set free of charge and paying only for the other.

That each purchaser of the set will be enrolled for a 10-year period as a member of its Research Bureau and that a limited number of its sets have been set aside for free distribution, as part of an advertising campaign to obtain an original owners' list in certain communities, to which prospective purchasers may be referred. Said Research Bureau is fictitious and no sets are given away, each subscriber being required to purchase the loose-leaf service, as above set forth.

Respondent, further, as charged, entitles editions printed from the plates used for its said "New World Wide Cyclopedia", the "Times Encyclopedia and Gazetteer" and sells said editions or copies under said title to The Times Sales Co., which resells the same to the public at retail, respondent concealing the fact that the two publications are printed from the same plates and are identical in contents, with the result that the public is thus confused and misled as to the identity of the two and induced to purchase the same as and for entirely different and distinct compilations and publications.

As a result, as alleged, of the use of such false, deceptive and misleading representations and statements said "New World Wide Cyclopedia" and the aforesaid extension and research services, have been and are sold to members of the public throughout the United States, thereby induced to purchase the same; and, as charged, the

above alleged acts, things and practices of respondent are each and all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in interstate commerce within the intent and meaning of section 5.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon Consolidated Book Publishers, Inc., hereinafter referred to as respondent, charging it with unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

The respondent having entered its appearance, and having filed its answer herein, hearings were had and evidence was thereupon introduced on behalf of the Commission (respondent waiving its right to introduce testimony) before an examiner of the Federal Trade Commission, theretofore appointed.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Consolidated Book Publishers, Inc., is a corporation organized in 1922, under laws of the State of Illinois, with its principal office and place of business at 537 South Dearborn Street, Chicago, Ill., where it has been engaged for more than one year last past in the sale and distribution throughout the United States of a set of books at retail under the name "New World Wide Cyclopedia" and of the same set of books at wholesale under the name of "The Times Encyclopedia and Gazetteer". Respondent is a subsidiary of John F. Cuneo Co., which company binds the encyclopedia sold by respondent, and the printing of said encyclopedia is done by the Cuneo Press of Wisconsin. All three of these companies are affiliated with Cuneo Press. The officers of respondent are Stanley H. Livingston, president; R. W. Smith, jr., vice president, and C. I. Ingve, secretary-treasurer. Mr. Smith is also connected with the John F. Cuneo Co. Mr. Stanley H. Livingston is manager and in active charge of everything in connection with respondent. In the course and conduct of its business respondent is in active

competition with other persons, partnerships and cooperations engaged in the sale of books throughout the United States.

PAR. 2. Respondent sells its "New World Wide Cyclopedia" at retail to the public by salesmen, on the subscription plan. Its method of sale is as follows: Lists of names of prospects are obtained from addressing companies, and a letter, copy of which is set forth hereinafter, is sent to said prospects. Accompanying the letter is a postal card, addressed to respondent, confirming the name and address of the person to whom the letter is sent, which such person is asked to initial and return to respondent. The postal cards so returned are given to respondent's salesmen and representatives, with instructions to call upon and attempt to sell said persons a set of the "New World Wide Cyclopedia". If the salesman makes a sale he requires the prospect to sign a contract, or order, a copy of which is retained by the purchaser, and the original sent to respondent. The purchaser pays \$9 to the salesman as an initial payment, \$12.20 upon receipt of the set of books, which are sent C. O. D. by respondent and an additional \$12 thirty days after the date of the order, a total of \$33.20. If a purchaser pays cash at the time of signing the contract, he receives a bookshelf for the books as a premium. The respondent, pursuant to orders for said books, previously received, as hereinbefore stated, causes said books to be shipped from its place of business in the city of Chicago, State of Illinois, to the different purchasers thereof located throughout the different States of the United States.

The set of books called the "New World Wide Cyclopedia" consists of eight volumes, with content material arranged alphabetically, on unnumbered pages, bound in board covers, with certain designs on said covers, which are tinted with colors. Accompanying the 8-volume set when delivered to a purchaser are a loose-leaf binder and three supplements.

PAR. 3. At the time of the hearings in the case respondent had 8 salesmen engaged in selling its encyclopedia in the various States of the United States, and particularly in the States of Indiana, Illinois, Michigan, Nebraska, and New York, but at different times since it has been in business respondent has had as many as 30 salesmen engaged in this work, scattered throughout the country. Respondent equips its salesmen with a "sales kit" containing the following items: Contract forms in duplicate, bureau of research certificate, blue print showing scope of research bureau work, prospectus or sample pages from the books, "stretcher" showing backs of volumes and sample of binding, a "broadside" or advertising circular, and other advertising literature.

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Respondent does not give its salesmen definite sales talks to follow in soliciting sales. Its salesmen are persons who have had a number of years experience in the sale of subscription books with other companies, and respondent does not give them any instructions as to the manner of selling its encyclopedia, but allows them to use their own methods of making sales. Salesmen are instructed only to call upon and solicit the persons to whom lead letters have been sent by respondent, and who have initialed and returned the post card.

PAR. 4. The letter, heretofore referred to, which respondent sends to prospects, is as follows:

Without cost to you and without any obligation on your part, we are holding a complete 8-volume set of the World Wide Cyclopeda.

A few of these sets are being distributed as an advertising feature to obtain an original owners' list in certain communities. Because of the standing you enjoy in your community we feel your name would be of special value to us as a local reference.

Should your opinion be asked at some future time, we request only that you speak of the work as you find it and say what you conscientiously think of its merits. A most attractive feature is the Loose Leaf Extension Service, which keeps the work constantly up to date.

It is necessary for you to initial and return the inclosed card, confirming the correctness of address (or make corrections) and we will see to it that you are supplied with complete details without cost or obligation.

Please treat the foregoing as personal and confidential.

At the time of the hearing the above letter was being sent by respondent at the rate of 2,000 a month to persons residing in the various States of the United States, and respondent has used said letter, or one differing only slightly in wording, in furthering the sale of its encyclopedia for several years last past. The above letter is sent out on a letterhead bearing the name "World Wide Educational Service, 537 South Dearborn Street, Chicago, Ill.", which is respondent's address, and is signed by different employees of respondent, over the title "Director of Publicity" or "Advertising Manager".

Said letters are false and misleading in that the letters represent to those receiving them that respondent will give them a set of the New World Wide Cyclopeda free of cost, as an advertising feature, in exchange for their opinion of said encyclopedia, and the addresses of said letters initial and return the inclosed post card in that belief. In fact, respondent does not give away any sets of said encyclopedia as an advertising feature, and does not give any sets of its encyclopedia to anyone who receives said letters, but said encyclopedia is sold by respondent in connection with a loose-leaf supplement and a research service, payment for all three items being included in the

purchase price of \$33.20. Said letters are used solely and intentionally by respondent for the purpose of obtaining the names and prospects upon whom respondent's salesmen can call for the purpose of soliciting them to purchase said New World Wide Cyclopedia. The name used on said letters—World Wide Educational Service—is a trade name adopted by respondent to conceal the fact that it is selling books, and there is no organization or service of any kind maintained or existing under said name.

PAR. 5. The contract, or order blank, which each purchaser has to sign provides as follows:

Gentlemen—Please enter my order and deliver by express (charges collect):

1. One set of the New World Wide Cyclopedia, 1929 Edition—8 volumes in De Luxe Art Craft binding (designs in colors and lettering in gold).
2. Enroll my name as a subscriber for your quarterly pictured Loose Leaf Extension Service for a period of Ten Years.
3. Supply me with a binder for Loose Leaf Extension Service.
4. Enroll my name as a member of the RESEARCH BUREAU for a period of TEN YEARS.

I have today paid your representative \$9 and agree to pay the balance of \$24.20 as follows:

\$12.20 to the expressman upon delivery of the set;

\$12 thirty days from the date of this order, to be remitted to your office at the above address.

The loose-leaf extension service referred to in above contract is prepared by respondent as a supplement in pamphlet form, comprising approximately 80 pages, and is issued quarterly on January 15, April 15, July 15, and October 15. The purpose of the supplements is to keep the encyclopedia up to date, and the material contained therein is arranged alphabetically and consists of material relating to current events, gathered from various sources, including the daily newspapers and magazines.

The loose-leaf supplements are a part of the set of New World Wide Encyclopedia, and salesmen and representatives of respondent emphasize the merits of said Loose Leaf Extension Service in soliciting sales of said encyclopedia. The price of \$33.20, as set forth in the contract is intended to, and does, include the four items therein set forth.

In truth and in fact, said price of \$33.20 is not the total price which a subscriber has to pay to receive the aforesaid four items, because after receiving the books subscribers receive from respondent a certificate of membership in the Bureau of Research, together with 40 coupons entitling them to receive the loose-leaf supplements. It is necessary for a subscriber to write his name and address on the coupons and send one in each quarter in order to receive the supplements. In addition, the subscriber must send with each coupon 20

cents, which the coupon states is "to cover the cost of postage and other mailing expense". If a subscriber fails to send in a coupon, together with 20 cents, respondent will not send him a copy of the supplement. Subscribers under their contract are entitled to receive the loose-leaf supplements for 10 years, and it is issued four times a year. It is necessary that the subscriber send 80 cents a year, or a total of \$8 in the 10-year period, in order to receive the Loose Leaf Extension Service which respondent represents is included in the price of \$33.20 named in the contract. The four items listed in the contract cost a subscriber a total of \$41.20, and not \$33.20, as stated by respondent.

Respondent's contract does not refer to this extra cost for the Loose Leaf Extension Service, and the prospective subscribers are not informed of it by respondent's salesmen and representatives, and the terms of said contract are false, deceptive, and misleading in that respect.

PAR. 6. In offering for sale and selling its New World Wide Cyclo-
pedia respondent through its salesmen and representatives, states to the prospective subscribers that they will be given a set of said encyclopedia free of charge if they will subscribe to the aforesaid Loose Leaf Extension Service. Said salesmen and representatives tell prospective subscribers that a few persons have been selected in each community who will receive a set of said encyclopedia as a gift and that the prospective purchaser then being solicited is one of these privileged persons, and that he will receive one of these free sets if he will pay \$33.20 which is to cover the cost of the loose leaf supplements which will be sent to him four times a year during the succeeding 10 years. As an additional consideration for the gift of the encyclopedia, the privileged subscriber will be expected, at some later date when a sales campaign in his city to sell the books generally to the public is being conducted, to give an opinion of the encyclopedia which can be used in said sales campaign. The cost of \$33.20 is specifically stated to be for the Loose Leaf Extension Service and the total cost which said subscriber has to pay.

Said statements and representations are false, deceptive, and misleading because in truth and in fact respondent does not select any persons in each community to receive said encyclopedia free of cost; does not give and has not given, any sets of the New World Wide Cyclo-
pedia to such persons free; does not ask, and has never asked, for any opinions of said encyclopedia from such subscribers; does not intend to have, nor has it ever had, a sales campaign in the various communities to sell the encyclopedia to the general public, other than the sales made as aforesaid by its salesmen and representatives; and

said price of \$33.20 is not intended only to cover the cost of the Loose Leaf Extension Service, but is principally for the books, but also covers the additional items included in the contract, or order blank, as set forth in paragraph 5 herein. Said statements and representations are further false, deceptive, and misleading because the cost of \$33.20 is not the total cost the subscriber has to pay if he desires all the items set forth in the contract, but he must pay \$8 additional in order to receive the loose-leaf supplements for 10 years, as described in paragraph 5 hereinabove.

The statements and representations made by its salesmen and representatives, as set forth herein, are part of the regular method of sale by which respondent sells its publication, New World Wide Cyclopedia, throughout the United States, and when subscribers call to respondent's attention the aforesaid false, deceptive, and misleading statements and representations made to them by its salesmen and representatives as a means of inducing them to subscribe and pay for said encyclopedia, respondent refuses to cancel said order and return the purchase price to said subscribers.

PAR. 7. Subscribers to the New World Wide Cyclopedia are made members of the Bureau of Research for a period of 10 years, as set forth in the contract, or order blank. After receiving the books, subscribers are sent by respondent a certificate enrolling them as members of the Research Bureau, and setting forth the conditions under which they are entitled to use said Research Bureau. Under its terms a subscriber is entitled to ask of, and receive from, said Research Bureau, special information on all subjects coming within the scope of an encyclopedia, during the 10-year period.

Salesmen and representatives of respondent, in soliciting sales of the encyclopedia from prospects, make many representations regarding the Research Bureau as to the value and aid it can be to subscribers, and show said prospects a blue print, which is part of the sales kit furnished salesmen by respondent, which said blue print lists 121 subjects, beginning with "accounting" and ending with "zoology," and including practically every subject within the realm of knowledge as being subjects upon which answers will be furnished by the bureau upon written request. Respondent also furnishes salesmen and representatives with a large 4-page circular known as a "Broadside", describing its New World Wide Cyclopedia, Loose Leaf Extension Service and Research Bureau, which is also shown to prospective purchasers by salesmen and representatives. In de-

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scribing its Research Bureau in said Broadside, respondent makes the following statement:

RESEARCH BUREAU

RENDERING A SERVICE OF INESTIMABLE VALUE

Information and advice on any subject for a period of 10 years will be furnished by the Research Bureau, a staff of competent editors, all expert in their particular field.

Said statement is false, deceptive, and misleading because, in truth and in fact, respondent does not maintain any Research Bureau employing a staff of competent editors, all expert in their particular field.

Respondent's Bureau of Research consists of only one man, Mr. C. W. Coumbe, located in New York City, to whom it pays \$40 a week for all his services, which include preparing all the material for the loose-leaf supplements, answering questions sent to the Research Bureau, and assisting in revising the encyclopedia when any revisions are made. T. H. Flood, a sales promoter, and who signs the letters sent to prospects as "Advertising Manager", is located in respondent's Chicago office and at times answers some of the simple questions sent to the Research Bureau by subscribers, and assists in mailing to subscribers the answers prepared by Mr. Coumbe. Mr. Coumbe is an elderly man who has had considerable experience writing articles for several encyclopedias and trade papers, and in preparing his answers to questions sent in by subscribers, consults the files of the public library in New York City, and other sources of information he may have access to. All questions are referred by respondent to Mr. Coumbe, irrespective of subject matter, and he has no assistants to help him in the work.

On July 26, 1929, Stanley H. Livingston, president of respondent, terminated the services of Mr. Coumbe by letter, and at the time of the hearings on the case respondent had no Research Bureau. Three days before the hearing at which Mr. Coumbe testified, a Mr. Simon P. Magee, connected with the Times Sales Co., which company sells said New World Wide Cyclopedia at retail under the name of Times Encyclopedia and Gazetteer, called on Mr. Coumbe and reengaged him to continue his work on said encyclopedia. The record does not show that Mr. Magee was representing, or was connected with, respondent in this matter.

PAR. 8. Respondent sells its encyclopedia under the name New World Wide Cyclopedia and represents that it is a new and up-to-date publication. Said encyclopedia is not a new publication and was not prepared and edited by, or under the direction of, respondent, but

was first published by Frank E. Wright, of New York, N. Y., under the name of Peoples Encyclopedia, prior to 1917. In 1917 respondent purchased the plates of said Peoples Encyclopedia from said Wright and renamed it New World Wide Cyclopedia. Respondent has made no general revision of the encyclopedia, but has made minor changes in it from time to time such as revising dates and other figures, and inserting new plates in portions of the work where it was necessary to amplify or rewrite an article.

PAR. 9. The various statements and representations hereinbefore set forth are false, deceptive, and misleading, and each of them had and has the tendency and capacity to mislead and deceive, and has so misled and deceived, the purchasing public, and induced said purchasing public to purchase respondent's publications in the belief that such representations and statements are true.

PAR. 10. Respondent, under contracts dated October 29, 1927, and May 28, 1929, sold to the Times Sales Co., a corporation, and Simon P. Magee, a total of 30,000 sets of a publication known as Times Encyclopedia and Gazetteer, which said Times Sales Co. resells to the public at retail. The contracts provide that respondent will furnish loose-leaf supplements to the Times Sales Co. to be supplied its customers, and that the Times Sales Co. and Simon P. Magee will pay one-half the expense of the production and printing of said loose-leaf supplements. Respondent also prints for, and supplies said Times Sales Co. with all sales and advertising literature in the name of the Times Encyclopedia and Gazetteer and Times Sales Co., which literature is the same in every particular as that used by respondent for the New World Wide Cyclopedia, and also supplies said Times Sales Co. with research service which said company holds out to the public as a Research Bureau.

The publication sold by respondent under the name New World Wide Cyclopedia and the publication sold by respondent to the Times Sales Co. and Simon P. Magee under the name Times Encyclopedia and Gazetteer, and which that company resells at retail to the public, are identical in text and content material. The only difference of any kind between the two sets of books is the binding.

The sale by respondent of a set of books under two different names, the text and content material of which are identical, with the knowledge that they are to be resold to the public under said different names, is unfair and misleading to the public, and has the capacity and tendency to mislead and deceive the purchasing public, and cause members of the public to purchase both sets of books in the belief that they are separate, different, and distinct works.

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CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is now ordered, That the respondent, Consolidated Book Publishers, Inc., its officers, agents, representatives, and employees, in connection with the offering for sale of any books, set of books, or publications in commerce among the several States of the United States or in the District of Columbia, cease and desist from:

(1) Selling or offering for sale, either at wholesale or retail, any set of books of the same text and content material under more than one name or title at the same time.

(2) Advertising or representing in any manner to purchasers or prospective purchasers that any book or set of books offered for sale and sold by it will be given free of cost to said purchaser or prospective purchaser when such is not the fact.

(3) Advertising or representing in any manner that a certain number of sets or any set of books offered for sale or sold by it has been reserved to be given away free of cost to selected persons as a means of advertising, or for any other purpose, when such is not the fact.

(4) Advertising or representing in any manner that purchasers or prospective purchasers of its encyclopedia are only buying or paying for loose-leaf supplements intended to keep the set of books up to date, or that purchasers or prospective purchasers are only buying or paying for services to be rendered by a research, or other bureau, for a period of 10 years, when such is not the fact.

(5) Selling the text and content material of any set of books in such a way or manner, and with the purpose and intent, that said text and content material may be resold by any other person, firm or corporation under any other name or title than that being used by respondent for said text and content material.

(6) Advertising or representing in any manner that it maintains a Research Bureau employing a staff of competent editors and experts for the purpose of answering inquiries from subscribers, when such is not the fact.

(7) Advertising or representing in any manner that inquiries addressed to its Research Bureau are referred to and answered by experts and specialists in the particular subject inquired about, unless such inquiries are actually referred to and answered by said experts and specialists.

(8) Advertising or representing in any manner that its set of books is a new and up-to-date encyclopedia, when such is not the fact.

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

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IN THE MATTER OF

J. A. POWELL, TRADING AS J. A. POWELL CO.

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

Docket 1762. Complaint, Feb. 17, 1930—Decision, May 6, 1930

Where an individual engaged in the sale of jewelry at wholesale; through catalogues, price lists, coupons, guarantees, and other advertising matter,

- (a) Falsely represented himself as an importer of synthetic and semi-precious stones;
- (b) Falsely represented certain stones as carbons in their crystalline state, through such words and phrases as "diamonds," "will stand the diamond test of beauty, fire, and acid," and "they can not be told from a genuine diamond," the facts being that the stones in question could not fairly and truthfully be described as diamonds;
- (c) Falsely represented certain imitation stones not commonly regarded by the public or trade as genuine jade, topaz, amethyst, sapphire, rubby, and emerald, as jade, topaz, etc., and certain ring cases not made in whole or in predominant part of the hide of an animal, as leather;
- (d) Falsely represented certain articles containing neither platinum nor gold and not engraved, as "platinum finish," "gold finish," and "engraved rings"; and
- (e) Supplied customers with coupons stating that for a limited time an "Egyptian diamond ring" of a value of \$5 would be sold for \$1, with a limit of two rings to a customer and that said coupon was worth \$4 to the ultimate purchaser and represented savings effected by not spending "fabulous sums in national publications," the facts being that the sale of said rings was not limited, the rings were not diamonds, wholesale cost thereof, was approximately 8½ cents, no savings in advertising costs were passed on to the ultimate purchaser, and the coupons had no substantial value to such purchaser;

With the capacity and tendency to mislead and deceive purchasers and prospective purchasers throughout the several States as to the quality, substance, source of origin, and value of the products in question;

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

Mr. P. B. Morehouse for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged in the wholesale jewelry business, and with principal office and place of business in Chicago, with mis-

representing business status and advertising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, in his advertisements in catalogues, price lists, coupons, etc., represents himself as an importer of synthetic and semiprecious stones, the fact being he is not such an importer, and commodities dealt in by him are not imported.

Respondent, further, as charged, in his aforesaid advertisements, misrepresents various products dealt in by him as follows:

Certain stones as diamonds, through use of the word itself, and such words as "will stand the diamond test of beauty, fire, and acid," and "they can not be told from a genuine diamond." Such stones were not carbons in their crystalline state and could not fairly and truthfully be described as diamonds.

Imitation stones as jade, topaz, amethyst, sapphire, ruby, and emerald. Said stones are not commonly recognized by trade as genuine jade, etc.

Ring cases neither made in whole nor in predominant part of a hide of an animal as "leather."

Certain articles as "platinum finish," "gold finish," and "engraved rings." Said articles contained neither platinum nor gold and had not been subjected to the process ordinarily known and recognized as engraving.

Respondent, further, as charged, has furnished and furnishes purchasers reselling his jewelry, with means calculated and tending to deceive the purchasing public, through coupons stating that for a limited time an "Egyptian diamond ring" worth \$5 will be sold for \$1 with a limit of two rings to a customer, that the coupon is worth \$4 to the ultimate purchaser, and represents savings effected through not spending "fabulous sums in national publications."

The sale of said rings was not limited, the stones were not diamonds, coupons could be had for 50 cents a thousand, the wholesale cost of each ring was about 8 $\frac{1}{3}$ cents, and no savings in advertising were passed on to the ultimate purchaser.

According to the complaint "the foregoing statements, representations, and practices of the respondent and each of them have the capacity and tendency to mislead and deceive purchasers and prospective purchasers throughout the various States of the United States as to the quality, substance, and source of production as well as the value of the products advertised, offered for sale, and sold; and the aforesaid acts and things alleged to have been done by respondent are to the prejudice of the public and the competitors of

the respondent, and constitute unfair methods of competition in commerce within the intent and meaning of section 5."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon the respondent, J. A. Powell, trading as J. A. Powell Co., charging him with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondent having entered his appearance and filed his answer herein stating that he desired to waive hearing on the charges set forth in the complaint and not to contest the proceeding.

Thereupon this proceeding came on for a final hearing on the complaint and answer, and the Commission having duly considered the record and being fully advised in the premises, makes this its report, stating its findings as to the facts set forth in the complaint and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is an individual doing business and trading under the name and style J. A. Powell Co., with principal office and place of business in the city of Chicago, State of Illinois. He is engaged in the wholesale jewelry business, selling, advertising, and offering for sale jewelry to purchasers and prospective purchasers located in the various States of the United States and causing said jewelry when so sold to be transported from his place of business in the city of Chicago and State of Illinois into and through other States of the United States to the purchasers thereof. In the course and conduct of his aforesaid business respondent is in competition with other individuals, partnerships, and corporations engaged in commerce between and among the various States of the United States.

PAR. 2. By the circulation and use of catalogues, price lists, coupons, guaranties, and other advertising matter respondent has represented and does represent to his purchasers and prospective purchasers in the various States of the United States that he is an importer of synthetic and semiprecious stones, whereas in truth and in fact respondent is not such an importer, and the commodity so offered and advertised for sale and sold is not imported.

PAR. 3. Respondent, through the use of the word "diamonds" and the words "will stand the diamond test of beauty, fire, and acid," and "they can not be told from a genuine diamond," in his catalogues, circulars, price lists, coupons, and advertising matter as aforesaid, has thereby represented and does represent to prospective purchasers and purchasers throughout the various States of the United States that the stones so offered for sale and sold are carbons in their crystalline state, whereas in truth and in fact the said stones so advertised, offered for sale, and sold are not genuine, are not carbons in their crystalline state, and can not fairly and truthfully be described as "diamonds."

PAR. 4. Respondent has advertised and is advertising, offering for sale, and selling to prospective purchasers and purchasers throughout the various States of the United States other imitation stones, represented and described as jade, topaz, amethyst, sapphire, ruby, and emerald, whereas in truth and in fact the said stones so advertised, offered for sale, and sold are not stones commonly recognized by the public or by the trade as genuine jade, topaz, amethyst, sapphire, ruby, and emerald.

PAR. 5. Respondent, by the advertising mediums aforesaid through the use of the word "leather" in connection with certain ring cases, has represented and does represent to prospective purchasers and purchasers throughout the various States of the United States that his said ring cases are made in whole or in predominant part of the hide of an animal, whereas in truth and in fact the said ring cases are made neither in whole nor in predominant part of any commodity commonly recognized or known to the public or the trade as leather.

PAR. 6. Respondent by means of his catalogues, price lists, coupons, guaranties, and other advertising matter through use of the words "platinum finish," "gold finish," and "engraved rings" has represented and does represent to purchasers and prospective purchasers through the various States of the United States that the articles so advertised for sale and sold contain some platinum, or some gold, or have been subjected to the process commonly known and recognized as engraving, whereas in truth and in fact none of such articles so advertised for sale or sold contain either platinum or gold or have been subjected to the process ordinarily known and recognized as engraving.

PAR. 7. Respondent has furnished and does furnish the purchasers who resell his jewelry with means calculated and tending to deceive the ultimate purchaser, which said means are coupons containing statements to the effect that for a limited time only an Egyptian

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diamond ring of a value of \$5 will be sold for \$1 with a limit of two rings to a customer; that said coupon is worth \$4 to the ultimate purchaser and that this coupon represents savings effected by not spending "fabulous sums in national publications," whereas in truth and in fact the sale of said rings was not limited, the rings were in no sense diamonds, the coupons have no substantial value to the ultimate purchaser, the wholesale cost of each ring was approximately $8\frac{1}{3}$ cents and no savings in advertising costs were passed on to the ultimate purchaser.

PAR. 8. The foregoing statements, representations, and practices of the respondent and each of them have the capacity and tendency to mislead and deceive purchasers and prospective purchasers throughout the various States of the United States as to the quality, substance, and source of production as well as the value of the products advertised, offered for sale, and sold by respondent.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is now ordered, That the respondent, J. A. Powell, trading as J. A. Powell Co., his agents and employees, with reference to all products and commodities sold and distributed by him in interstate commerce, do cease and desist:

1. From representing in connection with all synthetic and semi-precious stones or other jewelry which are not shipped from a point outside of the United States into the United States, and sold and

distributed by him, that he is an importer or that such stones are imported.

2. From the use of the word "diamonds" and the words "will stand a diamond test of beauty, fire, and acid", and the words "they can not be told from a genuine diamond" in the designation of or in the advertising, branding, or labeling of stones which are not carbons in their crystalline state and which can not be fairly and truthfully described as diamonds.

3. From the use of the words "jade", "topaz", "amethyst", "sapphire", "ruby", and "emerald" in the designation of or in the advertising, branding, or labeling of all jewelry or stones not commonly recognized by the public or by the trade as genuine jade, topaz, amethyst, sapphire, ruby, and emerald.

4. From the use of the word "leather" in the designation of or in the advertising, branding, or labeling of ring cases or other commodities not made of the hide of an animal.

5. From the use of the words "platinum finish", "gold finish", and "engraved" in the designation of or in the advertising, branding, or labeling of jewelry or other ware, containing no platinum, no gold, and which has not been subjected to the process commonly known and recognized as engraving.

6. From selling or distributing in connection with such jewelry, coupons containing statements to the effect that for a limited time only an Egyptian diamond ring of a value of \$5 will be sold for \$1 with a limit of two rings to a customer and that such coupon is worth \$4, and that the coupon represents savings effected by not spending "fabulous sums in national publications", or words of like tenor and effect, in connection with rings, the sale of which is not limited, and which rings are not diamonds, and which coupons have no value, and where no savings in advertising costs are passed on to the ultimate purchaser.

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

IN THE MATTER OF

J. MERRELL REDDING, DOING BUSINESS AS
ETHYL GAS COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 1778. Complaint, Mar. 31, 1930—Decision, May 6, 1930

Where a corporation engaged under the name Ethyl Gasoline Corporation of New York in the sale of an antiknock fluid or motor fuel in interstate commerce and in the use of the term "Ethyl" in connection therewith; and thereafter an individual engaged in the sale of a fluid for treating motor fuel,

- (a) Designated, advertised, and labeled the aforesaid fluid as "Ethyl Gas" and "Ethyl Gas Anti-Knock" and falsely represented the same as an effective antiknock motor fuel, when mixed with gasoline;
- (b) Falsely represented that said Ethyl gas was similar to and gave the same results as the aforesaid Ethyl fluid of said Ethyl Gasoline Corporation of New York and that he was an agent thereof or connected therewith;
- (c) Furnished customers with signs for gasoline pumps similar to those used by and furnished to dealers in the product of the aforesaid Ethyl Gasoline Corporation of New York, so as to mislead and deceive the consuming public into believing his product to be that of the aforesaid corporation;
- (d) So colored his product that when mixed with gasoline the resulting mixture was similar in coloring to and undistinguishable from the product of the aforesaid Ethyl Gasoline Corporation, with the result of deceiving and misleading the purchasing public into believing its said product to be that of the aforesaid corporation; and
- (e) Simulated advertising information and instruction publications, and booklets of competitor;

With the capacity and tendency to cause and with the effect of causing retail distributors and the consuming public to purchase its said product as and for one with antiknock properties when used as a motor fuel, and to confuse said product with that of its several competitors;

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

Mr. Henry C. Lank for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an individual engaged in the sale of a fluid for treating motor fuel, alleged to give such motor fuel antiknock properties, with misrepresenting qualities, nature and identity of product, mis-

branding or mislabeling same in said respects, misrepresenting business status or affiliations, and simulating advertisements and products of competitors, and passing off, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged in the sale of a fluid as above set forth, falsely and fraudulently represented and branded his said fluid as "Ethyl Gas" and "Ethyl Gas Anti-Knock," notwithstanding the fact that said fluid was not that product containing Ethyl, well known to the purchasing public for its antiknock properties and sold in interstate commerce by the Ethyl Gasoline Corporation of New York, and was not an antiknock fluid and did not, mixed with gasoline, produce antiknock gasoline, and falsely and fraudulently represented or caused to be represented his said product as (1) a treater of gasoline which, mixed therein, improved the antiknock properties thereof, and produced in effect antiknock motor fuel, (2) similar to the "Ethyl Fluid" of the Ethyl Gasoline Corporation of New York, sold and distributed throughout the several States to improve antiknock properties of motor fuels, and (3) similar to and giving the same results as Ethyl gasoline motor fuel, containing the aforesaid Ethyl fluid, and (4) the Ethyl Gas Co., trade name employed by him, as agent of or connected with aforesaid Ethyl Gasoline Corporation of New York.

Respondent further, in connection with the sale and distribution of his said product has simulated (1) signs of distributors or sellers of motor fuels, and furnished said simulating signs to distributors or sellers for use on their gasoline pumps, (2) coloring of motor fuels known to the public as having antiknock properties, and (3) advertisements, including booklets and other literature prepared and distributed by sellers or distributors of motor fuels, known to the public as having antiknock properties.

Said alleged acts and practices, as charged, have the capacity and tendency to and do cause retail distributors and ultimate purchasers of motor fuels to purchase respondent's said product as and for a product giving motor fuel with which is mixed an antiknock property, and to purchase motor fuels or gasoline containing respondent's said product as and for antiknock motor fuels or gasoline sold by other distributors or sellers; all to the prejudice of the public and of respondent's competitors and distributors, and sellers of motor fuels, and constituting unfair method of competition in commerce within the intent and meaning of section 5.

Upon the foregoing complaint the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served a complaint upon the said respondent, J. Merrell Redding, an individual doing business under the name and style of Ethyl Gas Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The said respondent, having entered his appearance and filed his answer herein, in accordance with Rule III (2) of the Commission's Rules of Practice, expressly refraining from contesting said proceedings and consenting that this Commission may make, enter, and serve upon him an order to cease and desist from the violations of the law alleged in the complaint.

Pursuant to the said mentioned rule of the Commission and being fully advised in the premises, the Commission now makes its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The said respondent, J. Merrell Redding, is an individual with his place of business in the city of Dallas, State of Texas. The said respondent for more than two years last past has been doing business under the name and style of Ethyl Gas Co. The said respondent during all of said time has been engaged in the sale of a fluid for treating motor fuel alleged to give said motor fuel anti-knock properties. The said respondent has caused said fluid when so sold to be transported in interstate commerce from the city of Dallas, in the State of Texas, to the purchasers thereof at various points in States of the United States other than the State of Texas. In the course and conduct of his business said respondent has been in competition with other individuals, partnerships, and corporations engaged in the sale of fluids for treating motor fuel so as to give said motor fuel antiknock properties.

PAR. 2. The said respondent for more than two years last past has been selling in interstate commerce the aforementioned fluid and variously describing the same as "Ethyl Gas" and "Ethyl Gas Anti-Knock," and advertising the same as a motor fuel having anti-knock properties when mixed with gasoline when in fact the said fluid when mixed with gasoline does not produce a motor fuel having antiknock properties.

At the time or times the said respondent, J. Merrell Redding, adopted the trade names "Ethyl Gas" and "Ethyl Gas Anti-Knock," the Ethyl Gasoline Corporation of New York was and had been using the term "Ethyl" in the sale in interstate commerce of an antiknock fluid or motor fuel.

PAR. 3. The said respondent in the sale of his product has made numerous statements and representations to the effect:

(a) That Ethyl Gas is a treater of gasoline and when mixed with or dissolved in gasoline improved the antiknock properties of the gasoline and produced an effective antiknock motor fuel.

(b) That Ethyl Gas was similar to Ethyl Fluid, a product of the Ethyl Gasoline Corporation of New York.

(c) That Ethyl Gas was similar to and gave the same results as Ethyl gasoline.

(d) That the Ethyl Gas Co. was an agent of or connected with the Ethyl Gasoline Corporation of New York.

All of the above-mentioned statements and representations were in fact false, deceptive, and untrue.

PAR. 4. Said respondent for more than two years last past has branded his product:

(a) Ethyl Gas, when in fact the mixture or compound did not contain Ethyl and was not in fact the product of the Ethyl Gasoline Corporation, which product of the Ethyl Gasoline Corporation was well known to the purchasing public and was being and had been sold in interstate commerce by the Ethyl Gasoline Corporation of New York.

(b) Ethyl Gas Anti-Knock, when in fact the product of the respondent was not an effective antiknock fluid or motor fuel and did not when mixed with gasoline produce an antiknock gasoline.

PAR. 5. In the sale and distribution of his product the said respondent has simulated the advertising of his competitors located in the various States of the United States and has sold his product as and for the product of the Ethyl Gasoline Corporation of New York and numerous and various other distributors and dealers located throughout the United States, the particular acts in this connection being—

(a) The furnishing by said respondent to his customers of signs to be placed on gasoline pumps similar to the signs used by and furnished to the dealers in the product of the Ethyl Gasoline Corporation of New York so as to mislead and deceive the consuming public into the belief that the said respondent's product was a product of the Ethyl Gasoline Corporation of New York.

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(b) Said respondent has so colored his product that when mixed with gasoline the ultimate product is similar in coloring and can not be distinguished from the product of the said Ethyl Gasoline Corporation of New York, thereby deceiving and misleading the purchasing public into the belief that said respondent's product is the product of the Ethyl Gasoline Corporation of New York.

(c) Said respondent has simulated the advertising, including booklets and other literature prepared, distributed, and circulated by competitors.

PAR. 6. The acts and practices of the said respondent as set forth above have the capacity and tendency to and do cause retail distributors and the consuming public to purchase respondent's product in the belief that said product has antiknock properties when mixed with gasoline or motor fuels and used as a motor fuel.

The acts and practices of respondent as set forth above have the capacity and tendency to and do cause retail distributors and the consuming public to confuse respondent's said product with the product of respondent's several competitors.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and upon the consent of the respondent, J. Merrell Redding, that the Commission may make, enter, and serve upon him an order to cease and desist from the violations of law as alleged in said complaint, as fully appears from the record herein; and the Commission having made its findings as to the facts with the conclusion that the respondent, J. Merrell Redding, has violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondent, J. Merrell Redding, individually and doing business as Ethyl Gas Co., his agents, servants, and employees, in connection with the advertising, offering for sale,

or sale in interstate commerce of a product variously described and designated as "Ethyl Gas" and "Ethyl Gas Anti-Knock" for use in treating motor fuel and gasoline, do cease and desist:

(1) From using the word "Ethyl" alone or in combination or connection with any other word or words.

(2) From using the word "Anti-Knock" or any other word or words or representation of like import unless and until respondent's said product actually contains properties which when mixed with motor fuel or gasoline give to said motor fuel or gasoline antiknock properties.

(3) From selling, leasing, or otherwise furnishing to dealers, signs for gasoline pumps similar in color, dress or general appearance to the signs for gasoline pumps furnished dealers by distributors or sellers of motor fuel or gasoline.

(4) From simulating, copying, or imitating in dress or general appearance the signs, placards, circulars, booklets, or other advertising or literature of distributors or sellers of motor fuel or gasoline.

It is further ordered, That the respondent, J. Merrell Redding, individually and doing business as Ethyl Gas Co., shall within 60 days after the service upon him of a copy of this order file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set forth.

IN THE MATTER OF
TAILOR-MADE SHOE SYSTEM, WILLIAM GINSBURG,
AND SAM GINSBURG

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

Docket 1562. Complaint, Feb. 18, 1929—Decision, May 12, 1930

Where a corporation engaged in the sale of shoes direct to the wearers through advertisements in newspapers, periodicals, and circulation of catalogues, leaflets, and other literature, and through agents supplied with catalogues, and other matter, who solicited orders, took measurements of the customer's foot, and transmitted measurements and orders to said corporation to be by it filled from its stock of ready-made shoes; and under the management of two individuals, president, and secretary and treasurer thereof, respectively, and principal stockholders therein, theretofore engaged in the conduct of a business identical in character and operation;

- (a) Employed the corporate name "Tailor-Made Shoe System", notwithstanding the fact that it neither made the shoes sold by it nor had an interest in any shoe factory, with the tendency and capacity to mislead and deceive the public and prospective customers into believing it to be the owner and operator of a shoe factory, eliminating profits of the middleman and enabling purchasers to obtain a special advantage in price;
- (b) Designated its shoes as "tailor-made shoes" and through such statements as "The scientific tailor-made way of fitting shoes to six actual foot measurements eliminates all possibility of imperfect fit", "* * * we use Ohio patent leather in making the Cadet", "* * * unlike most companies we have put into these (work) shoes careful workmanship and construction so that they will stand up", etc., and through other methods falsely represented itself as manufacturer of the shoes offered by it;
- (c) Depicted a large building upon the covers of its catalogues and a workman cutting leather while looking at an order for "tailor-made shoes"; and
- (d) Represented that it had over 800,000 satisfied customers and was the largest concern of its kind in the world, notwithstanding the fact that many competitors were larger, and in some cases incomparably larger, both in number of customers and volume of sales;

With the capacity and tendency to deceive the purchasing public and induce the purchase of its merchandise in reliance upon the truth of the aforesaid representations and in the belief that they were dealing directly with the manufacturer and thereby obtaining shoes at prices substantially lower than those charged by nonmanufacturing shoe dealers:

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

Mr. Alfred M. Craven for the Commission.

Mr. Maurice M. Loman, of Chicago, Ill., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Tailor-Made Shoe System, an Illinois corporation, and respondents William and Sam Ginsburg, its principal stockholders and managers, and president and secretary, respectively, engaged in the sale of shoes direct to the wearers,¹ and doing no manufacturing, and with no interest in any shoe factory, with principal place of business in Chicago, with assuming and using misleading corporate and trade names, misrepresenting business status or advantages and connections, and advertising falsely or misleadingly in regard thereto and as to nature and quality of product, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged (acting under direction of and including respondent individuals, who are charged with the same practices, in their individual capacities)—

Features the corporate and trade names Tailor-Made Shoe System and Triangle Shoe Factories upon letterheads, order blanks, labels, and other trade stationery, and in advertisements and in the transaction, generally, of its business;

Falsely represents in advertisements and orally through officers and agents that it has offices in Paris and New York and branches in the principal cities of the United States, that the business is the largest of its kind in the world, has 800,000 satisfied customers, and annual sales amounting to a million dollars, and depicts on the front covers of the agents' catalogue or sample book, shown to prospective customers (1) a large seven-story building representing a factory and (2) a workman cutting leather while looking at an order for "Tailor-Made Shoes", the facts being that respondent is not manufacturing, has no branches or offices elsewhere than in Chicago; its annual sales do not exceed \$100,000 or customers 20,000, and many competitors are larger both in respect of customers and volume of sales, and describes the shoes dealt in, in its catalogues and other advertising literature as "Tailor-Made Shoes", thereby falsely importing that they are made to order of the customer upon his individual measurements;

Falsely represents, by numerous other methods including statements in its trade literature and oral statements by its agents, "that

¹ As alleged, upon orders received through the mail in response to advertisements in newspapers and other periodicals, but principally, through circulation of catalogues, leaflets, and other trade literature and agents who solicit business from the users, showing catalogues supplied them and samples of letters, and transmitting measurements of customer's foot, together with customer's order to respondent for filling from its ready-made stock.

it manufactures the shoes which it offers for sale, to the order and individual measurements of the customer, and as such manufacturer, sells direct to the public, and that therefore the profits of jobbers and retailers do not enter into the prices asked by respondent"; and

Falsely represents that its shoes are better than those ordinarily purchased and shown in retail stores, and will give better and longer service;

The aforesaid false and misleading representations and the use of the aforesaid corporate and trade names by respondent corporation and respondent individuals, have, as charged, the tendency and capacity to mislead and deceive the public and prospective customers into believing respondents to be manufacturers of the shoes dealt in by them, and that purchasers from them are enabled to and do obtain a substantial advantage in price through the elimination of middlemen's profits, and to mislead and deceive the purchasing public and induce the purchase of respondents' shoes in reliance also upon the truth of the other representation hereinabove set forth; all to the prejudice of the public and of respondents' competitors.

Upon the foregoing complaint the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 719), the Federal Trade Commission, on the 18th day of February, 1929, issued and served its complaint against the respondents Tailor-Made Shoe System, a corporation, William Ginsburg and Sam Ginsburg, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Tailor-Made Shoe System, is now and since September, 1928, has been a corporation organized and existing

under and by virtue of the laws of the State of Illinois, having its principal place of business in the city of Chicago, in said State. It is and has been since its incorporation engaged in the business of selling shoes direct to the wearers thereof, and in the distribution thereof from its principal place of business throughout the various States of the United States. The respondent does not manufacture the shoes sold by it nor have any interest in any shoe factory. It causes said merchandise, when sold, to be transported in interstate commerce, and chiefly by mail, from its place of business at Chicago, Ill., into and through States other than the State of Illinois, to the vendees thereof at their respective points of location. In the course and conduct of its said business said respondent is in competition with other individuals, partnerships, and corporations located in the United States, some of whom are engaged in the sale and transportation of shoes in interstate commerce between and among the various States of the United States.

PAR. 2. Respondent, Tailor-Made Shoe System, solicits its business by advertising in the newspapers and other periodicals, and principally by the circulation of catalogues, leaflets, and other like literature, and by means of agents employed by said respondents. Said agents are furnished by respondent with catalogues purporting to show the latest styles of shoes and samples of leather, and are also furnished with order blanks, leaflets, circulars, foot measurement blanks, and other matter. Said agents solicit business from the users of shoes by exhibiting to them the catalogues and other advertising matter, and when an order is obtained the agent measures the foot of the customer and inserts same in the blank furnished for that purpose, which said measurements together with the customer's order are transmitted by the agent to respondent at its principal place of business. Respondent, upon receipt of the order and measurement, fills the same by selecting from its stock of ready made shoes a pair of shoes and sending same C. O. D., and usually by mail, to the customer.

PAR. 3. The individual respondents, William Ginsburg and Sam Ginsburg, are and have been since the incorporation, respectively, president and secretary and treasurer of the respondent corporation, and the principal stockholders therein, and they are, and have been since the incorporation in charge of the conduct of the business of said corporation. The corporation was organized in September of 1928, to take over and succeed to the business acquired by the respondent Sam Ginsburg in February of 1928, and thereafter conducted by the said respondent as owner, and the respondent William Ginsburg as manager, up to the time of the incorporation. The business conducted by the individual respondents was identical in its

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character and operation to the business described in paragraphs 1 and 2 hereof, and was carried on under the trade names of Tailor-Made Shoe System and Triangle Shoe Factories. The trade name, however, of Triangle Shoe Factories was abandoned by the said respondents shortly after the acquisition of the business by Sam Ginsburg, in February, 1928. Certain letterheads acquired by the respondent Sam Ginsburg in the acquisition above mentioned, containing the words "branches in principal cities", and which also stated, in effect, that the business had offices in New York and Chicago, were also abandoned by the said respondents shortly after said acquisition.

PAR. 4. In anticipation of the organization of the corporate respondent, the individual respondents prepared a catalogue which was thereafter circulated by the respondent corporation and was received in evidence as Commission's Exhibit No. 2. Said catalogue was superseded by another catalogue issued in September, 1929, which was in use at the time of the hearing, September 18, 1929, and was received in evidence as Respondent's Exhibit No. 1. Both of these catalogues were prepared for the purpose of being shown to prospective customers by the agents of the respondent corporation, and contain, among other things, pictures showing styles of shoes, samples of leather, and certain descriptions thereof, together with certain representations which will be hereinafter mentioned. In connection with these catalogues the respondent corporation sends written instructions to its agents as to how to approach prospective customers, and as to the representations which said agents shall make to prospective customers.

PAR. 5. Respondent corporation, under the management of said individual respondents, in the course and conduct of its business, and in order to secure customers, makes in its advertisements, catalogues, and other trade literature, and orally, through its officers and agents, numerous false and misleading statements and representations, among which are the following:

(a) Respondent corporation, upon the covers of its catalogues, depicts a large building and also a workman cutting leather while looking at an order for "Tailor-Made Shoes". Such a picture imports and signifies that the respondent is a manufacturer of shoes.

(b) Respondent represents that it has over 800,000 satisfied customers and that it is the largest of its kind in the world; when in truth and in fact, many competitors of respondent are larger, and some incomparably larger than the respondent corporation, both in number of customers and volume of sales. Respondent's customers do not exceed in number 25,000, and the usual annual sales do not exceed in volume \$150,000.

(c) Respondent, in its catalogues and numerous other species of advertising literature, and orally through its agents, designates the shoes which it sells as "Tailor-Made Shoes". Such designation as applied to shoes imports and signifies that the shoes designated are made to the order of the customer, upon his individual measurements.

(d) Respondent, by numerous other methods, including statements in its catalogues and literature and oral statements made by its agents, represents that it manufactures the shoes which it offers for sale. For example, in Commission's Exhibit No. 2 the respondent states:

TAILOR-MADE SHOES are made of quality leathers to fit your feet. Naturally they give twice the wear of an ordinary shoe, and retain their fine shape to the very last (p. 1).

The scientific Tailor-Made way of fitting shoes to six actual foot measurements eliminates all possibility of imperfect fit (p. 1).

Tailor-Made Shoes are fitted to six actual foot measures—they fit throughout—give foot comfort and twice the wear (p. 10).

Other representations of like character are to be found in Commission's Exhibit 2 at pages 20, 25, 28, and 29. In the catalogue circulated by the respondent at the time of the hearing the following statements appear (Resp. Ex. No. 1.):

Our shoes are built the way that nature would build shoes—moulded to the contour of the foot (p. 2).

Our Built-In Features. We use Ohio patent leather in making the Cadet, assuring you of lasting satisfaction, so far as wear is concerned. The life of this shoe is guaranteed by the hand processed Goodyear Welt construction, the solid leather insole and counters, the kid lining and the First Quality Rubber Heels (p. 15).

We are proud of our work shoes. Unlike most companies we have put into these shoes careful workmanship and construction so they'll stand up, no matter what your work may be (p. 40).

Other similar statements appear in said catalogue at pages 21, 23, 29, 35, 40, 42, 45, 50, 51, 56, 58, and 60.

PAR. 6. The use by respondent of its corporate name, Tailor-Made Shoes System, is deceptive, in that said name imports and signifies that the respondent corporation is a manufacturer of shoes, and the use of said name has the tendency and capacity to mislead and deceive the public and prospective customers of respondent into the erroneous belief that respondent owns and operates a factory where the shoes it offers for sale are made; and by reason thereof, and the consequent elimination of the middleman's profit, that purchasers of respondent's shoes are enabled to obtain, and do obtain, a special advantage in price.

PAR. 7. The false and misleading representations mentioned in paragraphs 4 and 5, and each of them, are false and deceptive and have the capacity and tendency to deceive the purchasing public,

and to induce the purchasing public to purchase respondent's merchandise in and on account of the belief that such representations are true, and in the belief that they, because of dealing directly with the manufacturer, are to obtain shoes at prices substantially less than those charged by dealers in shoes who are not manufacturers.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, the testimony and evidence introduced, and briefs and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondent Tailor-Made Shoe System, its officers, agents, and employees, and respondents William Ginsburg and Sam Ginsburg, in connection with the sale or offering for sale of shoes in interstate commerce between and among the several States of the United States and in the District of Columbia, do cease and desist from:

(a) Using in any manner the corporate name "Tailor-Made Shoe System".

(b) Designating or describing in any manner the shoes offered for sale by respondent Tailor-Made Shoe System as "Tailor Made" shoes.

(c) Representing in any manner that the corporate respondent is the largest of its kind in the world, or that it has 800,000 customers.

(d) Representing in advertisements, pictures, or otherwise, that the corporate respondent is a manufacturer of shoes.

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

Complaint

IN THE MATTER OF
VAL BLATZ BREWING CO.

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

Docket 1608. Complaint, Apr. 23, 1929—Decision, May 12, 1930

Where a corporation engaged in the manufacture and sale of a malt sirup flavored with domestic and imported Bohemian hops in the proportion of four to one,

- (a) Designated and advertised the same as “ * * * Bohemian Malt Sirup Hop Flavored * * * ” and so labeled the containers thereof; and
- (b) Made such statements in its advertisements thereof in newspapers and other publications as “Flavored with world-famous imported, genuine Saazer hops”. “ * * * Guaranteed by the Czechoslovak Government certificate attached to each bale of Saazer hops exported ” (along with a purported facsimile thereof), together with pictures of a European peasant woman, sprinkling hops into a can thereof, and, in some cases, a prominent map of Czechoslovakia, and the words, “Flavored with a blend of Bohemian Saazer and domestic hops”;

With tendency and capacity to mislead and deceive and with effect of misleading and deceiving purchasing public into believing said sirup to be flavored exclusively with such higher priced and highly reputed imported hops, and with tendency to divert business from and otherwise prejudice and injure competitors representing use of Bohemian or imported hops on their labels and in advertising matter, and competitors using exclusively domestic hops and making no such representation as above set forth:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Everett F. Haycraft for the Commission.

Richmond, Jackson, Wilkie & Toebaas, of Madison, Wis., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Wisconsin corporation engaged in the manufacture and sale of malt sirup, and with principal place of business in Milwaukee, with misbranding or mislabeling and advertising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, labels containers of its aforesaid product, neither manufactured in Bohemia

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nor from ingredients obtained in and imported therefrom, or Czechoslovakia (excepting a small proportion of hops used for flavoring), but made in the United States and principally from ingredients obtained therein (including American grown hops in substantial quantity), "Blatz Bohemian Malt Sirup Hop Flavored—Light", and makes such statements in advertising its aforesaid product in newspapers and other publications circulating among the various States and in circulars and other trade literature used by it in soliciting the sale thereof, as "Blatz Bohemian Malt Sirup Hop Flavored—Light", and, "If you want the world-famous flavor of genuine imported Saazer hops, ask for" followed by an illustration of a can labeled, as above set forth, together with, among other things, the statement "Blatz malt sirup, flavored with a blend of Bohemian Saazer and domestic hops", illustrations of a man with a bag of barley and a woman dressed in Bohemian or Czechoslovakian costume, and a pictorial representation of a certificate described as "Government certificate issued by Czechoslovakian Republic and attached to each bale of Saazer hops exported", and the phrase "Made from the world's choicest ingredients—Genuine Bohemian Saazer hops, and No. 1 barley from Minnesota and Wisconsin, America's foremost barley region"; and the statement, "It's the genuine. Flavored with Bohemian Saazer hops, guaranteed genuine by the Czechoslovakian Government certificate attached to each bale imported by Blatz," and supplied customers with advertising copy containing the aforesaid statements and illustrations and others.

According to the complaint the use by respondent, and by others, caused by it, of the word "Bohemian" and the aforesaid statement, illustrations and representations "have the tendency and capacity to mislead and deceive the trade and purchasing public into the belief that respondent's malt sirup is manufactured in and imported from Bohemia and is composed wholly or in substantial part of hops grown in and imported from Bohemia or Czechoslovakia"; with their superior flavor, greater desirability and better reputation amongst the trade and consuming public than hops grown in the United States, and to cause such trade and public to purchase and use respondent's malt sirup, relying upon that belief; to the injury and prejudice of the public and of respondent's competitors, of whom some are engaged in the manufacture and sale of malt sirup grown in and imported from Bohemia or Czechoslovakia and known as Saazer hops, and others are engaged in the manufacture and sale of malt sirup containing hops grown in the United States.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 717), the Federal Trade Commission on April 23, 1929, issued and served a complaint, as required by law, upon Val Blatz Brewing Co., respondent above named, in which said complaint it is charged that respondent has been and is now using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

The said respondent having filed its answer herein, hearings were held and evidence was introduced on behalf of the Commission and of the respondent before an examiner of the Federal Trade Commission duly appointed. Thereupon this proceeding came on for a final hearing on the briefs and oral argument, the briefs having been filed on the part of the Commission and the respondent, and counsel for the Commission and the respondent having been heard on oral argument, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Val Blatz Brewing Co. is a corporation, organized and existing under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located in the city of Milwaukee in said State. Said respondent was organized in 1889 and for many years prior to 1919 operated a so-called shipping brewery, with fifty-two branch establishments, and engaged in the business of making and selling malt products including a beverage known as beer, having succeeded to the brewery business established by Val Blatz in 1851. During that period of time the name "Blatz" was largely advertised in distinctive script facsimile of its founder's signature, and said respondent's products were shipped throughout all of the several States of the United States and into foreign countries. Among the various types of beer thus manufactured, sold and distributed by the said respondent was one known as Bohemian, which was a beer of a distinctive brew originating in the country of Bohemia and originally flavored with Bohemian hops. Said respondent, since the year 1920, has been, and

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now is, making a hop-flavored malt sirup and packing said sirup in containers and labeling the same as follows:

Blatz Bohemian Malt Sirup
Hop Flavored
Made By
Val Blatz Brewing Co.,
Milwaukee, Wis.

and selling said sirup in said containers, thus labeled, to various individuals, partnerships, and corporations engaged in the distribution of such products, located in the several States of the United States other than the State of Wisconsin, and causing said product when so sold to be transported from respondent's factory in Milwaukee in said State to, into and through other States to the purchasers thereof.

PAR. 2. Said respondent in the course and conduct of its said business of manufacturing, selling, and distributing malt sirup as described in paragraph 1 hereof, prior to January 1, 1928, in soliciting the sale of, and in selling its said sirup, advertised it in newspapers and other publications having a circulation among the several States, under its said trade name Blatz Bohemian Malt Sirup, using the following statements to describe said malt sirup when it was hop flavored:

1. Flavored with the world-famous flavor of genuine, imported Saazer hops.
2. Flavored with world-famous imported, genuine Saazer hops.
3. Made from the world's choicest ingredients, genuine Bohemian Saazer hops and No. 1 barley.
4. It's the genuine, flavored with Bohemian Saazer hops. * * * Guaranteed by the Czechoslovak Government certificate attached to each bale of Saazer hops exported. (Said quotation was always accompanied by a facsimile of a certificate purported to have been issued by the Czechoslovakian Government.

In some of said advertising literature the following statement appeared in small type: "Flavored with a blend of Bohemian Saazer and domestic hops." Many of the advertisements issued by said respondent also displayed a picture of a woman in European peasant garb, sprinkling hops into a can of said sirup, and some of them featured a map of Czechoslovakia, thus carrying out the impression which had been created by the statements made in the advertisements to the effect that the hops used in flavoring said product were imported from Czechoslovakia.

Since January 1, 1928, said respondent has discontinued the foregoing described representations in its advertising matter but has continued the use of its said trade name featuring the word "Bo-

hemian" in large and distinctive type to describe its hop-flavored product on labels placed on containers, and in advertising matter.

PAR. 3. Hops grown in Bohemia or Czechoslovakia, and particularly in the district of Saaz, known as Saazer hops, have the reputation of being one of the best types of hops grown and command a higher price on the market than any other type of hops. Respondent, in the manufacture of its said Blatz Bohemian Malt Sirup, designated, labeled, advertised, and sold as aforesaid, has flavored and now flavors said sirup with a blend of domestic hops and hops imported from Bohemia or Czechoslovakia in the ratio or proportion of 80 per cent domestic hops to 20 per cent imported hops.

PAR. 4. A substantial portion of the trade and purchasing public is of the belief that the word "Bohemian", when applied to hop-flavored malt sirup on labels or in advertising matter, describes and refers to a malt sirup flavored with hops imported from Bohemia or Czechoslovakia, as that country is now known, and the use by said respondent of the word "Bohemian" in its trade name on labels and advertising matter, as aforesaid, has the tendency and capacity to, and does mislead and deceive the purchasing public into the belief that the said respondent flavors its said malt sirup, thus described, exclusively with hops imported from Bohemia or Czechoslovakia.

PAR. 5. Said respondent, in the course and conduct of its said business as described herein, is now, and has been during three years last past, in competition in commerce in the sale of said sirup with other individuals, partnerships, and corporations, among which competitors are several who explicitly represent on labels and in advertising matter that Bohemian or imported hops are used in flavoring their products, while others who flavor their products exclusively with domestic hops make no such claim, and the acts and practices of said respondent as set forth herein tend to divert business from and otherwise prejudice and injure said competitors.

CONCLUSION

The respondent, by reason of the facts set forth in the foregoing findings, has been and now is using unfair methods of competition in commerce in violation of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

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

spondent thereto, the testimony, evidence, briefs, and argument of counsel; and the Commission having made its findings as to the facts with its conclusion that respondent has violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That respondent, Val Blatz Brewing Co., its representatives, agents, servants, employees, and successors forthwith, cease and desist, in connection with the sale and distribution of malt sirup in interstate commerce, from using directly or indirectly the word "Bohemian" on the labels of containers of hop-flavored malt sirup manufactured by it, or in advertising matter circulated by the respondent directly or indirectly, or inserted in periodicals and publications, to describe said product, unless or until said product is flavored exclusively with hops imported from Bohemia or Czechoslovakia; or when flavored with a blend of such imported hops and domestic hops, a statement to that effect be prominently displayed in type equally as large and as conspicuous as, and in immediate conjunction with, the word "hop" or the phrase or term "hop-flavored," on said labels or in said advertising matter.

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

Complaint

IN THE MATTER OF
BURTON BROS. & CO., INC.

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

Docket 1696. Complaint, Sept. 28, 1929—Decision, May 12, 1930

Where a corporation engaged in the sale to shirt manufacturers, of a trade-marked, expensively advertised, and widely and favorably known, specially woven cotton cloth; in pursuance of a decision to permit shirts made therefrom to bear its label only when sold at not less than minimum specified by it,

Adopted and employed a "notice" to the trade for transmission to haberdasher customers by manufacturer vendees using label (and making a large proportion of the shirts concerned), claiming or setting forth, (1) labels furnished, and trade-mark, its property, (2) guarantee of wear and satisfaction for said shirts, (3) limitation of label, mark, and accompanying guarantee to shirts advertised and sold at not less than minimum specified, (4) haberdasher's privilege to remove label and mark, and offer, advertise, and sell garment, at any price desired, under any name, mark or label not resembling its own, (5) irreparable damage to it through offer, advertisement, representation, or sale of shirt under name or label, at less than said minimum, and intent to protect itself, its trade, trade-mark and good will, therefrom, to the fullest extent of the law, and prevent such offering, advertisement, sale and damage, and (6) statement explanatory of policy, and haberdasher's acceptance of and agreement to conditions and facts of said notice through acceptance of invoice of which made a part; extending to retailers or haberdashers electing to sell shirts made of its aforesaid trade-marked, so-called Irish poplin, under its said label and mark, the benefit of said guarantee as well as of other selling aids, denied to those electing sale of such shirts without such label and mark;

Not intending through said notice to warn retailers against proceedings, never in fact brought, for price cutting, but with purpose and effect of fixing and controlling resale prices and preventing dealers' exercise of own discretion and with tendency and effect of suppressing competition, and depriving ultimate purchasers of advantages in price which would obtain from the natural and unobstructed flow of commerce in said garments under conditions of free competition:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. William T. Kelley for the Commission.

Green & Hurd, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Burton Bros. & Co., Inc., a New York corporation, en-

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gaged in the sale of its Burton's Irish Poplin to dealers and manufacturers of shirts and other apparel, with maintaining resale prices in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged in conducting its business in the product in question, which it converts from cotton fabrics made by the mills in accordance with its specifications,¹ "for more than one year last past has enforced and still enforces a merchandising system adopted by it of fixing and maintaining uniform prices below which shirts made out of its fabric shall not be sold to the public by retail dealers handling them. Respondent enlists and secures the support and cooperation of its said shirt manufacturer vendees and said retail dealers who handle shirts made out of its said fabric and its officers, agents, and employees in maintaining and enforcing said retail dealer sale prices. In order to carry out said system, respondent during aforesaid times has employed and still employs the following means whereby it and those cooperating with respondent have undertaken to prevent and have prevented retail dealers handling shirts made out of respondent's fabric from selling same to the public at prices less than the retail dealer resale prices fixed and designated by respondent."

(a) Procuring adherence of shirt manufacturers to restrictions promulgated by it, by requiring such manufacturers in their sales to retailers, to attach to the shirts involved, and their containers, notices as to the prices at which such shirts are to be resold to the public;

(b) Communicating such restrictions to manufacturers in notices as aforesaid, letters, circulars, telegrams, and labels;

(c) Selling fabric herein concerned to shirt manufacturers only upon condition of their observing its said restrictions;

(d) Requiring all such manufacturers to cooperate with it under penalty of refusal of sale of its fabric to those not cooperating;

(e) Communicating the restrictions concerned as to prices, through manufacturers and otherwise, to retailers in the notices

¹Allegations of the complaint relating to respondent's business include the following:

"Respondent is engaged in purchasing from cotton mills a certain cotton fabric manufactured in accordance with its specifications and in converting said fabric into finished form and selling same to dealers for resale by the yard to the consuming public, and to manufacturers of men's shirts and other wearing apparel. Said fabric was originated by Burton Brothers some 35 years ago. It is of standard weave and is known to the trade and consuming public as Burton's Irish Poplin, under which name it is now and for many years last past has been sold."

The complaint further sets forth that respondent's manufacturer vendees, with places of business principally in New York City, sell the shirts and other wearing apparel made out of the fabric in question direct to retailers throughout the different States, and to wholesalers for resale to retailers, and that respondent, and said manufacturers and retailers are in competition with other corporations, firms, and individuals similarly engaged.

hereinabove set forth to be affixed to shirts and their containers, by the manufacturers, and in circulars and labels;

(f) Warning and threatening retailers of conferences which will follow failure to observe the restrictions in question;

(g) Threatening all price-cutting retailers with suits for damages based upon alleged infringement of its trade-mark, Burton's Irish Poplin;

(h) Maintaining and publishing for the use of retailers, a list of names of those shirt manufacturers who have agreed to cooperate with it and observe its said restrictions;

(i) Investigating shirt manufacturers and retailers, to discover those who have failed to observe such restrictions; and

(j) Soliciting agreements from retailers that in the future they will maintain the retail dealer sale prices fixed by it.

As a result of its said acts and practices its said retail dealer resale prices have been generally maintained, as alleged, and the direct effect and result of its said alleged acts and practices, as charged, "has been and now is to suppress competition among retail dealers in the distribution and sale of respondent's products; to constrain said dealers to sell said products at aforesaid prices fixed by respondent and to prevent them from selling said products at such less prices as they may desire, and to deprive the ultimate purchasers of said products of the advantages in prices and otherwise which they would obtain from the natural and unobstructed flow of commerce in said commodities under conditions of free competition. Wherefore, said acts and practices of respondent are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of section 5."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondent Burton Bros. & Co., Inc., charging it with the use of unfair methods of competition in commerce. Respondent having entered its appearance and filed its answer herein, hearings were had and evidence was thereupon introduced upon behalf of the Commission, and the respondent before an examiner of the Federal Trade Commission theretofore duly appointed. Thereupon this proceeding came on for final hearing on the record, briefs of counsel for the Commission and counsel for the respondent, and the Commission being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Burton Bros. & Co., Inc., is a corporation organized under the laws of the State of New York, with its principal place of business at New York City in said State. It is engaged in the business of buying cotton goods from mills, having same converted, and selling same to manufacturers, jobbers, and retailers. Respondent causes quantities of cotton goods dealt in by it to be transported, when sold, to the respective purchasers thereof, from New York City in the State of New York, through and into various other States of the United States and in the course and conduct of its said business, respondent, since its organization, has been and is now in active competition with various persons and partnerships and other corporations also engaged in the business of buying and selling cotton goods in commerce among the several States of the United States.

About thirty-five years ago, the president of respondent, then a member of the firm of Burton Bros. & Co., created a specially woven cotton cloth which was sold by the firm as Irish Poplin. Later, it was sold as Burton's Irish Poplin, and in 1923 the firm Burton Bros. & Co. registered the trade-mark Burton's Irish Poplin with an accompanying design of a shamrock, as applicable to this cloth. Burton Bros. & Co., the firm, and respondent, expended many thousands of dollars advertising the fabric, which as a result of its inherent quality and of the advertising and merchandising efforts of respondent and its predecessor in business has become widely and favorably known.

Respondent sells this cloth to jobbers and retailers for resale by the yard and to manufacturers of various types of wearing apparel. Manufacturers of men's shirts are the largest users of this cloth. Approximately twenty-five shirt manufacturers purchase this cloth from respondent, and make shirts out of the material and sell same, labeled Burton's Irish Poplin, to retail dealers located throughout the various States of the United States for resale to the consuming public.

In the latter part of 1927 the respondent decided that it would allow its label, Burton's Irish Poplin, to be used by retailers only upon condition that a shirt bearing the label be sold at a price specified by respondent, leaving the retailer free to sell the shirt at any price after first removing the label.

On December 31, 1927, respondent sent to each of the shirt manufacturers to whom respondent had been furnishing its labels, a printed letter explaining respondent's new policy regarding the use of its labels. This letter explained that respondent was hav-

ing its label changed in size so that it could, without extra cost or machine operation, be folded and sewn on the yoke or the bottom of a shirt in such a way that it could easily be cut off or detached by a retailer without injury to the shirt; that the cloth would be invoiced to the manufacturer as White Poplin or Colored Poplin, and the manufacturer would likewise invoice his shirts to his retailers as White Poplin shirts or Colored Poplin Shirts, attaching to the invoice a Notice of Trade prepared and furnished to the manufacturer by respondent. This notice to trade explained to the retailer that respondent allowed its label to be attached to the shirt only upon condition that title to the label be admitted as remaining in respondent, that the label was easily removable, and that while the retailer was at full liberty to remove the label and sell the shirt at any price he pleased, by accepting the invoice and shirt with label attached, he agreed not to sell the shirt with the label for less than \$2.75. This notice also stated that each shirt sold with respondent's label attached carried the guarantee that it would wear and give satisfaction or money would be refunded at any time by respondent.

Each of the shirt manufacturers to whom respondent sent its letter of December 31, 1927, had been previously supplied with respondent's old labels. To insure that these would be no longer used, respondent insisted that all of same then on hand be returned to respondent. Respondent also, having decided upon this new policy regarding use of its label, refused to supply any of these manufacturers with its label until assured that the manufacturer would use same only in accordance with the conditions specified in respondent's letter of December 31, 1927.

Many shirt manufacturers put their own trade mark, trade name or brand name on shirts made of respondent's cloth, in addition to respondent's label. After respondent, as the basis of its present policy, had changed the size of its label so as to make it readily detachable from shirts, the idea was conceived of having the manufacturer's label and respondent's label made on one strip, to be attached to the shirt only by that part bearing the manufacturer's label, thus making it easier for a retailer to cut off respondent's label without leaving any indication that there had been any additional label on the shirt. As a result, respondent now has arrangements with seven shirt manufacturers for the use of such combination labels. Shirt manufacturers pay for their proper part of these combination labels. The combination labels make the cutting off of respondent's label by a retailer a simple operation. Respondent's Exhibit 9² is a shirt bearing one of these combination labels and

² Not published.

shows the way such labels are attached. The above seven shirt manufacturers now using these combination labels distribute practically 95 per cent of Burton's Irish Poplin shirts.

Respondent sells its fabric, without its label, to any shirt manufacturer desiring same. Such shirt makers take only about 5 per cent of the total yardage of respondent's material which is used for shirts. Manufacturers sell Burton's Irish Poplin shirts to retail dealers at from \$21 to \$24 per dozen; \$22.50 per dozen is the prevailing price. The guaranty of respondent that shirts made out of its fabric would wash, wear, and give satisfaction or money would be refunded by respondent, applies only to shirts bearing respondent's name and label—Burton's Irish Poplin.

All of respondent's sales assistance to retailers is limited to retailers of shirts which bear its labels. Such sales assistance consists in the furnishing, free of cost, of large numbers of swatches bearing the retailer's name and address, and copies of respondent's label, and the payment of part of the expense of local advertising campaigns. Respondent's Exhibit 7² consists of some sixteen of such swatches. In no instance do these swatches bear a resale price below the minimum price fixed by respondent. In cases where the retailer desires a resale price higher than the minimum price fixed by respondent, there is printed on the swatches the resale price desired by the retailer. In soliciting retailers to handle these shirts, respondent furnishes to the retailer a list of shirt manufacturers from whom such shirts may be purchased, this list includes only those manufacturers to whom respondent furnishes its label.

On or about August 29, 1928, respondent sent to the shirt manufacturers using its label a new Notice to Trade, bearing date September 1, 1928, in which the minimum price at which shirts bearing respondent's label could be sold was raised to \$2.95.

This notice, which is still in effect, reads as follows:

NOTICE TO TRADE—SEPTEMBER 1, 1928

The label and trade-mark on these shirts are the property of Burton Bros. & Co., Inc., manufacturers of Burton's Irish Poplin, who on each shirt bearing this label and trade-mark will give this guarantee, namely, that this shirt will wear and give satisfaction or money will be refunded at any time by Burton Bros. & Co., Inc.

The use of this label and trade-mark and the guarantee which goes with it is permitted by Burton Bros. & Co., Inc., only when the shirt bearing this label and trade-mark is offered, advertised, and sold for not less than \$2.95, and such permission is subject always to the following conditions:

This label and trade-mark may easily be cut off or detached without injury to the shirt. The haberdasher, after first removing these labels and trade-marks, may offer, advertise, and sell these shirts as White Poplin shirts.

² Not published.

or under any other name, trade-mark, or label that does not resemble any of Burton Bros. & Co., Inc.'s, for 3 cents a shirt, or any other price the haberdasher desires.

Offering, advertising, representing, or selling of these shirts under Burton Bros. & Co., Inc.'s name, trade-mark, or label at less than \$2.95 per shirt irreparably damages Burton Bros. & Co., Inc., its trade, trade-mark, and good will, and is not permitted.

Burton Bros. & Co., Inc., proposes to protect itself, its trade, trade-mark, and good will and to prevent such offering, advertising, selling, and damage to the fullest extent of the law.

This policy has been adopted for our mutual protection and for the general benefit of the trade. These shirts have, accordingly, been invoiced and sold to the trade as White or Colored Poplin shirts, and such invoices and sales have in each case been subject to the conditions contained in this Notice to Trade, and by accepting such invoices, sale, and shirts the haberdasher has in each case admitted and conceded the facts and conclusions set forth therein and accepted and agreed to comply with all the conditions contained therein.

BURTON BROTHERS & Co. INC.

440 Fourth Avenue, New York City.

PAR. 2. Respondent in connection with the sale of its material, Burton's Irish Poplin, to its shirt manufacturer customers stands responsible for the quality and condition of said material and guarantees to ultimate buyers that such shirts will wash, wear, and give satisfaction.

PAR. 3. Shirt manufacturers, in connection with the sale of shirts made out of Burton's Irish Poplin material and carrying respondent's name, label, and trade-mark, as heretofore described in these findings, have sold such shirts to retail dealers under the restriction as to resale price appearing on respondent's Notice to Trade above set forth. Such shirts have been and now are generally sold at the minimum resale price fixed by respondent. Retail dealers in selling such shirts to the consuming public have not, except in a very few cases, sold such shirts for less than the minimum price fixed by respondent. Less than one-half dozen retail dealers located in the United States have sold such shirts at a price below the minimum price fixed by respondent.

PAR. 4. The respondent has never brought any suit or action against any dealer or any person on account of such dealer or person having offered for sale or sold shirts bearing or carrying its name, label, or trade-mark at prices less than the minimum resale price fixed by it.

PAR. 5. The notice set forth in paragraph 1 hereof is not given by the respondent with any purpose to warn retail dealers against any action or proceeding which respondent intends to bring on account of sales below its fixed price, but such notice is given for the purpose and with the effect of fixing and controlling resale prices and of preventing the exercise by such dealers of their own discretion in the sale of said shirts.

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PAR. 6. The respondent on one occasion requested a manufacturer-customer to refuse to sell Burton's Irish Poplin shirts to two retail dealers located in New York City who were not observing in the sale of shirts to the public respondent's fixed resale price. The respondent requested this manufacturer to call on one of said retail dealer who was not observing its said resale price for the purpose of having said dealer sell said shirts at its fixed price. Another shirt manufacturer-customer of respondent called on this retail dealer and requested him to fall in line and sell Burton's Irish Poplin shirts at the price fixed by respondent. Another manufacturer-customer of respondent offered to sell this dealer Burton's Irish Poplin shirts if he would resell same at respondent's fixed price. Retail dealers who sold for less than respondent's fixed price have always been able to obtain Burton's Irish Poplin shirts from some of the manufacturers of such shirts.

PAR. 7. The direct tendency and result of the foregoing acts and methods of respondent have been and now are to fix and control the resale price of shirts and suppress competition, and to constrain retail dealers to sell said shirts at the prices fixed by respondent, and to prevent them from selling said shirts at such less prices as they may desire, and to deprive the ultimate purchasers of said shirts of those advantages in prices which would obtain from the natural and unobstructed flow of commerce in said shirts under conditions of free competition.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is now ordered, That respondent Burton Bros. & Co., Inc., its officers, agents, and employees, in connection with the sale or offering

for sale, in interstate commerce, of shirts made out of the fabric or material—Burton's Irish Poplin—do cease and desist from:

(1) Requesting shirt manufacturers to attach to invoices of shirts, or to boxes, or other containers of shirts respondent's Notice to Trade set out and referred to in the findings as to the facts in this proceeding;

(2) Publishing or making use of said notice or any notice or statement which asserts to retail dealers, directly or in effect, (a) that such shirts are sold them subject to resale price restrictions or on condition that they be not sold for less than prices fixed by respondent, or (b) that any retail dealer who sells such shirts at a price less than the resale price thereof fixed by respondent, then and there becomes legally liable to respondent;

(3) Making, publishing, or otherwise using any threat express or implied to bring a suit or action in any court against any retail dealer who sells such shirts, at prices less than the resale price thereof fixed by respondent;

(4) Utilizing any other equivalent methods or means of accomplishing the maintenance or control of retail dealer resale prices of shirts.

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

IN THE MATTER OF
EVERITT & GRAF, INC.

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

Docket 1611. Complaint, Apr. 25, 1929—Decision, May 19, 1930

Where trade names and brands featuring the word "California", and, particularly, the words "California Sports Hat", had come to be associated with a type of hat long since made by California hat manufacturers, sold throughout the several States under said name, exhibited and displayed along with such words, prominently featured, in the larger cities, possessed a good will and reputation for style, quality, and workmanship and especially for the distinctive manipulation and combination of colors therein embodied, and in demand through its qualities and characteristics and extensive advertising by the makers, with total sales amounting to about \$10,000,000 annually and an annual advertising expenditure in excess of \$100,000, and the phrase "California Sports Hat", usually accompanied in advertisements with illustrations of California scenery and products, motoring, boating, and other sports popular in said State, and such phrases as "From Sunny California", "Colors Born of Sunshine", etc., had come to be known and understood by the trade and purchasing public as describing sport hats made in California; and thereafter a Milwaukee manufacturer,

- (a) Designated a sport hat made and styled by it in its Milwaukee factory and sold at a lower price, "California sport hat" and so branded the lining and, after a time and in inconspicuous type, with the words "Made in Milwaukee" and also the individual containers thereof and larger cartons containing same, sealed with gummed paper strips containing the words "Styled and produced by Everitt & Graf, Inc., Milwaukee, Wis.", and depicted on said containers and cartons outdoor scenes of motoring, boating, and golfing, with background of water, mountains, and palm trees, without further accompanying explanatory statement; and
- (b) Employed the words "California sport hat" in advertising its said product, in newspapers and other publications of general circulation and featured prominently said product, in newspapers and other publications of general circulation and featured prominently said words in circulars and bulletins sent to customers and prospective customers, together with such phrases as "Style, fit, make, and finish—America's greatest hat sensation—Happy days and sunny skies", and pictorial representations of styles and types of hats and aforesaid hat boxes or containers prominently featuring the aforesaid phrases, along with California sport scenes;

With the capacity and tendency to mislead and deceive customers and many of the consuming public into believing its said hats to have been made in California and into purchasing the same in such belief and with effect of placing in the hands of retail dealer customers, who prominently featured the phrase "California sport hat", in advertising such Milwaukee

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made hat, together with pictorial representations of said individual containers, and descriptive phrases indicating the same to have been made in California (and, subsequently at said maker's instance, with such phrases, in inconspicuous type, as "By arrangement with the maker, Everitt & Graf, Inc., Milwaukee, Wis."), a means for defrauding a substantial portion of the consuming public by enabling said dealers to represent its said hats as made in California, and with tendency to divert business from and otherwise injure competitor manufacturers selling women's sport hats in the various cities, without in any manner representing same as made in California, but lawfully labeling, advertising, and representing the same to retailers and the consuming public, and, more particularly, competitor manufacturers of such hats in California:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Everett F. Haycraft for the Commission.

Mr. A. R. Townshend, jr., of Washington, D. C., and *Mr. Ira Milton Jones*, of Milwaukee, Wis., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charges respondent, a Wisconsin corporation, engaged in the manufacture and sale of women's hats and with principal place of business in Milwaukee, with misbranding or mislabeling, advertising falsely or misleadingly, and simulating trade name of competitor's product, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, brands the linings of its hats, made by it in Wisconsin, as above set forth, and also the individual containers thereof, with the inscription "California Sport Hat," together with illustrations of outdoor scenes depicting such sports as motoring, yachting, and golfing, with backgrounds of water, mountains, and palm trees, suggestive of the State of California, and advertises its said hats under the aforesaid inscription in newspapers and other publications circulating among the various States, and in trade literature.

A large number of manufacturers of women's hats, as alleged, located in California, have for a number of years past adopted and used the inscription "California Sport Hat" on sport hats made by them, and have exclusively advertised the same under the aforesaid trade name in newspapers, fashion magazines, and other periodicals of national circulation together with scenes typical of California and said trade name is known and understood by the trade and purchasing public as meaning sport hats made in said State, specialties in the

millinery industry and with a high reputation,¹ and the adoption and use by the respondent of the inscription in question, as alleged, "have the tendency and capacity to mislead and deceive the trade and purchasing public into the belief that respondent's hats so stamped, designated, and described are made by manufacturers of women's sport hats located in the State of California and to induce the trade and purchasing public to purchase respondent's hats relying upon that belief, and enables the respondent and the dealers in women's hats reselling said hats to the public to pass off the same as and for women's sport hats made in the State of California by manufacturers located therein"; all to the injury of the public and respondent's competitors.

Upon the foregoing complaint, the commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 717), the Federal Trade Commission on June 9, 1928, issued and thereupon served, as required by law, upon Everitt & Graf, Inc., respondent above named, in which said complaint it is charged that respondent has been and is now using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

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

¹ The allegations of the complaint relating to the manufacture of such hats in California read as follows:

For more than ten years last past a large number of the manufacturers of women's hats referred to, located in the State of California, have been and still are engaged in the manufacture of women's sport hats among others, and in the sale of the same in commerce throughout the various States of the United States, and in connection with the sale of said sport hats have adopted and used and continue to use as a trade name or designation for them, the words or inscription, "California Sport Hat".

During the times above mentioned and referred to, the said manufacturers located in California have extensively advertised their women's sport hats under the above trade name or designation, "California Sport Hat" in newspapers, fashion magazines, and other periodicals of national circulation throughout the United States, and have accompanied said inscription with scenes of sports typical of California, and said trade name or designation is known and understood by the trade and purchasing public to describe sport hats manufactured in the State of California. The sport hats manufactured in California as aforesaid, are specialties in the millinery industry and have acquired a high reputation for originality of design, distinctiveness of style and quality of workmanship and material. The said manufacturers located in California have built up a good will and reputation for said sport hats, and by extensive advertising, and through the qualities and characteristics of the said hats have created a demand for them as and for sport hats identified with and made in the State of California by manufacturers located there.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Everitt & Graf, Inc., is a corporation organized on or about March 8, 1927, under the laws of the State of Wisconsin, having its principal office, place of business, and factory located in the city of Milwaukee in said State. Since its organization said respondent has been and now is engaged in the business of manufacturing women's hats, and in the sale of said products to various individuals, partnerships, and corporations, dealers in women's hats located in the District of Columbia and in the several States of the United States other than the State of Wisconsin, where they are displayed and resold by such dealers to the purchasing public, and has caused and still causes said hats when so sold to be transported from its said place of business to, into, and through said other States and the District of Columbia to the purchasers thereof.

PAR. 2. During the period of time since said respondent was organized and for many years prior thereto, a large number of manufacturers of women's hats (more than fifteen) located in the State of California have been manufacturing a type of hat known as "Sports Hats" which they have been selling, transporting, and delivering to dealers located in the several States of the United States and in the District of Columbia under trade names and brands featuring the word "California" and particularly featuring the phrase "California Sports Hat" in advertising literature sent to the trade and consuming public either directly or inserted in leading trade, style, and fashion magazines and other periodicals having nation-wide circulation, usually accompanied by illustrations of natural scenery and products of California and of motoring, boating, golfing, and other sports popular in California, and usually accompanied by such phrases as "From Sunny California", "Colors Born of Sunshine", and other phrases of similar import.

Said sports hats manufactured and sold by California manufacturers as aforesaid have acquired a good will and reputation for their style, quality, and workmanship, and especially for the distinctive manipulation and combination of colors which they embody; and

the said California manufacturers, by their extensive advertising and through the qualities and characteristics of said hats, have created and built up a demand, reputation, and good will for said hats, and the phrase "California Sports Hats" is known and understood by the trade and purchasing public to describe sports hats manufactured in the State of California.

Said hats manufactured in California sell at wholesale to retail dealers at prices ranging from \$39 per dozen upward to \$150 per dozen, and said hats are retailed at prices starting at \$5 each and ranging upward. The total volume of sales of said California manufacturers amounts to approximately \$10,000,000 annually, and said manufacturers have spent and are now spending more than \$100,000 annually in advertising their aforesaid hats. During the past five years some of the largest California manufacturers have exhibited their said hats in style shows in the larger cities of the country, including particularly New York City and Chicago, and maintain salesrooms containing displays of said hats in other large cities of the country, particularly Dallas, Tex., Portland, Oreg., and Seattle, Wash.; in all of which exhibitions and displays the word "California" and the phrase "California Sports Hats" are prominently featured.

Large and small retail dealers in women's hats, including some of the larger chain stores maintaining retail establishments in department stores in the larger cities of the country, sell and distribute said hats manufactured and sold by said California hat manufacturers as "California Sports Hats", using display cards and other advertising matter furnished by said California hat manufacturers to said retail dealers for that purpose. Buyers for said retail dealers recognize the demand for hats manufactured in California because of their style, color, and other characteristics, to the extent that they look to California for advanced styles and colors as featured by early style exhibitions of said California manufacturers in San Francisco and Los Angeles, new models of said hats being displayed by leading moving picture stars.

PAR. 3. Said respondent, in the course and conduct of its said business as described in paragraph 1 hereof, has since the date of its organization and now is manufacturing sports hats under the trade name and style of "California Sport Hat" which are styled by its own designers in its own factory at Milwaukee, Wis., and are sold to dealers located throughout the several States and in the District of Columbia at prices ranging from \$24 to \$36 per dozen, and which said hats are retailed by said retail dealers at prices ranging from \$2.98 to \$7 each. Said respondent, during the year 1927 and the early part of 1928, stamped upon the linings of its said

hats manufactured by it as aforesaid the phrase "California Sport Hat" in large, distinctive type, surrounded by three concentric circles, but since on or about May 1, 1928, after investigation in this case was begun, said respondent has caused to be placed under said phrase, with the accompanying concentric circles, the following language in small, inconspicuous type: "Made in Milwaukee". Said respondent since it began business has packed and now packs said hats in individual boxes in which said boxes said hats are delivered to the purchasers thereof, and has caused and now causes to be inscribed and printed upon said individual boxes in which said hats are packed the said phrase "California Sport Hat" surrounded by three concentric circles, and further surrounded and accompanied by illustrations of outdoor scenes depicting such sports as motoring, boating, and golfing, with backgrounds of water, mountains, and palm trees, without any accompanying statement or insignia indicating that said hats are not manufactured in California, but were in truth manufactured in the State of Wisconsin. Said respondent, since its organization, has packed and now packs said individual boxes in which said hats are packed in larger cartons containing the same insignia as heretofore described, and sealed with gummed strips of paper containing, among other things, the following phrase: "Styled and produced by Everitt & Graf, Inc., Milwaukee, Wis."

PAR. 4. Said respondent in the course and conduct of its business as aforesaid and as described in paragraph 1 and 3 hereof, has caused and now causes various statements, illustrations, and representations descriptive of its said hats containing the words or inscription "California Sport Hat" to be printed or displayed in advertisements which it has caused and still causes to be inserted in newspapers and other publications having a circulation between and among the various States of the United States and the District of Columbia, and also has advertised and now advertises directly to the trade and consuming public through the medium of circulars and bulletins which are sent through the mails to customers and prospective customers, in which said circulars and bulletins said respondent prominently features the phrase "California Sport Hat" accompanied by such phrases as "Styles, Fit, Make, and Finish—America's Greatest Hat Sensation—Happy Days and Sunny Skies", and other phrases of similar import with many references to "California Sports Hats" and accompanied by pictorial representations of various styles and types of hats and of the hat boxes in which said respondent's hats are sold to the consumers and which feature in most prominent type the phrase "California Sport Hat" along with

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California sport scenes. Retail dealer customers of said respondent advertise the said hats manufactured by said respondent in daily newspapers having a circulation among the several States, prominently featuring the phrase "California Sport Hat" and always featuring pictorial representations of said individual hat boxes heretofore described, in which said hats are packed, and usually featuring other descriptive phrases indicating that the hats are manufactured in California. For illustration, one such advertisement contains the following statement "For play from America's playground * * * and the most popular color features capucine shades." In other retail advertisements, the following phrase was used "California Sport Hat—thousands of fashion-wise women the country over know them for their unique designs * * * in the wanted bright shades California sport hats distinguish the wearer." Numerous other retail dealers issued advertisements containing phrases of similar import during the years 1928 and 1919. Subsequent to August, 1929, said respondent caused and now causes said retail dealers in their advertisements to feature in inconspicuous type in their said advertisements, such phrases as "These sales now famous by arrangement with the maker, Everitt & Graf, Inc., of Milwaukee, Wis." or "By arrangement with Everitt & Graf, Inc., makers, Milwaukee, Wis."

PAR. 5. Early in the year 1928 said California manufacturers of women's sports hats referred to in paragraph 2 hereof began to get reports from their salesmen and customers that hats manufactured by the respondent and labeled and advertised as aforesaid in paragraphs 3 and 4 hereof were being confused in the trade with hats manufactured in California and sold as "California Sports Hats".

PAR. 6. Respondent's aforesaid labeling, advertising, and representing of its women's sport hats as set out herein have the capacity and tendency to mislead and deceive its customers and many of the consuming public into the belief that its said hats were manufactured in California and to purchase said hats in that belief, when in truth and in fact all of respondent's said hats are manufactured in the State of Wisconsin.

PAR. 7. Further, respondent's said labeling, advertising, and representing of its women's sport hats as set out herein, places in the hands of said retail dealers the instrument and means whereby said retail dealers may commit fraud upon a substantial portion of the consuming public by enabling said retail dealers to represent, offer for sale, and sell respondent's said sport hats as hats manufactured in California.

PAR. 8. There are among the competitors of the respondent, in addition to those described in paragraph 2 hereof, many who manu-

facture and sell women's sport hats in the various cities and States of the United States and who rightfully and lawfully label, advertise, and represent said hats to the retail dealers and consuming public and who in no manner represent their said hats to be manufactured in the State of California. Respondent's acts and practices hereinbefore set out tend to divert business from and otherwise injure its said competitors, including particularly manufacturers of women's sport hats located in the State of California.

CONCLUSION

Respondent, by reason of the facts set forth in the foregoing findings, has been and now is using unfair methods of competition in commerce in violation of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

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

It is now ordered, That the respondent, Everitt & Graf, Inc., its representatives, agents, servants, employees, and successors forthwith cease and desist from using directly or indirectly, the word "California" in trade-marks, labels, or brands stamped on linings of women's hats or containers in which said hats are sold, offered for sale, delivered, or shipped in interstate commerce and/or advertising or representing, either directly or indirectly, by causing retail dealer customers to so advertise or represent either on display cards, counter cards, advertisements inserted in newspapers, trade and fashion magazines, or in any other manner, advertising, representing, or designating its said hats as being manufactured in California unless and until said hats are actually manufactured in the State of California.

And it is further ordered, That the respondent, Everitt & Graf, Inc., shall, within 60 days from service upon it of a copy of this order, file with this Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order by this Commission herein set forth.

IN THE MATTER OF
SHAKESPEARE COMPANY

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

Docket 1719. Complaint, Nov. 5, 1929—Decision, May 19, 1930

Where a corporation engaged in the manufacture of fishing tackle, extensively advertised, along with the specified price for each item, in magazines of national circulation and through catalogues sent to the public and trade, and in the sale thereof to mail order houses, retail hardware dealers, retail sporting goods dealers, and other retailers throughout the United States; in enforcing a merchandising system for the maintenance by retailers of certain minimum prices fixed by it for reels, sale of which constituted, in amount, the principal part of its total sales,

- (a) Made it generally known to dealers that it expected and required all those handling said reels to sell the same at such fixed prices and that it would refuse to sell to a dealer found to be deviating therefrom;
- (b) Entered into contracts, agreements, and understandings with and procured promises and assurances from dealers for the maintenance by them of said prices as a condition of opening accounts with them or of continuing their supplies of its products; and
- (c) Sought and secured from dealers information concerning and evidence of price cutting by others and investigated and procured from dealers concerned promises and assurances to maintain prices in the future, or declined further to supply the same or to sell to those failing to maintain its prices;

With the result that cooperation of its dealers was generally secured, prices fixed by it generally prevailed, and dealers engaged in the distribution and sale of its products were prevented from securing the same at such lower prices as might be deemed by them warranted, and competition in respect of its said products in interstate commerce was thus suppressed and hindered:

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

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Michigan corporation engaged in the manufacture of fishing tackle, including lines, reels, baits, and other items, and in the sale and distribution thereof from its principal place of business at Kalamazoo, to mail order houses, retail hard-

ware dealers, retail sporting goods dealers, and other retailers throughout the United States, with maintaining resale prices, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, for many years last past in the course and conduct of its said business has "enforced and now enforces a merchandising system adopted by it of fixing and maintaining certain specified minimum prices at which the reels which it manufactures and sells shall be sold to the consuming public by its dealers, and respondent enlists and secures and has enlisted and secured the support and cooperation of its said dealers in enforcing said system.

"In order to carry out said system, respondent has employed and still employs the following means whereby it and those cooperating with it have undertaken to prevent and have prevented dealers from selling same to the consuming public at prices less than the aforesaid prices established by respondent:"

(a) Fixing minimum uniform prices at which its dealers shall resell its products to consumers and making it generally known to the trade that it expects and requires all dealers handling said products to sell the same at said prices and that it will refuse to sell to a dealer found to be cutting the same;

(b) Entering into contracts, agreements, and understandings with and procuring promises and assurances from dealers for the maintenance by them of said resale prices as a condition of opening accounts with them or of continuing their supplies of its products;

(c) Making it generally known to the trade through agents and by correspondence that it will refuse to sell to price cutters, and securing information from dealers concerning price cutting by other dealers and exacting from reported dealers investigated by reason of information thus secured and found and believed to have cut its prices, promises, and assurances thereafter to maintain the same, and, in the event of failure to obtain such promises and assurances, declining further to supply such dealers.

As a result of said acts and practices by respondent, its said resale prices, as alleged "have been and are generally maintained" and the direct effect of said acts and practices, as charged, "has been and now is to suppress competition among dealers in the distribution and sale of respondent's said products; to constrain dealers to sell said products at the prices fixed by respondent, and to prevent them from selling the products at such less prices as they may desire, and to deprive the ultimate purchasers of said products of the

advantage in price which otherwise they would obtain from a natural and unobstructed flow of commerce in said products under methods of free competition."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 719), the Federal Trade Commission on the 5th day of November, 1929, issued and served its complaint upon the respondent, Shakespeare Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent having entered its appearance and filed its answer to said complaint, hearings were had before a trial examiner theretofore duly appointed, and testimony was heard and evidence received in support of the charges stated in the complaint and in opposition thereto. Thereafter this proceeding came on regularly for decision and the Commission having duly considered the record and being now fully advised in the premises, makes this its report, stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Shakespeare Co., is a corporation organized and existing under the laws of the State of Michigan with its principal place of business and factory at the city of Kalamazoo in said State. It is now and has been for a number of years engaged in the manufacture of fishing tackle including lines, reels, baits, and other items, and the sale and distribution thereof from its principal place of business, Kalamazoo, Mich., to mail order houses, retail hardware dealers, retail sporting goods dealers, and other retail dealers throughout the United States. It causes its said products when sold, to be transported from its principal place of business into and through States of the United States other than Michigan in interstate commerce to said dealers, about 5,000 in number, at their respective points of location. In the course and conduct of its said business respondent is and has been in competition with other individuals, partnerships, and corporations engaged in the manufacture, sale, and transportation of similar items of fishing tackle in interstate commerce between and among the various States of the United States.

PAR. 2. The respondent advertises its said products extensively in magazines having national circulation among the public and also by means of catalogues sent to the public and other catalogues sent to the trade. In all such advertisements respondent specifies and advertises the consumer's price for each item advertised. Among the items of respondent's manufacture and sale as aforesaid are many different types and kinds of reels, the sale of which constitute in amount the principal part of respondent's total sales.

PAR. 3. For many years last past the respondent has determined upon and fixed certain minimum resale prices for its said reels, which price it publishes to the trade as the price which must be obtained by retailers from the purchasing public. As to such specified minimum price for its reels respondent has for many years last past enforced a merchandising system for the maintenance by retailers of such prices and has enlisted and secured the support and cooperation of its said dealers in enforcing said system. In order to carry out said system respondent has employed and still employs the following means:

(a) Respondent makes it generally known to its dealers that it expects and requires all dealers handling said reels to sell same at such fixed prices and that it will refuse to sell a dealer found to be deviating therefrom.

(b) Respondent enters into contracts, agreements and understandings with and procures promises and assurances from dealers for the maintenance by them of said specified minimum prices as a condition of opening accounts with them or continuing their supplies of said products.

(c) Respondent seeks and secures from its dealers information concerning and evidence of the failure of other dealers to observe and maintain said specified minimum price and by reason of the information thus secured makes investigations and procures from such reported dealers found or believed by respondent to have not maintained the specified prices, promises and assurances that they will in the future maintain same. Failing to obtain such promises and assurances respondent declines further to supply such dealers. Respondent refuses to sell its products to dealers who will not maintain such specified minimum prices.

PAR. 4. Respondent has secured the cooperation of its dealers generally by reason of the methods and practices stated in paragraph 3, with the effect that the said resale prices fixed by respondent generally prevail, by reason of which dealers engaged in the distribution and sale of respondent's products are prevented from selling

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such products at such lower prices as might be deemed by them to be warranted, thus suppressing and hindering competition in respect to respondent's products in interstate commerce.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is now ordered, That the respondent, Shakespeare Co., its officers, agents, representatives, and employees in connection with the sale or offering for sale its products in interstate commerce between and among the several States of the United States and in the District of Columbia, do cease and desist from:

(1) Entering into or procuring from its dealers contracts, agreements, understandings, promises or assurances that respondent's products, or any of them, are to be resold by such dealers at prices specified or fixed by respondent.

(2) Requesting its dealers to report the names of other dealers who do not maintain respondent's resale prices or who are suspected of not maintaining same.

(3) Seeking by any methods and cooperation of dealers in making effective any policy adopted by the respondent for the maintenance of prices.

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

Complaint

IN THE MATTER OF
MARIETTA MANUFACTURING COMPANY

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

Docket 1686. Complaint, July 15, 1929—Decision, May 27, 1930

Where a corporation engaged in the manufacture of a product for interior walls, wainscoting, ceilings, table tops, and other like purposes, and in the sale thereof to jobbers, contractors, builders and, to a lesser extent, the ultimate user, designated said product as "SANI-ONYX, a vitreous marble", "SANI-ONYX" (or "SANIONYX") and made such statements in advertising same under said names in newspapers and periodicals of national circulation and in catalogues, leaflets and other like literature circulated among the trade and public, as "SANI-ONYX, a vitreous marble, truly modern is this new material for bathroom and kitchen walls * * * offers distinctive surface textures with colors of rare and exquisite beauty. No substitute or makeshift * * * a superior product fused from rock ingredients", the fact being that its aforesaid "SANI-ONYX" was not a product of nature, but was made chiefly of silica, in slab form, in a great variety of colors, capable of being used in place of natural or quarried onyx or marble in similar form, resembling in some of its colors the aforesaid stones, and with other features and characteristics in common between said artificial slab products and slabs of natural onyx and/or marble, permitting use of the former as a substitute for the latter; with tendency and capacity to deceive purchasers of its products into believing same to be onyx and/or marble and to cause purchase by them thereof in such belief:

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

Mr. Alfred M. Craven for the Commission.

Lockwood, Lockwood, Goldsmith & Galt and *Roemler, Carter & Rust*, of Indianapolis, Ind., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Indiana corporation engaged in the manufacture of a product for use for interior walls, wainscoting, ceiling, tops of tables and counters and for other like purposes and simulating the appearance of marble and designed and used as a substitute therefor, and in the sale thereof to jobbers, contractors, builders, and the public generally, and with principal place of business at Indianapolis, with naming product misleadingly and advertising falsely or mislead-

ingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, describes its said product, neither onyx nor marble, but chiefly composed of silica sand, as SANIONYX and as vitreous marble, in its advertising, catalogues, circulars, leaflets, and other like literature, with the tendency and capacity to deceive purchasers thereof into believing the same to be marble or onyx and to cause them to purchase said product in such belief; all to the prejudice of the public and of respondent's competitors, who include individuals and concerns dealing in products of the same general kind and nature and/or marble and onyx quarried, cut, and fashioned so as to be suitable for the same uses as respondent's said product.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 719), the Federal Trade Commission, on July 15, 1929, issued and served its complaint upon the respondent Marietta Manufacturing Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent having entered its appearance and filed its answer to said complaint, hearings were had before a trial examiner theretofore duly appointed, and testimony was heard and evidence received in support of the charges stated in the complaint and in opposition thereto. Thereafter, this proceeding came on regularly for decision; and the Commission having duly considered the record, and being now fully advised in the premises, makes this its report, stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Marietta Manufacturing Co. is a corporation organized and existing under the laws of the State of Indiana, with a factory and its principal place of business in the city of Indianapolis, in said State. It is now and for the last twenty years has been engaged in the business of manufacturing and selling to jobbers, contractors, builders and, to a lesser extent to the ultimate user, a product used for interior walls, wainscoting, ceilings, table tops, counters, and for other like purposes. It causes and has

caused said product, when sold, to be transported in interstate commerce from Indianapolis, Ind., into and through States of the United States other than the State of Indiana, to purchasers thereof at their respective points of location. In the course and conduct of its business the respondent is, and for many years has been, in competition with other individuals, partnerships and corporations located and doing business in the United States, engaged in the sale and transportation in interstate commerce between and among the various States of the United States of products of the same general kind and nature and/or marble and onyx quarried, cut, and fashioned so as to be suitable for the same uses as respondent's said product.

PAR. 2. The respondent, in order to create a demand by the public for its product and to obtain orders therefor, advertises extensively in newspapers and periodicals of national circulation, and by the circulation among the trade and general public of catalogues, circulars, leaflets, and other like literature. In such advertising, respondent describes and designates its product as SANI-ONYX, a vitreous marble, SANI-ONYX, and sometimes as SANIONYX, and makes use of the following, among other statements, in describing the product which it sells:

SANI-ONYX, a vitreous marble, truly modern is this new material for bathroom and kitchen walls, ceilings, wainscoting. Sani-Onyx offers distinctive surface textures with colors of rare and exquisite beauty. No substitute or makeshift. Sani-Onyx is a superior product fused from rock ingredients.

Sani-Onyx is fused from rock ingredients and comes in convenient slabs in a variety of modern colors and color combinations.

WHAT IS SANI-ONYX? Emphatically Sani-Onyx is not a substitute. It is a superior modern-day material for walls, ceilings, wainscoting—wherever in the past you have been forced to use conventional plaster, tile, or marble.

PAR. 3. Respondent's product is not a product of nature, but is a manufactured product, the chief ingredient of which is silica. It is neither marble nor onyx. It is manufactured in slab form and capable of being used in place of natural or quarried onyx or marble when such onyx or marble is in slab form. It is made in a great variety of colors, and in some of said colors the product resembles marble in appearance, and also, in some of said colors it is somewhat similar in appearance to a type of onyx in slab form.

PAR. 4. Among the competitors of respondent are numerous marble dealers throughout the United States, who deal in, and sell in interstate commerce, marble in slab form, and, to a limited extent, onyx in slab form, adapted to and in fact put to substantially the same uses as are the products of respondent.

In addition to color there are other features and characteristics in common between respondent's artificial slab product and slabs of natural onyx and/or marble, so that its product under certain conditions may be used as a substitute for natural onyx and/or marble, and to that extent may be said to be artificial onyx and/or marble.

PAR. 5. The designation by the respondent of its said product, as set forth in paragraph 2 hereof, is palpably false and misleading, and has the tendency and capacity to deceive the purchasers of said product into the belief that respondent's said product is onyx and/or marble, and to cause said purchasers to purchase said product in that belief.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is now ordered that the respondent, Marietta Manufacturing Co., its officers, agents, and employees, in connection with the sale or offering for sale of its product in interstate commerce between and among the several States of the United States and in the District of Columbia, do cease and desist from:

(1) Using the term "Sani-Onyx, a Vitreous Marble", or the term "Sani-Onyx", as a designation or description of the product manufactured by it.

(2) Representing in its advertising matter or by other means, that the product which it manufactures is marble, or onyx.

It is further ordered, That the respondent shall, within 30 days after the service upon it of a copy of this order, file with the Com-

mission a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

By the Commission, Commissioner Humphrey dissenting in memorandum attached.

Dissent of Commissioner Humphrey in the matter of Marietta Manufacturing Co.

I do not disagree with my associates as to the law, but as to the facts in this case. I do not think the evidence sustains the findings. Fortunately, for the determination of this question if it is appealed, the court can examine all the material evidence in a few moments.

The advertisements and the product itself constitute the material evidence and all of it. In each of the advertisements quoted in the findings of fact, a statement is made that shows no possibility of leading anyone to believe that the product is either onyx or marble. Again, this product is almost exclusively sold to the contractor, generally through the architect. That a contractor or architect would think that this product is either onyx or marble, is to attribute to them lack of human intelligence.

I can not believe that anyone of ordinary capacity, using the ordinary care that one would naturally employ in making a purchase, would ever be deceived into thinking that he was purchasing either onyx or marble.

The term "Sani-Onyx" is really under the circumstances of this case, a fanciful name. The trouble is that the people are not deceived by the respondent's product. They know what it is and they prefer it and they buy it. The sale of this product is not unfair competition, but it is dangerous competition, because the product is cheaper and better suited for most purposes for which it is sold than either marble or onyx.

If the respondent, when it refers to its own product, shall use the word "made-marble", and the word "made-material", and when it refers to onyx or marble were to use the words "natural onyx" and "natural marble", the possibility of deception, if there be any, would be effectually removed. Certainly the respondent should be allowed this privilege.

It might be worth while to call attention to the fact that this trade name was adopted before the Federal Trade Commission Act was passed, and for twenty years nobody has complained about it.

I think in this case the Commission is promoting monopoly instead of competition.

IN THE MATTER OF
THE AMERICAN SCHOOL OF CORRESPONDENCE

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

Docket 1486. Complaint, April 2, 1929¹—Decision, June 23, 1930

Where a corporation engaged in the business of giving courses of instructions in sundry arts, sciences, professions, and branches of learning by correspondence, through the mail; in advertising the same in magazines, periodicals, and other publications of general circulation throughout the United States, and in letters, booklets, pamphlets, leaflets, and other business literature, sent to prospective pupils, and employed by agents in soliciting the same,

- (a) Represented that it was organized and incorporated, and was required by law to operate without profit, that its courses and business were accordingly so conducted, and that its entire income was expended in the interest of the pupil in the preparation and giving of said courses, enabling it thereby to sell courses of a high degree of excellence at prices substantially lower than its competitors are enabled to charge for similar instruction; the facts being that under the law concerned the corporation was not forbidden so to carry on its operations as to derive therefrom a profit to its use and benefit as distinguished from that of the incorporators or organizers thereof, that 35 per cent of the revenue received from pupils was expended for soliciting enrollments and collecting tuition, and that starting with \$30,000 advanced by its organizers, it had accumulated more than \$350,000 worth of property; and
- (b) Held out to prospective pupils a "\$2,000,000 guarantee" of a job and raise, to induce enrollment and payment of tuition in advance, or of an installment thereof with unconditional obligation to pay the residue, in which it undertook to secure for any pupil completing its course and earning less than \$30 a week a satisfactory position paying at least 50 per cent more, or to refund the entire amount paid for its training, and similarly undertook to refund such amount to any such pupil, who earned \$30 a week or more and considered that training and employment service given by it had not been such as to help him secure promotion and increased salary, and made such false and misleading statements incident to aforesaid "guarantee", pupils and enrollment as that prospective pupil need not fear lack of previous education, guarantee insured him a job and pay increase "absolutely without risk of a penny", he was relieved of worry upon enrollment, as he had thereby "put the responsibility for his success up to it", a person enrolling for one of its complete courses could master the same in his spare time and thereby secure the job and salary increase without the risk of a penny, it guaranteed that pupil's choice of one of its 13 courses would lead to a fine position and increase in pay, it was selling him "a training and employment service guaranteed" to fit him for the

¹ Amended.

job wanted and then get him that job, he was hiring it, "a million dollar institution—with its tremendous facilities and high standing," to do just that, and if its training did not secure him a good job and raise in pay it would not cost him a penny; the fact being that less than seven per cent of its pupils (in accordance with general experience in correspondence schools giving substantial courses) completed courses for which enrolled, and more than 50 per cent abandoned their studies without half completing them;

With intent and effect of inducing prospective pupils to believe that everyone enrolling was assured of the guarantee of a job and pay increase, or repayment of all tuition, and of influencing many to enroll in such belief, and pay its tuition fee or portion thereof and obligate themselves for the remainder, and with the result that thereby more than 93 per cent of the money paid by pupils to it was paid for a consideration having no real existence, or wholly failing and known by it to wholly fail, and with tendency to divert business from and otherwise injure and prejudice competitive schools engaged in the sale of courses at fixed prices:

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

Mr. Alfred M. Craven for the Commission.

Mayer, Meyer, Austrian & Platt, of Chicago, Ill., for respondent.

SYNOPSIS OF COMPLAINT ²

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Massachusetts corporation engaged in giving courses of instruction in various professions and branches of learning ³ by correspondence through the mails, and with place of business in Chicago, with advertising falsely or misleadingly as to guarantee offered and nature of product or service and with misrepresenting business status, in violation of the provisions of section 5 of said act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth and selling its said courses under an arrangement by which the pupil who pays in installments, unconditionally obligates himself to pay the balance, features its so-called "2,000,000 guarantee of a job and raise"; so worded as to apply only to those completing the course,⁴ and stress the same, as well as the alleged ease and certainty of mastering the course in question in the pupil's spare time, in such a way

² As amended.

³ Respondent sells thirteen separate, complete courses, among which there may be mentioned architecture, business management, electrical engineering, high school, and law, prices ranging from \$112 for mechanical engineering (without shop practice) to \$189 for high school (for business purposes).

⁴ See "guarantee" set forth in full, in the findings, below, at page 84.

as to mislead the prospective pupil, it appearing that due to inherent difficulties less than 7 per cent of all those who enroll for correspondence courses involving substantial courses of instruction, complete the same and that more than 50 per cent of respondent's pupils abandon their studies before half completing their courses, so that the guarantee in question is in fact addressed to less than 7 per cent of those who may enroll, though intended to influence and influencing many to select respondent's school in preference to those operated by competitors or to enroll as pupils in cases in which, but for the misleading statements and representations made, they would have kept their money.

Respondent, further, as charged, inserts advertisement in newspapers and other publications of general circulation falsely asserting or importing that it is an employer seeking employees for specified work and service at a lucrative remuneration, in many instances, in order to further such deception, causing its advertisements to be inserted in the classified sections under such headings as "Male help wanted", "Help wanted", with the capacity and tendency to cause many people to enter into negotiations with it, for the supposed employment, and thereby being afforded the opportunity to solicit and secure such persons as pupils.

The aforesaid false, misleading, and deceptive statements and representations, and each of them, as alleged, have the capacity and tendency to cause many of the public to subscribe for and purchase its said courses, in reliance on the truth of such statements, etc., and to pay the price of the course or obligate themselves therefor in such belief, and also to cause many to subscribe for and purchase said courses in preference to those of competitors, from whom business is thus diverted and who are thus and otherwise injured and prejudiced; and such alleged acts and practices are all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Acting in the public interest, pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served upon respondent, The American School of Correspondence, an amended complaint in the above-entitled proceeding, charging it with

the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having filed its answer to such amended complaint, hearings were had thereon and evidence was thereupon introduced on behalf of the Commission and by the respondent before an examiner of the Federal Trade Commission thereunto duly appointed.

Thereupon this proceeding came on for final hearing before the Commission on the briefs and oral argument of counsel for the Commission and for the respondent, and the Commission, having considered the entire case and being fully advised in the premises, now makes these its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Massachusetts, with its principal office and place of business in the city of Chicago, State of Illinois. It is engaged in the business of giving courses of instruction in sundry arts, sciences, professions, and branches of learning by correspondence through the mails to persons hereinafter referred to as pupils, residing at points in various States of the United States. In the course of its said business and in order to secure pupils therefor, respondent causes advertisements offering its said courses of instruction to be inserted in newspapers, magazines, periodicals, and other publications of general circulation throughout the United States and in various sections thereof, and sends to prospective pupils letters, booklets, pamphlets, leaflets, and other like business literature offering and describing its said courses of instruction and setting forth the prices for same and the conditions under which same are offered. Respondent also employs agents in various States of the United States to secure pupils for respondent by personal solicitation and supplies to said agents aforesaid business literature, which said agents use and display to prospective pupils in the course of soliciting them to take and subscribe for respondent's said courses of instruction. Upon securing pupils through said means for its said course of instruction respondent sends by mail from its said place of business in the city of Chicago, Ill., to such pupils at their respective places of residence in the various States of the United States, written lessons, instructions, textbooks, tools, and appliances to be used by said pupils in and about pursuing and studying said course of instruction, in consideration of which said pupils pay and remit to respondent certain agreed sums of money. In the course and conduct of its said business respondent is in competition with other individuals, partner-

ships, and corporations also engaged in offering for sale and selling and delivering in interstate commerce after the manner of respondent's methods of offering for sale and selling and delivering its courses of instructions, the same or similar or competitive courses of instructions in various arts, sciences, professions, and branches of learning by correspondence through the mails.

PAR. 2. In the aforesaid advertisements and business literature described in paragraph 1 hereof, respondent causes to be set forth many misleading and deceptive statements and representations to the effect as follows:

First.—That respondent is organized and incorporated as an institution to operate without profit, is required by law to so operate; that in accordance therewith respondent offers and sells its said courses of instruction and conducts its said business without securing or realizing any profit therefrom and that respondent is thus enabled to, and does, give and sell its said courses of instruction at prices substantially less than its competitors can and do give and sell similar courses of instruction.

In truth and in fact, respondent derives and realizes substantial profits from the operation of its said business and the giving and selling of its said courses of instruction and has accumulated and still has a substantial sum of money or amount of property resulting therefrom.

The organizers of respondent corporation advanced the sum of \$30,000 to enable respondent to begin operation as a correspondence school. No money has been received by respondent by way of gift, or as endowment, or otherwise than as current revenues from tuition and the operation of said school. Respondent has thus and thereby accumulated property of a total value of more than \$350,000. The exact present value of all respondent's assets does not appear by the evidence, but is represented by respondent variously at from \$350,000 to \$2,000,000.

No evidence was adduced to disprove respondent's representation that it was organized under a statute of the State of Massachusetts as an educational institution, as a corporation organized not for profit, or that the organizers thereof are not entitled by law to receive as dividends or otherwise the whole or any portion of the profits of said corporation, for their own use and benefit, as such incorporators or as owners of such corporation. There was no evidence that any incorporator or owner of respondent corporation has at any time received for his own use or benefit the profits, property or assets of respondent corporation, otherwise than as just compensation for services actually rendered to respondent.

Respondent corporation is not forbidden by law so to carry on its operations as to derive therefrom a profit to the use and benefit of such corporation, as distinguished from the persons who incorporated

the respondent or are the owners thereof. Respondent lawfully may, and actually does, so operate said school as to derive therefrom for the use of respondent total revenues greater than its total expenditures or outlay in the operation of said school.

Prior to the issuance of the complaint in this case, respondent discontinued the published statement or representation that respondent is forbidden by law to operate its school at a profit. In its answer to the amended complaint herein filed May 17, 1929, respondent asserted the truth of said statement or representation, in these words, to wit:

Respondent admits that it formerly caused to be set forth in its advertisements and business literature certain statements substantially as described in paragraph 2 (a) of said amended complaint, but denies that said statements were or are false, misleading or deceptive and states that, on the contrary, said statements so used by respondent were and are true in substance and in fact. Respondent denies that it derives or realizes substantial profits from the operation of its said school and from the giving and selling of its said courses of instruction, and further denies that it has accumulated, or still has, a substantial sum of money or amount of property resulting from such operations.

In its printed brief filed May 19, 1930, on the final hearing of this case before the Commission, at pages 16, 17, and 18, respondent asserts that respondent is "forbidden by law to make a profit", and "is pledged not to make a profit", and may, therefore, rightfully so represent its corporate status and practice.

Second.—That respondent's entire income is expended in the interest of the pupil in and about the preparation and giving of its said courses of instruction and that thereby respondent is enabled to and does furnish to pupils instruction of a high degree of excellence at prices substantially less than the reasonable value of such instruction and substantially less than respondent's competitors can offer and sell instruction of like quality.

In truth and in fact, respondent does not so expend its entire income or the prices which respondent demands and secures for its said courses of instruction, respectively, but expends for said purposes a substantially smaller sum, as is more fully set forth hereinabove under the first subdivision of this paragraph of the findings.

Respondent in its advertising copy represents that "every dollar received for instruction is used for instruction", notwithstanding the accumulation of property and assets by respondent, as found above, out of the excess of current revenues from tuition above the total expenses incident to the operation of said school. In addition to such fact, it is shown by the evidence that 35 per centum of the revenues received by respondent from pupils as tuition is expended by respondent as compensation for the work of soliciting enroll-

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ment by students and in collecting tuition from students. In its said printed brief filed in this case on May 19, 1930, respondent asserts at pages 19 and 20 thereof, that its said representation is true, and that "the cost of securing the pupil by advertising or otherwise is as much an expense of instructing the pupil as the outlay made for instructional material or instructors' salaries".

PAR. 3. Respondent, in the manner above alleged, offers for sale and sells, thirteen separate and several "complete courses", to wit: Architecture, automotive engineering, business management, civil engineering, contracting and building, drafting and design, electrical engineering, higher accounting (including C. P. A. work), high school (for business purposes), law, mechanical engineering (without shop practice), steam engineering, and structural engineering. For each of said complete courses a student who enrolls as such is required to pay, or obligates himself to pay, a fixed price or tuition, such price being fixed and uniform to all students for any one course, but the price of each course is separate, several and different, ranging from \$112 for mechanical engineering (without shop practice) to \$189 for high school (for business purposes). A pupil who pays such tuition fully in advance is given the benefit of a discount of 12 per centum from such uniform price or sum. A pupil who elects to pay such tuition in installments pays a designated sum in advance and obligates himself unconditionally to pay a like designated sum each calendar month, until he has paid the whole of said fixed or uniform tuition.

To induce prospective pupils to enroll as such for one or more of said complete courses, and to pay said tuition in advance or to pay an installment thereof and obligate themselves unconditionally to pay the residue thereof, respondent advertises that it will issue, and issues, to each pupil who so enrolls a certain written instrument which respondent denominates a "\$2,000,000 guarantee of a job and raise", said instrument being in these words, or words in substance the same, to wit:

HERE IS YOUR JOB AND RAISE GUARANTEE—KEEP IT!
 CHARTERED AS AN EDUCATIONAL INSTITUTION IN 1897
 AMERICAN SCHOOL
 CHICAGO, U. S. A.
 GUARANTEE
 OF POSITION AND INCREASED PAY
 TO JOHN DOE

1 If you are earning LESS than \$30 a week now, we guarantee to find you a satisfactory position within 60 days after you finish our home-study train-

ing in any one of the thirteen complete courses listed on the back of this Guarantee; and, further,

We guarantee that said position will pay you a salary of at least 50 per cent more than you are earning today;

Or, failing to do so, we guarantee to refund to you immediately the entire amount that you paid for this training.

2. If you are earning \$30 or MORE a week now, we guarantee to refund to you the entire amount that you paid for your course if, when submitting your final examination, you notify us that, in your judgment, we have not given you the training and employment service that will help you secure promotion and increased salary.

(SEAL) This guarantee may be withdrawn without notice unless your enrollment application for our home-study training is sent to the AMERICAN SCHOOL promptly.

Given under the seal of the school by order of the board of trustees of the AMERICAN SCHOOL, this 15th day of October, A. D. 1928.

(Sgd.) R. T. MILLER, Jr., *President*.

To induce prospective pupils to enroll as such because of such guaranty and in order to obtain the job and pay increase so guaranteed therein, respondent makes many false and misleading statements relative to said courses of study, the ease and certainty with which they may be mastered, and the small portion of the time of a pupil that is required to complete such courses and be entitled to such guaranteed job and pay increase and the manner in which respondent construes and administers its said job and increased pay guaranty, as follows, to wit:

In its aforesaid advertisements and business literature described in paragraph 1 hereof, respondent causes to be set forth many misleading and deceptive statements and representations to the effect:

(a) That a prospective pupil has no need to fear that his lack of previous education will prevent his success, and that no prospective pupil needs to hesitate to take the risk that he may not actually land in the better position and salary increase.

(b) That, under the terms of respondent's said contract of guaranty, each prospective pupil is insured a job and pay increase, "absolutely without risk of a penny on his part".

(c) That when a pupil enrolls with respondent as a pupil, he is thereby relieved of any worry about his future employment or compensation, because such pupil has thereby "put the responsibility for his success up to the American School"—respondent herein.

(d) That the assurances of a job and pay increase given by such guaranty is a real reason for a student to enroll as such with respondent and pay or obligate himself to pay such fixed price or tuition.

(e) That a pupil who enrolls as such with respondent for one of said complete courses may master the same in his spare time, and thereby procure a job and increase of salary without the risk of a penny on his part.

(f) That "We (respondent) *guarantee* that your choice of the thirteen courses will lead to a fine position and an increase in pay.

"This is a startling offer, different from any ever made you by a corre-

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spondence school. We are not selling you a set of books, or a certain amount of 'education'. In fact, we are selling you a training and employment service, guaranteed to fit you for the job you want and then get that job for you.

"In short, you 'hire' this million-dollar institution—with its tremendous facilities and its high standing—to get you just the kind of a job you want.

"If this training does not take you all the way into a good job at a raise in pay, it will not cost you a penny."

(g) That respondent guarantees to its pupil a job and pay increase or reimbursement for all tuition paid by a pupil to respondent, so that a pupil takes no risk of loss.

Prospective pupils have no means of knowledge as to the certainty and ease with which they may master such course of instruction, and secure the benefit of such guaranteed job and pay increase, except such statements and representations so made to them by respondent.

In truth and in fact, as a general rule, pupils who enroll as such with respondent, like pupils who enroll in other correspondence schools, are seeking primarily a means of securing a more desirable employment and higher wages, are engaged in gainful pursuits that occupy a considerable part of their time, have not maintained habits of study, and are not in circumstances favorable to systematic and prolonged mental activity. The successful taking of substantial courses of study in correspondence schools required prolonged and systematic mental labor, without the benefit or inspiration of personal instruction. Such work is difficult, uninteresting and tends to discouragement of a pupil and the abandonment of his undertaking. Among pupils enrolled in correspondence schools that give substantial courses of instruction, less than 7 per centum of all those who enroll as such complete the respective courses for which they enroll. Among all pupils who enroll with respondent for any of its said thirteen complete courses, less than 7 per centum continue their studies until they have completed the respective course for which they severally enroll. More than 50 per centum of such total number of pupils who so enroll with respondent as such, discontinue and abandon their studies before they have completed as much as one-half of their respective courses. This tendency among, and history of, pupils in correspondence schools is constant, and has been over a period of many years, in correspondence schools of the respondent and of its competitors.

The terms of respondent's said guaranty, as the same is written, applies to less than 7 per centum of the pupils to whom it is issued, in its practical application in the progress of their studies; whereas, in the light of all statements so currently made, published and distributed by respondent to prospective pupils as to its intent, purpose, and effect, as actually construed and administered by respondent,

prospective pupils tend to believe, are intended by respondent to be induced to believe, and are induced to believe, that, under such guaranty, every pupil who does enroll as such is assured of the guaranteed job and pay increase, or the repayment of all tuition paid by him to respondent.

Said guaranty so issued by respondent, although of negligible value to pupils, and of no value whatever to more than 93 per centum of the pupils who so enroll as such with respondent, has the tendency and capacity to, is intended to, and does, influence many prospective pupils to select respondent's school in preference to correspondence schools operated by competitors of respondent, or to elect to enroll as pupils in a correspondence school, and to pay to respondent its said tuition fee or to pay a portion thereof and obligate themselves to pay the residue; who, but for the false and misleading statements and representations so made by respondent, would retain said tuition money for their own use or enroll as pupils in the schools of competitors of respondent. Of the sums of money so paid by pupils to respondent because of, and to secure the benefit of, said contract of guaranty, more than 93 per centum is paid for a consideration that has no real existence or wholly fails, and the respondent well knows will wholly fail. Respondent well knows at all times that less than 7 per centum of all pupils who enroll as such with respondent for its said various courses of instruction will become entitled to the benefit of its said guaranty of a job and pay increase, or will get the full benefit of such courses of instruction for which they have fully paid in advance or for which they have in advance paid in part and obligated themselves unconditionally to pay the residue of such total fixed fee or tuition.

PAR. 4. No evidence was adduced to sustain paragraph 4 of the complaint.

PAR. 5. The aforesaid misleading and deceptive statements and representations and each of them as in this amended complaint before set out, have the capacity and tendency to cause many of the public to subscribe for and purchase respondent's said courses in the belief that said statements and representations are true, and to pay the fixed price of respondent's said courses of instruction, or to obligate themselves to pay the same in and because of such belief.

PAR. 6. There are correspondence schools engaged in offering for sale and selling and delivering the same or similar and competitive courses of instruction to the public and to pupils and prospective pupils, at certain fixed prices of tuition, in interstate commerce, in the manner in which respondent so offers for sale and sells and delivers its said courses of instruction. The aforesaid acts, practices,

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and methods of respondent as hereinabove alleged have the capacity and tendency to cause many of the public to subscribe for and purchase respondent's said courses of instruction in preference to the courses offered by said competitors. Respondent's said acts and practices thus tend to divert business from and otherwise to injure and prejudice said competitors.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is now ordered, That the above-named respondent, the American School of Correspondence, its officers, representatives, agents, and employees, do cease and desist from the use of the following designated methods of competition, and each of them, in aid of offering for sale and selling in commerce, among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, any courses of instruction as alleged in said amended complaint or any other courses of instruction, to wit:

1. From making the statement or representation in its advertising copy, order blanks, or other literature, or otherwise, that respondent corporation is forbidden by law so to transact the business of carrying on a correspondence school as to derive a profit therefrom; or that respondent corporation is pledged not to make a profit from the operation of such school; or that respondent corporation has heretofore derived no profit from the operation of such school; or that the respondent corporation is at any future time operating such

school without deriving a profit therefrom, unless such statement shall at any such future time be true.

2. From making in its advertising copy, order blanks or other literature, or otherwise, as bearing upon or explanatory of or as indicating the effect or value of the certain so-called "job and raise" guaranty alleged in said amended complaint and set forth in the Commission's findings as to the facts in this case, any of the following statements or representations or statements and representations equivalent thereto, to wit:

(a) That a prospective pupil has no need to fear that his lack of previous education will prevent his success, and that no prospective pupil needs to hesitate to take the risk that he may not actually land in the better position and salary increase.

(b) That, under the terms of respondent's said contract of guaranty, each prospective pupil is insured a job and pay increase, "absolutely without risk of a penny on his part".

(c) That when a pupil enrolls with respondent as a pupil, he is thereby relieved of any worry about his future employment or compensation, because such pupil has thereby "put the responsibility for his success up to the American School"—respondent herein.

(d) That the assurances of a job and pay increase given by such guaranty is a real reason for a student to enroll as such with respondent and pay or obligate himself to pay such fixed price or tuition.

(e) That a pupil who enrolls as such with respondent for one of said complete courses may master the same in his spare time, and thereby procure a job and increase of salary without the risk of a penny on his part.

(f) That "We (respondent) *guarantee* that your choice of the thirteen courses will lead to a fine position and an increase in pay.

"This is a startling offer, different from any ever made you by a correspondence school. We are not selling you a set of books, or a certain amount of 'education'. In fact, we are selling you a training and employment service, guaranteed to fit you for the job you want and then get that job for you.

"In short, you 'hire' this million-dollar institution—with its tremendous facilities and its high standing—to get you just the kind of a job you want.

"If this training does not take you all the way into a good job at a raise in pay, it will not cost you a penny."

(g) That respondent guarantees to its pupil a job and pay increase or reimbursement for all tuition paid by a pupil to respondent, so that a pupil takes no risk of loss.

It is further ordered, That the respondent, the American School of Correspondence, shall, within 60 days after the service on it of this order, file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which it has complied with the above order to cease and desist.

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IN THE MATTER OF
DAVID V. BUSH

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

Docket, 1596. Complaint, April 19, 1929—Decision, June 23, 1930

Where an individual engaged in the sale of instructions for reducing which consisted in sum and substance of prescribing a diet limited to fruit juices, and the drinking of water, for a number of days, and were sold for \$2.98 plus postage, under a money back promise; falsely and misleadingly and with intent to deceive, represented and stated, in advertising and describing the method involved, that it was amazing, new and nature's method, furnishing all needed nutrition, involving no fasting or starving, external agencies, exercises or appliances, and absolutely yielding satisfactory results, regardless of the particular individual's excess flesh, within a few days, that customers would find their fat melting away like magic, weigh what they should, and become slim, buoyant and energetic, and that many persons had formerly gladly paid \$25 for said instructions; with effect of misleading those desiring to reduce into believing that he had a new, marvelous and unfailing remedy for excess weight, and with capacity and tendency to mislead and deceive persons who might otherwise have sought and obtained services, products, means, and methods of competitors, offered without such false and misleading assertions and representations in regard thereto; all to the prejudice of the public and competitors:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Eugene W. Burr for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged in the sale of courses of instruction for reducing weight, and with offices in Chicago, with advertising falsely or misleadingly as to nature of product, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, for about two years last past, in advertising his aforesaid course, which consisted, broadly, in the drinking of water and fruit juices, and otherwise abstaining from food,¹ made such statements as "NATURE'S METHOD

¹ Respondent's instructions, captioned "INSTRUCTIONS ON HOW TO REDUCE" sent to the customer after payment by him of respondent's charge, as set forth in the complaint, are reproduced in the findings at p. 93.

OF REDUCING. * * * I want to tell you all about this amazing method of reducing which I have discovered. * * * My amazing new method will make your excess fat melt away like magic—give you a normal, youthful figure—make you slim, buoyant, energetic, as nature intended you to be. * * * No starving—no exercising, no drugs—no external agencies—no mechanical appliances. You simply follow my instructions for a few days until your excess pounds disappear * * * Your health will improve. You will feel energetic and full of life. You will look better and feel better than you have felt in years”, and other similar statements, together with a caution to the reader not to undervalue the method by reason of its low cost and simplicity.

The effect of the foregoing practices, as alleged, “is to mislead individuals who desire to reduce their bodily weight into the belief that respondent has a new, marvelous and unfailing remedy for excess bodily weight, whereas this belief is ill-founded and erroneous and respondent’s aforesaid advertising and offers are misleading and false, and are issued with the purpose of deceiving as large a number of the public as possible to the financial gain of respondent”; and said false and misleading assertions have the capacity and tendency to mislead and deceive persons who might otherwise seek and obtain the services, products, means and methods of competitors, of whom there are many, offering professional advice, books of information and instructions, and other means and methods for reducing, without making any such false and misleading assertions and representations as above set forth; all to the prejudice of the public and respondent’s competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

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

The respondent, after having entered his appearance in person and having duly filed his answer, subsequent to the setting of the matter for trial, made application for leave to withdraw his said answer and to file a substitute answer in lieu thereof. The said application was duly granted and said substitute answer was received as the answer in this proceeding. Thereby respondent availed himself of Rule III (2) of the Commission’s Rules of Practice, expressly refraining from contesting the proceeding and waiving a hearing therein.

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Pursuant to said mentioned rule of the Commission, and being fully advised in the premises, the Commission now makes its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, David V. Bush, having offices in the city of Chicago, was, for a period of two years prior to the issuance of complaint herein, engaged in the business of offering, through advertising in various newspapers and magazines having circulation in various States of the United States, for a stated money consideration, instructions for the reduction of the bodily weight of individuals applying for his said instructions. To persons sending to the respondent the said requested money consideration, respondent during said period, sent his said instructions for weight reduction through the mails from the city of Chicago to the places of residence of his said customers in various States in all sections of the United States.

PAR. 2. In advertising his said instructions for sale the respondent used, among other representations, the following false and misleading statements, which were declared by him to be descriptive of the treatment outlined in his instructions offered for sale as aforesaid:

NATURE'S METHOD OF REDUCING
IT WORKS OR IT COSTS NOTHING!

I want to tell you all about this amazing method of reducing which I have discovered. It is simply wonderful. I am delighted with it. My friends are delighted with it. Everyone who hears about it becomes enthusiastic!

I don't care how stout you are. I don't care how many times you have tried to reduce and failed. My amazing new method will make your excess fat melt away like magic—give you a normal, youthful figure—make you slim, buoyant, energetic, as nature intended you to be, or the treatment won't cost you a single penny!

No starving—no exercising, no drugs—no external agencies—no mechanical appliances. You simply follow my instructions for a few days until your excess pounds disappear—until the scales tell you that you weigh exactly what you should.

This method is so simple that anyone, even a child, can understand how it works and why it works. It is so logical, so reasonable, so sensible that the moment you hear about it you will know instantly that it works.

SEND NO MONEY

Merely send me your name and address. When the postman brings you my complete instructions "How to Reduce", simply pay him the special low price of only \$2.98 plus a few cents postage. If at the end of two weeks you are not completely satisfied—if you do not lose weight rapidly and easily—then simply

tell me so and your money will be instantly refunded. You risk nothing—*write to-day*. David V. Bush, Dept. H.-U882, 225 N. Michigan Blvd., Chicago, Ill.

Don't be led astray by the fact that these instructions are so simple. This is nature's method of reducing and all of nature's methods are simple. The simple methods are the best methods—the surest methods—the pleasantest methods. In judging a method, the important thing is, "Does it work?" This method of reducing *does work*.

Above all, don't make the fatal mistake of undervaluing this method because you get it for such a small sum of money. It's difficult for you to realize now how immensely valuable these instructions may be to you. But you will realize it in a short time if you follow the instructions carefully.

Thousands of men and women in my classes paid \$25 each for this same system of reducing. When they saw what wonderful results they got—how quickly they reduced—how much better they looked and felt—they decided that the price was cheap. I gave them my reducing instructions in lecture form. I am giving you the very same instructions in printed form at a great saving of money.

Read my instructions over carefully. Follow them faithfully, in just a short time you will begin to lose weight quicker and easier than you ever thought possible. Your figure will become normal, youthful. Your health will improve. You will feel energetic and full of life. You will look better and feel better than you have felt in years!

PAR. 3. In consideration of the receipt of the said monetary payment required, as above described, from his customers respondent furnished to said customers certain mimeographed material containing *Instructions on how to reduce*, the text of which is as follows:

If you want to take off five to ten pounds go one, two, or three days (more if you please, but not for too many days, because you will take off too much weight) without any cooked foods, meats or any other food except juices of fruits, drinking copious draughts of water—at least two quarts a day. More would be better. By drinking fruit juices you get all of the nutrition necessary for the body; hence you are not fasting or starving. Juices of fruits contain all of the natural minerals, salts, and sugars the body needs as well as the sixteen essentials for nourishment. Hence you may drink all the fruit juices you please, such as orange juice, grapefruit juice, grape juice (not more than two small glasses a day because there is too much sugar in grape juice), cider, pineapple juice, or juices which you may make in season from berries, pears, and peaches. Do not take the syrup or juices from canned peaches, pears, or berries because they contain too much sugar. Thus you may drink all the fruit juices you desire, with two or three quarts of water a day and it is guaranteed that you will take off from one to fifteen pounds within three to ten days. Remember you are not to eat anything aside from what is prescribed above. Also remember, *you are not fasting because in the juices of fruits you have all the nourishment the body requires*.

The said mimeographed material described in the hereinabove paragraph and the said advertising material described in paragraph 2 hereof contain other deceptive and misleading statements.

PAR. 4. The effect of respondent's methods and practices hereinabove described, during the said period, was to mislead individuals

who desire to reduce their bodily weight into the belief that respondent had a new, marvelous and unfailing remedy for excess bodily weight, whereas this belief is ill-founded and erroneous and respondent's aforesaid advertising and offers were misleading and false, and were issued with the purpose of deceiving as large a number of the public as possible to the financial gain of respondent.

PAR. 5. That, to meet the demands of said many persons so seeking a safe and dependable means of ridding their bodies of excess fat or flesh, there were many competitors of respondent offering to the public professional advice, books of information and instructions, and other means and methods for the accomplishment of such results; many of said competitors of respondent have not made any of the false and misleading assertions and representations made by respondent, as above alleged, as to the means and methods so offered by them, or any like or equivalent false and misleading assertions and representations. That said false and misleading assertions and representations so made and published by respondent as herein described have had the capacity and tendency to mislead and deceive persons who might otherwise have sought and obtained the services, products, means and methods of said competitors, into purchasing said instructions of respondent above described.

PAR. 6. That the acts and practices of the respondent above alleged, were all to the prejudice of the public and of the competitors of respondent, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of the aforesaid Federal Trade Commission Act.

CONCLUSION

The acts and things done by respondent under the conditions and the circumstances described in the foregoing findings are to the injury and prejudice of the public and are unfair methods of competition in interstate commerce, and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been considered by the Federal Trade Commission upon the complaint of the Commission, the substitute answer of respondent and the Commission having made its findings as to the facts, together with its conclusion that respondent has violated the provisions of an act of Congress approved September 26,

1914, entitled "An act to create a Federal Trade Commission, to define its power and duties, and for other purposes",

It is now ordered, That the respondent, David V. Bush, his agents and representatives do cease and desist, in offering, selling, and transporting his course of instructions for the reduction of bodily weight in interstate commerce, from the following methods of competition, to wit:

From any manner representing, declaring, publishing and/or advertising with reference to his method or system for bodily weight reduction or with reference to his course of instructions therefor, in the following ways or to the following effect or any of them, to wit: That respondent's method for bodily weight reduction is nature's method of reducing, that it is amazing, wonderful or new; that it does not involve processes of starving, that the said alleged results will be obtained by customers within a few days, or that upon following respondent's said instructions his customers will find that their fat melts away like magic and that each of them weighs what he should weigh, that said customers will necessarily become slim, buoyant and energetic; that many persons in respondent's classes paid \$25 each for the respondent's said instructions or course for bodily weight reduction; that the juice of fruits as recommended by respondent for use by his customers for bodily weight reduction contain all the nutrition and nourishment required by or for the body; that the person following respondent's said course is not thereby fasting or starving and/or that respondent's said course is efficacious in all cases; and that respondent shall cease and desist from making other misleading statements of the same character and meaning in regard to his said course of bodily weight reduction.

It is further ordered, That the respondent, David V. Bush, shall within 30 days after the service upon him of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinabove set forth.

IN THE MATTER OF
BERNARD BERNARD, CLARA LOUISE GLOVER, DOING
BUSINESS UNDER THE NAME OF L. GLOVER, AND
R. B. NEWELL

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

Docket 1591. Complaint, Apr. 1, 1929—Decision, June 24, 1930

Where certain individuals engaged in the sale of courses in physical culture; in advertising a so-called height increasing course, together with certain articles and appliances incidental and accessory thereto, in newspapers, magazines, periodicals, and other publications of general circulation, and in enrollment and other blanks, catalogues, pamphlets, letters, circulars, and other matter,

- (a) Falsely represented that growth in height does not finally cease at physical maturity, but may be caused to continue at any time, and that scientific research had disclosed that it could be prolonged in youth or renewed later and height increased through certain advice and instruction, physical exercises, diets, and appliances, so that any short, mature person or short person about to cease growing could so increase his height as to be tall and on an equality with people naturally so, the facts being that such growth almost universally terminates at age of physical maturity, i. e., from 18 to 22 years, usually, and that no such scientific discovery had been made;
- (b) Falsely represented that said course, appliances, and accessories enabled pupils following and using same and diet prescribed, easily, safely, and certainly to increase their height sufficiently to become as tall as people naturally taller and thereby overcome the handicap and humiliation of lack of stature and employed "before and after" and other pictures suggesting increase in height from 62 to 72 inches, and such statements as "No need to envy and look up to the big fellows" or "to have the disadvantage of the little man", the facts being that no such results had been brought about for pupils and that the utmost that could be accomplished by said course was to enable them to acquire correct postures and thus appear of greater height; and
- (c) Referred to said course as that of "Glover, a height increasing specialist", and as having the approval and indorsement of an eminent specialist in the science and art of physical culture and especially in that branch thereof concerned with increase in height, namely, Dr. Bernard Bernard, indicated recipient, by initials appended, of high professional degrees, the facts being that no such Glover as referred to was connected with the business, the name L. Glover was a mere trade or business name, and said "eminent specialist" was none other than one of the individuals engaged in conducting the business, whose connection therewith was not revealed;

With tendency, capacity, and probability of misleading and deceiving the public and prospective pupils into believing said course to be superior to all other competitive courses in physical culture, and to induce the public to pay therefor, for impossible benefits, in preference to and to the exclusion of said competitive courses; all to the prejudice of the public and of competitors;

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Ellis DeBruler for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondents Bernard and Glover, engaged, at Sausalito, Calif., in a joint business enterprise of selling courses of instruction by correspondence in physical culture, including a so-called height increasing course, to pupils in the several States, and respondent Newell, an advertising agent, under contract with them, with advertising falsely or misleadingly as to results of product or service offered, misrepresenting business or professional status, and claiming or using false and misleading indorsements, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged as above set forth, in advertising their courses in newspapers, magazines, periodicals, and other publications of general circulation and in enrollment and other blanks, catalogues, pamphlets, letters, circulars, and other written, mimeographed, or printed matter, promise, state, and represent that the growth of the body does not finally cease at physical maturity or at any age, but, as a result of discoveries based on scientific research, may, through certain exercise, diet, and appliances be prolonged in youth or renewed in later years, that respondents' course of instruction, information, and advice, and appliances will bring about this result, easily, safely, and certainly by a number of inches, respondents making use of before and after pictures purporting to show such results, and also pictures of two men standing by one another with an indicated difference of ten inches and the statement in part, "No need to envy and look up to the big fellows. No need to have the disadvantages of the little man. This course makes it possible for you to be on a level with your fellow men. Course is easy, inexpensive, and results sure", the facts being that growth almost universally terminates at physical maturity, that is, in most persons, at from 18 years to 22 years of age, that there have been no such discoveries as

represented, that pupils are not enabled to prolong or renew the growth of their bodies, and that the utmost they are enabled to do "is to acquire correct postures of the several parts of their respective bodies, and to make and hold such bodies more nearly straight and apparently of greater length".

Respondents further, as charged, in their aforesaid advertisements under their trade or business name of L. Glover, refer to their Height Increasing Course as that of Glover, a Height Increasing Specialist, "thus and thereby implying and giving assurance that said course is the product of one learned and skilled in matters affecting the growth of the human body, and that said course represents his sound judgment and conscience", the fact being there is no person corresponding to the name Glover, the name of L. Glover being a mere trade name, and represent and assert that said course has "the approval and indorsement of a certain eminent specialist in said science and art of physical culture and especially in the branch thereof relating to the art of increasing the length of the human body, to wit: A certain doctor, Bernard Bernard, to whose name are appended initials indicating that such doctor has received certain high professional degrees, without indicating that such eminent specialist was none other than respondent Bernard, with an interest in the enterprise in question but, by every reasonable implication constituting a representation and assurance to the public, to prospective pupils, and to pupils, that said indorsement is the disinterested and unbiased judgment of an eminent specialist in said science and art".

The use by respondents, as alleged "of said trade practice and method of competition, to wit: The making and publication of said false, deceptive and misleading representations, assertions and promises, as above set forth, has the tendency and capacity to mislead and deceive the public and prospective pupils, and will probably mislead and deceive the public and prospective pupils, into the erroneous belief: 1. That such representations, assertions and promises are true; 2. That pupils of respondents will be enabled in the manner and by the means above alleged, to increase the lengths or heights of their respective bodies to the extents and with the effects and results as so represented, asserted and promised by respondents; 3. That the course of instruction in the science and art of physical culture so being offered for sale and sold by respondents is superior to all other courses being offered for sale and sold by any or all of the competitors of said respondents"; engaged in the sale of courses in physical culture and accessories incident to such courses, "and more to be

desired than any other by any and all prospective pupils, especially by prospective pupils who are short of stature”.

The use by respondent of said trade practice method, as alleged, has the further tendency and capacity to “and probably will, injuriously affect the public, prospective pupils, and the competitors of respondents in the particulars as follows; to wit:

“1. To induce the public to purchase and pay for said course of instruction solely on account of, and for the sake of, the pretended benefits that can not in fact be realized by pupils of respondent.

“2. To induce prospective pupils to select, purchase and pay for respondents’ said course, in preference to, and to the exclusion of, courses of instruction in the science and art of physical culture being offered for sale and sold by said competitors of respondents, solely because of such false, deceptive and misleading representations, assertions and promises, and solely in order to receive the particular benefits so promised, but which pupils of respondents are not enabled to receive or realize.

“3. To divert from competitors of respondents the enrollment of prospective pupils solely by the making and publication of such false, deceptive, and misleading representations, assertions and promises.”

Such acts and practices of the respondents, as charged, are all to the prejudice of the public and of respondents’ competitors, and constitute unfair methods of competition in commerce within the intent and meaning of section 5.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled “An act to create a Federal Trade Commission, to define its power and duties, and for other purposes”, the Federal Trade Commission issued and served a complaint upon the respondents, Bernard Bernard, Clara Louise Glover, doing business under the name of L. Glover, and R. B. Newell, charging them with unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

The respondents, Bernard Bernard and Clara Louise Glover, doing business under the name of L. Glover, entered their appearance and an agreed stipulation as to the facts was entered into and filed in which it is stipulated that the facts therein recited shall be taken as the facts in this proceeding as against said respondents, and in lieu of testimony, and that the Commission may proceed upon said stipulation as to the facts to make its report in said proceeding as

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against said respondents, and its findings as to the facts, and its order disposing of the proceeding without briefs or oral argument.

Thereupon, this proceeding came on for decision, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Bernard Bernard and Clara Louise Glover, doing business under the name of L. Glover, as partners or otherwise, are and for the past three years or more have been, engaged in a joint business enterprise under the trade or business name of L. Glover, having and maintaining their principal place of business at 70 Buckley Avenue, Sausalito, in the State of California; said respondents, Bernard Bernard and Clara Louise Glover, doing business under said trade or business name of L. Glover, are engaged in the business of offering for sale and selling and furnishing courses of instruction by correspondence in the science and art of physical culture, including a so-called height-increasing course, to persons referred to as pupils, such pupils residing at various places in the several States of the United States; and in offering for sale and selling and furnishing to such pupils, as incidental and accessory to such instruction and in aid thereof, certain articles and appliances furnished for that purpose by said respondents. The several courses of instruction so offered for sale and sold by respondents are sold as an entirety, or the so-called height-increasing course may be purchased separately.

Said respondents, when a prospective pupil enters into a contract with them, and enrolls with them as such pupil, in consideration of the agreed cash tuition paid and agreed to be paid by such pupil, undertake to sell and deliver to such pupil through the United States mails, or otherwise, a complete course of written, mimeographed, or printed information and instruction in the particular portion or portions of such course of said instruction chosen by such pupil, or in the whole of said instructions; and at the same time and as a part of the same transaction and contract, and as a part of the consideration for the tuition or selling price of such course of instruction, said respondents undertake to sell to such pupils and deliver to them, through the United States mails or otherwise and in interstate commerce, the articles and appliances so incidental to and in aid of such course of instruction; and in pursuance of said contract with such pupils said respondents furnished and caused to be transported from their place of business, or some other place main-

tained by said respondents for that purpose, into and through the several States of the United States, and to be delivered to such pupils at their respective places of residence, such respective courses of written, mimeographed, or printed information and instruction, and other items of written, mimeographed, or printed matter, and such articles and appliances incidental to such courses of instruction, and to be used in aid thereof.

PAR. 2. In all of their said business and parts thereof, and in the procurement of pupils to enroll as such, and to purchase said courses of instruction and said articles and things above referred to, said respondents are in competition with other persons who are likewise engaged in the same or similar lines of business activity and who are seeking to procure pupils in and throughout the several States of the United States to enroll as such, and to purchase, receive, and pay for courses of instruction by correspondence as above set forth written, mimeographed, or printed matter and other articles and things to be sold, furnished and delivered to such pupils as incidental or accessory to the learning and practice of said science and art of physical culture; the same to be likewise transported by such competitors from their places of business, through the United States mails or otherwise, into and through the several States of the United States, and delivered to such pupils at their several places of residence in and throughout the several States; said respondents being in competition with various persons, corporations, associations, and firms who are engaged in the same or similar lines of business activity and who are also seeking to procure pupils in the several States in courses of instruction by correspondence, as above set forth, and pupils who pay for courses of instruction by correspondence, and written or printed matters and other articles and things to be sold, furnished, and delivered to such pupils as incidental or accessory to the learning and practice of said science and art of physical culture, the same to be likewise transported by such competitors in interstate commerce.

PAR. 3. In all of their said business and for the purpose of inducing prospective pupils to enter into contracts with them to enroll as such pupils with them, and to purchase of them the courses of information and instruction and the articles and things above referred to, and to pay to them the purchase price thereof, said respondents caused advertisements of their said courses of information and instruction and of said articles and things incidental and accessory thereto, and of said other articles and things above referred to, to be inserted and made accessible to the public and to prospective pupils, in newspapers, magazines, periodicals, and other pub-

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lications of general circulation in the United States and in the several parts thereof, and in enrollment and other blanks, catalogues, pamphlets, letters, circulars and other forms of written, mimeographed, or printed matter, and in all such advertisements, and in all said written, mimeographed, or printed matter, said respondents, Bernard Bernard and Clara Louise Glover, doing business under the name of L. Glover, make the promises, statements and representations, hereinafter referred to as follows:

Said respondents represent, assert and promise that the growth of the human body in length does not fully and finally cease at what is usually regarded as the age of physical maturity, or at any age, but may be caused to continue at any time or from time to time without a limit of one's age; when in truth and in fact, the growth of a human body in length almost universally and for almost every person terminates at the age of the physical maturity of such person, which age is in most persons reached at ages ranging from 18 years to 22 years, or approximately within such age limits.

Said respondents also represent, assert, and promise that men by scientific research have discovered that, by complying with certain advice and instructions, by taking certain physical exercises and certain diet, and the use of certain appliances, the growth of the human body may be prolonged in one's youth or renewed in one's later years, and the total length of one's body increased so that one who has arrived at the age of physical maturity and is of short stature, or who is about to cease from growing while still of short stature, may so increase the length of his physical body as to be tall of stature and equal in bodily height to persons who are by nature tall of stature; when in truth and in fact no science and no scientist has made such alleged discovery or any discovery that is identical in substance or practical effect therewith.

Said respondents further represent, assert, and promise that they are offering for sale and selling and furnishing to persons who are willing to purchase and pay for the same a certain course of instruction, information and advice, and certain appliances to be used as incidental and accessory to such course, by means of which their pupils, to wit, persons who purchase said course of instruction, information and advice, and said appliances, and who take the certain physical exercises and the certain diet prescribed in such course, and follow the advice given and directions contained in said course, are enabled easily, safely, and certainly to increase the length of their respective bodies by a number of inches sufficient to enable each pupil to become as tall of stature as are the persons whose bodies are now longer and who are taller than are such pupils.

Said respondents further represent, assert, and promise that their pupils will thus be enabled, easily, safely, and certainly, to overcome any differences in height of their respective bodies there may now be between such pupils and persons who are taller of stature than are such pupils, such differences being to the handicap and humiliation of such pupils; when in truth and in fact, such pupils are not thus enabled to prolong the period of the growth of their bodies, in length, or to renew such growth after such pupils have passed beyond

the respective periods of their bodily growth and such growth has ceased; nor are such pupils thus enabled to add in any substantial degree to the total lengths of their respective bodies or otherwise to make their respective bodies as long and as tall as are the bodies of persons who are now longer and taller than are such pupils; in truth and in fact, the utmost that such pupils are thus enabled to do is to acquire correct postures of the several parts of their respective bodies, and to make and hold such bodies more nearly straight and apparently of greater length.

Said respondents also further represent, assert, and promise that science as embodied in their said course has put it within the power of their pupils thus easily, safely, and certainly, to increase their respective lengths of body to such degree as to free them severally of the handicap, inconvenience, and humiliation resulting from their being shorter of stature than are others whose heights of body they admire, envy or covet; when in truth and in fact, such pupils are not thus enabled to cause their bodies to grow to greater lengths or substantially to eliminate or lessen the shortness of their respective bodies or the differences between their bodies and the bodies of taller persons.

Said respondents also, by photographs and printed words, represent, assert and, in the ways and manners above alleged, promise that they, by the means and methods aforesaid, enable their pupils to grow taller and to control their respective actual and comparative heights or lengths of body. For that purpose in said manners and ways, respondents cause to be printed and published two pictures of the same pupil purporting to have been taken respectively before and after such pupil had taken said course so being offered for sale and sold by said respondents, and purporting to demonstrate that such pupil had been short before, and is tall since the taking of such course. Along with such pictures respondents cause so to be published these words, to wit:

Science has found the way to add inches to your height. No need to envy and look up to the big fellows. No need to have the disadvantages of the little man. This course makes it possible for you to be on a level with your fellow men. Course is easy, inexpensive, and results sure.

Respondents likewise make other representations, assertions, and promises in other words, but of the same import, tenor, and meaning to readers thereof; when in truth and in fact the length of body or height of such pupil was substantially the same at the several times of the taking of said two pictures, and such pupil had not been enabled to change himself, and had not changed himself, from the class of "little men" over into the class of "big fellows", in the sense in

which such words are used in said advertisement; when in truth and in fact the taking of said course of information and instructions, advice and directions, and compliance with such instructions and advice, the taking of the exercises and diet therein prescribed, had not enabled said pupil to grow taller, as asserted in said advertisement, and do not enable other pupils of said respondents to grow taller.

PAR. 4. Said respondents, Bernard Bernard and Clara Louise Glover, doing business under the name of L. Glover, in their advertisements in which they make the false representations, statements, and promises above referred to, the same being made in said trade or business name of L. Glover, refer to such course as that of Glover, a height-increasing specialist, thus and thereby implying and giving assurance that said course is the product of one learned and skilled in matters affecting the growth of the human body, and that said course represents his sound judgment and conscience; when in truth and in fact there is no person corresponding to said name Glover, the name of L. Glover being a mere trade or business name.

Said respondents in the manners above alleged and in such advertisements by pictures and printed matter, by every reasonable implication thereof, represent, assert, and promise that they enable their pupils to increase their several heights or lengths of body by many inches, such advertisements carrying pictures of two men standing, the one immediately in front of the other, and of such relative heights that, if the shorter were to be of the height of 62 inches, the taller would be of the height of 72 inches. In and as a part of such advertisements and in immediate connection with such pictures, are these words:

No need to envy and look up to the big fellows. No need to have the disadvantages of the little man. This course makes it possible for you to be on a level with your fellow men. Course is easy, inexpensive, and results sure.

In truth and in fact the utmost limitations of any benefits such pupils may receive from such course are the possible straightening of a stooping posture, which is purely mechanical and in no sense is it that of growth.

PAR. 5. Said respondents so doing business in said name of L. Glover, in the manners above alleged and in such advertisements represent and assert that their said course has the approval and indorsement of a certain eminent specialist in said science and art of physical culture and especially in the branch thereof relating to the art of increasing the length of the human body, to wit, a certain doctor, Bernard Bernard, to whose name are appended initials indicating that such doctor has received certain high professional degrees. Said advertisements bear no indication that respondent has

an interest in said business enterprise so carried on by said respondents, and by every reasonable implication such statement is a representation and assurance to the public, to prospective pupils, and to pupils, that said indorsement is the disinterested and unbiased judgment of an eminent specialist in said science and art; when in truth and in fact such eminent specialist is none other than respondent Bernard Bernard.

PAR. 6. The use by respondents of said trade practice and method of competition in the making and publication of said false, deceptive, and misleading representations, assertions, and promises, as hereinabove set forth, has the tendency and capacity to mislead and deceive the public and prospective pupils, and will probably mislead and deceive the public and prospective pupils, into the erroneous belief that such representations, assertions, and promises are true; that the pupils of respondents will be enabled in the manner and by the means above alleged to increase the lengths or heights of their respective bodies to the extents and with the effects and results as so represented, asserted, and promised by respondents; that the course of instruction in the science and art of physical culture so being offered for sale and sold by respondents is superior to all other courses being offered for sale and sold by any or all of the competitors of said respondents, and more to be desired than any other by any and all prospective pupils and especially by prospective pupils who are short of stature.

The use by respondents of said trade practice and method of competition above referred to and the making and publication of said false, deceptive, and misleading representations, assertions, and promises as above set forth, has the tendency and capacity to and probably will injuriously affect the public, prospective pupils and the competitors of respondents and induce the public to purchase and pay for such course of instruction solely on account of and for the sake of the pretended benefits that can not in fact be realized by pupils of respondents; and also induce prospective pupils to select, purchase, and pay for respondents' said course, in preference to, and to the exclusion of, courses of instruction in the science and art of physical culture being offered for sale and sold by competitors of respondents, solely because of such false, deceptive, and misleading representations, assertions, and promises, and solely in order to receive the particular benefits so promised, but which pupils of respondents are not able to receive or realize; and to divert from competitors of respondents the enrollment of prospective pupils solely by the making and publication of such false, deceptive, and misleading representations, assertions, and promises.

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7. The Commission also finds the facts to be that all such acts and practices of respondents hereinabove referred to, and as hereinabove fully set out and described, are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce.

CONCLUSION

The said practices of the respondents, Bernard Bernard and Clara Louise Glover, doing business under the trade name of L. Glover, under the conditions and circumstances as fully set forth in the foregoing findings, are unfair methods of competition in interstate commerce and constitute a violation of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the stipulation of facts agreed upon by respondents, Bernard Bernard, Clara Louise Glover, doing business as L. Glover, and counsel for the Commission, and the Commission having made its findings as to the facts, with its conclusion, that the respondents have violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondents, Bernard Bernard, Clara Louise Glover, doing business under the name of L. Glover, in interstate commerce, or either of them, or their, or either of their agents, representatives, servants, or employees and anyone acting under or through them, or by or through either one of them or their authority or direction, cease and desist from stating or representing in advertisements, circulars, catalogues, pamphlets, letters or other forms of mimeographed, written or printed matter, or otherwise, in securing or attempting to secure the enrollment of persons or pupils, who are charged a fee by said respondents, or either of them, for any course of instructions furnished by said respondents, or either of them, in the science and art of physical culture, including a so-called height-increasing course, or any business of like purport or character—

(1) That the growth of the human body in length does not cease at what is usually regarded as the age of physical maturity—somewhere between the ages of 18 and 22 years—or at any age, but may be

caused to continue to grow at any time or from time to time without a limit of one's age; and that men, by scientific research, have discovered that by complying with certain advice and instructions, and by taking certain physical exercises and certain diet and the use of certain appliances, the growth of the human body may be prolonged in one's youth or renewed in one's later years, and that the length of one's body may be increased so that one who has arrived at the age of physical maturity and is short of stature, or who is about to cease from growing while still of short stature, may so increase the length of his physical body to be tall of stature and equal in bodily height to persons who are by nature tall of stature.

(2) That respondents are offering for sale and selling and furnishing to persons a certain course of instruction, information, and advice, and certain appliances to be used as incidental and accessory to such course, by means of which persons who purchase said course of instruction, information, and advice and appliances, and who take the certain physical exercises and the certain diet prescribed in said course and follow the advice given and the directions contained in said course furnished by said respondents, are enabled certainly to increase the lengths of their respective bodies by a number of inches and sufficient to enable such persons to become as tall of stature as are persons whose bodies are longer and who are taller than such persons who are taking such course of instruction; and that said respondents' pupils will thus be enabled easily, safely, and certainly to overcome any differences in heights of their respective bodies there may then be between such pupils and persons who are taller of stature than are such pupils, regardless of whether or not such pupils have reached the age of physical maturity.

(3) That science, as embodied in the course offered by said respondents, has put it within the power of their pupils to easily, safely, and certainly increase their respective lengths of body, after physical maturity, to such degree as to free them severally of the handicap, inconvenience, and humiliation resulting from such pupils being shorter of stature than are others whose heights of body they admire or covet.

(4) That said respondents, by the course of instructions furnished by them, enable their pupils to grow taller and to control their respective, actual and comparative heights or lengths of body.

(5) That said course of instructions furnished by respondents, and which will cause their pupils to grow taller, represents the sound judgment of a height-increasing specialist, and that said course fur-

nished by respondents is the product of one learned and skilled in the matters affecting the growth of the human body, and that said respondents are enabled, by their course of instructions, if followed by pupils, to increase the several heights or lengths of body of their pupils several inches, regardless of whether such pupils have reached maturity before the taking of such course of instructions prescribed by said respondents.

(6) That the said height-increasing course of instructions and exercises prescribed and furnished by said respondents has resulted successfully in causing persons and pupils of said respondents to grow taller after the age of maturity and after their bodies had reached maturity and had ceased growing.

(7) That by following the course of instructions and exercises prescribed and furnished by said respondents, or otherwise, that persons are enabled to grow taller after they have once reached the age of maturity, or that science has found the way to add inches to the height of persons, and that no person who is naturally of small stature needs to envy and look up to the big fellows, nor is there any need to have the disadvantages of the little man, and that the course of instructions furnished by respondents makes it easy for persons who are naturally of small stature to be on a level with their taller fellowmen, and that the course recommended that will produce such results is easy, inexpensive and sure.

It is further ordered, That the respondents, Bernard Bernard, Clara Louise Glover, doing business under the name of L. Glover, shall within 30 days after the service upon them of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinabove set forth.¹

¹ Proceedings against respondent R. B. Newell dismissed by the following order made as of December 8, 1930:

"The above-entitled proceeding coming on for consideration by the Commission and it appearing that an order to cease and desist issued against respondents Bernard Bernard and Clara Louise Glover on June 24, 1930, and it further appearing that said respondents discontinued the practices and obeyed said order and the Commission now being fully advised in the premises,

"*It is ordered*, That the complaint herein be, and the same is hereby, dismissed as to respondent R. B. Newell."

Complaint

IN THE MATTER OF
ESPOSITER VARNI COMPANYCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914*Docket 1781. Complaint, Apr. 7, 1930—Decision, June 24, 1930*

Where a corporation engaged in the importation and sale of semiprecious stones; sold, designated, and invoiced as rose quartz beads, Chinese quartz beads dyed the deep rose color naturally found in those cut from German, Swiss, and other quartz, and, because of the deep rose color naturally contained therein, in large demand for necklaces, without disclosing the dyeing of said inferior, cheaper, and otherwise undesired Chinese beads; with capacity and tendency to mislead and deceive the public into believing that its said so-called rose quartz beads had the natural instead of the artificial color, and into purchasing said beads in such belief, and with the effect of furnishing wholesale and retail jewelers means of misleading and deceiving customers and prospective customers into purchasing the same as and for the natural colored rose quartz beads as known to trade and public:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. James M. Brinson for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation engaged in the importation of semiprecious stones and in the sale and distribution thereof among the various States, and also in the sale of such stones purchased by it from importers or others, and with office and principal place of business in New York City, with misrepresenting its product, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, offers and sells and by invoice or otherwise describes and designates as rose quartz beads, beads cut or carved from quartz in China, and so treated as to acquire and have the deep rose color long and still identified by the public with the genuine rose quartz beads carved from quartz in Germany, Switzerland and elsewhere, without disclosing that the

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color of the said beads has been imparted to them by dyeing. Said beads so dyed are purchased by it at a cost substantially less than that of the genuine rose quartz beads, are inferior thereto in quality, worth less and sell for less, and have no demand or market, in their natural color, among the consuming public.¹

Said offer and sale of such beads under the above circumstances, has had and has the capacity and the tendency to mislead and deceive the public into the belief that respondent's so-called rose quartz beads, "have the natural instead of artificial color, and to induce their purchase in reliance on such erroneous belief", and has furnished and furnishes wholesale and retail dealers in jewelry the means by which they have been and are enabled to mislead and deceive their customers and prospective customers into the purchase of respondent's so-called rose quartz beads, as and for the natural rose color quartz beads known to the trade and public as such, and said acts and practices of respondents are all to the prejudice of the public and constitute unfair methods of competition in commerce, within the intent and meaning of section 5.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Espositer Varni Co., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act. Thereupon respondent filed its answer admitting each and every allegation of the complaint, stating its unwillingness to contest the proceeding, and agreeing that the Commission may accept as the facts in this matter the practices and methods alleged in the complaint and forthwith proceed to file its report stating its findings as to the facts and conclusion therefrom, without any testimony or evidence other than such admissions, and that it may thereupon make, enter, and serve upon respondent an appropriate order to cease and desist from the practices and methods charged in the complaint.

¹ Allegations of the complaint relating to genuine rose quartz beads are set forth therein as follows:

"There are and for many years last past have been offered for sale and sold in commerce among and between the various States of the United States, beads cut or carved from quartz in Germany, Switzerland, and elsewhere, which, on account of their natural deep rose color, have been described, designated and known, and now are described, designated and known as rose quartz beads. There has been and is a large demand for such beads for necklaces for women because of such deep rose color, and the designation rose quartz beads has come to signify and mean, and signifies and means to the trade and the public, beads cut or carved from quartz having the natural, deep rose color."

Thereupon this proceeding came on for final hearing before the Commission upon its complaint and the answer of the respondent, and the Commission having duly considered the record and being now fully advised in the premises files this its report in writing, stating as its findings of the facts as stated in the complaint and its conclusion drawn therefrom :

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Espositer Varni Co. is now and for several years last past has been a corporation organized and existing under and by virtue of the laws of the State of New York with office and principal place of business in the city of New York in the State aforesaid. It has been and is engaged in the importation of semiprecious stones and their sale and distribution in commerce among or between the various States of the United States. It also sells and causes to be transported, when sold, from its place of business in the State of New York to purchasers in the various other States of the United States, semiprecious stones which it has purchased in the United States from importers or others. It sells its products to wholesale dealers in such jewelry. In the course and conduct of such business respondent has been and is in competition with individuals, partnerships, and corporations similarly engaged in like commerce.

PAR. 2. There are and for many years last past have been offered for sale and sold in commerce among and between the various States of the United States, beads cut or carved from quartz in Germany, Switzerland, and elsewhere, which, on account of their natural deep-rose color, have been described, designated and known, and now are described, designated and known as rose quartz beads. There has been and is a large demand for such beads for necklaces for women because of such deep rose color, and the designation rose quartz beads has come to signify and mean, and signifies and means to the trade and the public, beads cut or carved from quartz having the natural, deep rose color.

PAR. 3. There have been and are cut or carved from quartz in China, beads which, on account of inferior quality of the stone, lack the deep rose color which long has been, and now is, associated with the designation rose quartz beads by the purchasing public. A process has been contrived by means of which such beads may be so dyed as to acquire and have the deep rose color by which the public has long identified, and now identifies, rose quartz beads. Such beads so dyed to resemble or simulate rose quartz beads with genuine, natural color of deep rose, have been imported for several years last past into the United States, and in the course and conduct of its

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business respondent, without advising or disclosing that the color of such beads has been imparted by dyeing, has offered for sale and sold them as and for rose quartz beads, and by invoice or otherwise has so described and designated them to purchasers in various States of the United States. Such quartz beads so dyed have been and are purchased by respondent at a cost substantially less than the original cost of rose quartz beads of the genuine, natural color of deep rose. They are inferior in quality, worth less, and sell for less than rose quartz beads known as such by the public. There is no demand or market for them among the consuming public in their natural color.

PAR. 4. The offering for sale or selling by respondent as or for rose quartz beads, of beads cut or carved from quartz in China and dyed or colored to resemble or simulate the natural, deep rose color associated by the purchasing public with the name or designation rose quartz beads, without disclosing the essential and material fact that such beads have been dyed to resemble or simulate the deep rose color so associated by the public with the designation or name rose quartz beads, has had and has the capacity and tendency to mislead and deceive the public into the belief that such so-called rose quartz beads so offered for sale or sold by the respondent have the natural instead of artificial color, and to induce their purchase in reliance on such erroneous belief. The practice of respondent has furnished and furnishes wholesale and retail dealers in jewelry the means by which they have been and are enabled to mislead and deceive their customers and prospective customers into the purchase of such so-called rose quartz beads in the belief that they have been and are the natural colored rose quartz beads known to the trade and the public as such.

CONCLUSION

The practices of respondent as described in the above and foregoing findings as to the facts have been and are, under the conditions and circumstances described therein, unfair methods of competition in interstate commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and the answer of the respondent wherein it agrees that the Commission may accept as the facts in this matter the practices and methods alleged in the

complaint and may forthwith proceed to file its report stating its findings as to the facts and its conclusion drawn therefrom without any testimony or evidence other than admissions of respondent in its answer, and may thereupon make, enter, and serve upon respondent its appropriate order to cease and desist from the practices and methods charged in the complaint, and the Commission having filed its report stating its findings as to the facts and its conclusion therefrom that the respondent Espositer Varni Co. has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That respondent Espositer Varni Co., its officers, agents, servants, and employees, cease and desist directly or indirectly from describing, designating, offering for sale, or selling any products in interstate commerce as rose quartz beads, unless cut, carved, or manufactured from rose quartz.

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

IN THE MATTER OF
THE NORTHWEST TILE & MANTEL CONTRACTORS'
ASSOCIATION ET AL.

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

Docket 1764. Complaint, Apr. 21, 1930¹—Decision, June 26, 1930.

Where an organization, the members of which were engaged in the purchasing, placing, and laying of tiles in various States; and said members, in pursuance of an agreement and undertaking to cooperate to (1) prevent manufacturers from shipping and selling tile to nonmember contractors in the business and States concerned, or (2) prevent such manufacturers from making shipments to such contractors except at prices substantially higher than those at which the product was sold to members or (3) prevent nonmember contractors from securing contracts, or from laying and placing tiles in the securing or fulfillment thereof, through cooperation with union tile setters or union representatives,

- (a) Coerced and attempted to coerce manufacturers into refusing (1) to supply other contractors with tile or (2) so to supply them except at prices substantially higher than those charged the members, and prevented nonmember contractors from securing contracts or procuring necessary labor incident to the securing and carrying out of contracts, through cooperation with union tile setters or union representative, with the common purpose of restricting the purchase, laying, and placing of tiles throughout the Northwest Pacific States concerned to their own members;
- (b) Notified manufacturers or their representatives that if such manufacturers sold and supplied tile to nonmember contractors, they, the members, would cease purchasing therefrom; and
- (c) Refused to admit to membership in the organization other contractors desiring to join in order to obtain tile at substantially the same prices paid by the members, with intent of restricting the purchase, laying, and placing of tile to present members;

With the result that competition in the purchase, laying, and placing of tiles in the States concerned was substantially lessened, manufacturers were prevented from selling their tile to nonmember contractors or prevented from so selling same except at prices substantially higher than those at which sold to members, cost of placing and laying tile was enhanced over that which would prevail under normal, natural, and open competition, and the natural flow of commerce in said commodities and the channels of interstate trade was hindered; all to the prejudice of the public and competitors:

Held, That such practices, under the circumstances set forth, constitute unfair methods of competition.

Mr. Ellis De Bruler for the Commission.

Mr. H. A. P. Myers, of Seattle, Wash., and *Mr. John R. Latourne*, of Portland, Oreg., for respondents.

¹ Amended.

SYNOPSIS OF COMPLAINT²

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondents, the Northwest Tile & Mantel Contractors' Association, its officers and members, engaged in the business of purchasing, placing and laying tile in various States, and with offices and places of business variously in Portland, Seattle, Spokane, and Tacoma,³ with combining or conspiring to cut off or restrict competitors' sources of supply, labor and business, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged as above set out, "for more than two years last past have agreed and undertaken to cooperate with each other to prevent manufacturers of tile from selling and shipping or causing to be shipped tile to tile and mantel contractors engaged in the business of purchasing, laying, and placing tile in the States of Washington and Oregon who are not members of The Northwest Tile & Mantel Contractors' Association; or to prevent manufacturers of tile from selling and shipping or causing to be shipped tile to tile and mantel contractors engaged in the business of purchasing, laying and placing tile in the States of Washington and Oregon, except at prices substantially higher than the prices at which said tile is sold to the members of respondent association, or to prevent nonassociation tile contractors from securing contracts, or to prevent them from laying and placing tile by interfering with the procuring of the necessary labor incident to the laying and placing of tile in the securing or in the fulfillment of contracts by cooperation with labor union tile setters or representatives of such unions".

Respondents further, as charged, engaged, as above set forth, in order to carry out and make effective the aforesaid undertaking and agreement have cooperated together and with others in that regard in the following acts and practices:

(a) Members of respondent association, acting together and with common purpose of restricting purchase, laying, and placing of tile throughout the Northwest Pacific States to member contractors, and preventing purchase, etc., by nonmember contractors, undertake to and do (1) coerce manufacturers into refusing to supply said last-named contractors with tile, or into refusing so to supply them except at prices substantially higher than those extended by such

²As amended.

³The various respondents joined and their places of business are set forth in the findings, *infra*, at pages 117-119.

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manufacturers to respondents, or (2) prevent nonmember contractors from securing contracts or from laying and placing tile by interfering with the procuring of necessary labor incident thereto, in the securing or in the fulfillment of contracts, through cooperation with labor union tile setters or their representatives;

(b) Respondents notify tile manufacturers or their representatives that if they sell and supply nonmember contractors, respondents will cease purchasing tile from them;

(c) Respondents, with purpose and intent of restricting purchase, etc., of tile to present members, refuse to admit to their association, other contractors desirous of joining in order to obtain tile or to obtain same at substantially same prices at which obtained by respondents.

The result and effect of the foregoing practices, as alleged, "has been and now is substantially to lessen and restrict competition in the purchase, laying, and placing of tile in the Northwest Pacific States; to prevent manufacturers of tile from selling the same to tile contractors not members of respondent association or to prevent said tile manufacturers from selling tile to nonassociation tile contractors except at prices substantially higher than the prices at which said tile is sold to members of respondent association; to enhance the cost of placing and laying tile above the prices which would prevail therefor under normal, natural and open competition, and to hinder the natural flow of commerce in said commodity in the channels of interstate trade," and "the above acts and things done by respondents, as charged, are all to the injury and prejudice of the public and respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties and for other purposes", the Federal Trade Commission issued and served a complaint upon all of the parties named as respondents in the caption hereof, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act, together with a notice that within 30 days after the service of the complaint an answer to the same should be filed with the Commission, and with a copy of Rule III of the Rules of Practice adopted by the Commission with respect to answers and failure to answer.

Thereafter, all of the respondents mentioned in the caption hereof, excepting F. T. Crowe & Co., filed an answer denying all the material allegations of the complaint contained in paragraphs 3, 4, and 5, and F. T. Crowe & Co. answered by stating that it had no interest as to whether or not orders to cease and desist were entered in the above-entitled matter.

Thereafter, an amended complaint was issued and served upon all of the respondents, and all respondents, excepting F. T. Crowe & Co., filed an answer to the amended complaint stating that they refrain from contesting the proceeding, and F. T. Crowe & Co. filed no answer or appearance whatsoever to the amended complaint. No other answer or return has been filed by said respondents, or any of them, to the amended complaint and the time for appearance, answer, and return has not fully expired.

The record shows that all of the respondents refrain from contesting the allegations contained in the amended complaint and waive a hearing on the charges therein set forth.

Thereupon, this proceeding came on for decision and the Commission having duly considered the entire record, and being fully advised in the premises, makes this its findings of the facts as stated in the complaint and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Northwest Tile & Mantel Contractors' Association, is a voluntary unincorporated organization with a membership composed of persons, partnerships and corporations engaged in the business of purchasing, placing, and laying tile in various States of the United States, and in shipping and transporting and/or causing to be shipped or transported said tile and other materials or supplies incident to the placing or laying of said tile from the places of manufacture of the same in various States of the United States, other than the State or States in which said members have their respective places of business, into the State or States in which said members have their respective places of business, and in the course and conduct of their business as aforesaid each and every member of the said association purchases tile and other materials and supplies incident to the placing or laying thereof and transports or causes to be transported the said tile and other materials from the places of manufacture of the same in States other than those in which said members have their respective places of business to States in which said members have their respective places of business, all in competition with other persons, partnerships, and corporations likewise engaged.

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Respondents, E. H. Roedel, A. P. Robinson, George Heard, and Max M. Stockert are, respectively, the president, vice president, treasurer and secretary of respondent, The Northwest Tile & Mantel Contractors' Association.

Respondents, Field Art Tile Co., a corporation under the laws of the State of Oregon, Northwest Tile & Mantel Co., a copartnership, Roedel Tile Co., a corporation under the laws of the State of Oregon, and The Fred W. Wagner Tile Co., a corporation under the laws of the State of Washington, are members of aforesaid respondent, The Northwest Tile & Mantel Contractors' Association, and are tile and mantel contractors engaged in the business of purchasing, laying, and placing tile, having offices and places of business respectively at 330 East Broadway, 114 Halsey Street, 209 South Broadway, 391 Oak Street, and 307 Fitzpatrick Building in the city of Portland, State of Oregon, and, in the course and conduct of their business as aforesaid, each and every one of said respondents purchase tile for use in placing and laying the same in the State of Oregon and in various other States of the United States and transports or causes said tile to be transported from the places of manufacture of the same in various States of the United States other than the State of Oregon into the State of Oregon, and transports or causes to be transported certain of said tile and other materials and supplies incident to the laying and placing of the same from the State of Oregon into and through various States of the United States other than the State of Oregon, all in competition with other persons, partnerships, and corporations likewise engaged.

Respondents, Robinson Tile & Mantel Co., a corporation under the laws of the State of Washington; Rogers Tile Co., a corporation under the laws of the State of Washington; Shippen Tile Co., a corporation under the laws of the State of Washington, and University Brick & Tile Co., a corporation under the laws of the State of Washington, are members of aforesaid respondent, The Northwest Tile & Mantel Contractors' Association, and are tile and mantel contractors engaged in the business of purchasing, laying, or placing tile, having offices and places of business respectively at 600 Eighth Avenue North, 117 Yale Avenue North, 620 Eastlake Avenue, and 1215 East Fortieth Street, in the city of Seattle, State of Washington, and respondents, H. G. Lanahan, trading under the name and style of H. G. Lanahan & Co., and F. T. Crowe & Co., a corporation under the laws of the State of Washington, members of aforesaid association, The Northwest Tile & Mantel Contractors' Association, are tile and mantel contractors engaged in the business of purchasing, laying, and placing tile, having offices and places

of business respectively at 324 North Division Street, in the city of Spokane, State of Washington, and at 1117 Dock Street, in the city of Tacoma, State of Washington, and in the course and conduct of their business as aforesaid each and every one of said respondents purchases tile for use in placing and laying the same in the State of Washington and in various other States and transports or causes said tile to be transported from the places of manufacture of the same in various States of the United States other than the State of Washington into the State of Washington, and transports or causes to be transported certain of said tile and other materials and supplies incident to the laying and placing of the same from the State of Washington into and through various States of the United States other than the State of Washington, all in competition with other persons, partnerships, and corporations likewise engaged.

PAR. 2. For more than two years last past respondents have agreed and undertaken to cooperate with each other to prevent manufacturers of tile from selling and shipping or causing to be shipped tile to tile and mantel contractors engaged in the business of purchasing, laying, and placing tile in the States of Washington and Oregon who are not members of The Northwest Tile & Mantel Contractors' Association, or to prevent manufacturers of tile from selling and shipping or causing to be shipped tile to tile and mantel contractors engaged in the business of purchasing, laying, and placing tile in the States of Washington and Oregon, except at prices substantially higher than the prices at which said tile is sold to the members of respondent association, or to prevent nonassociation tile contractors from securing contracts, or to prevent them from laying and placing tile by interfering with the procuring of the necessary labor incident to the laying and placing of tile in the securing or in the fulfillment of contracts by cooperation with labor union tile setters or representatives of such unions.

PAR. 3. For more than two years last past, respondents, in order to carry out and make effective the aforesaid undertaking and agreement, have cooperated together and with others in that regard in the following acts and practices:

(a) The members of respondent association, acting in unison, with a common purpose of restricting the purchase, laying, and placing of tile throughout the Northwest Pacific States to those tile and mantel contractors who are members of the Northwest Tile & Mantel Contractors' Association and of preventing the purchase, placing, and laying of tile by any tile and mantel contractors not members of respondent association attempt to and do coerce tile manufacturers into refusing to supply said other tile and mantel contractors with

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tile, or attempt to and do coerce tile manufacturers into refusing to supply said other tile and mantel contractors with tile except at prices substantially higher than the prices at which said tile manufacturers sell their products to respondents, or prevent nonassociation tile contractors from securing contracts, or prevent them from laying or placing tile by interfering with the procuring of the necessary labor incident to the laying and placing of tile in the securing or in the fulfillment of contracts by cooperation with labor union tile setters or representatives of such unions.

(b) Respondents notify tile manufacturers or their representatives that if said manufacturers sell and supply tile and mantel contractors not members of respondent association with tile that respondents will cease purchasing tile from such tile manufacturers.

(c) Respondents, with the purpose and intent of restricting the purchase, laying, or placing of tile to present members of their association, refuse to admit to membership in said association other tile and mantel contractors who are desirous of joining said association in order that they may obtain tile or that they may obtain tile at substantially the same prices at which respondents obtain it.

The result and effect of the foregoing practices has been and now is substantially to lessen and restrict competition in the purchase, laying and placing of tile in the Northwest Pacific States; to prevent manufacturers of tile from selling the same to tile contractors not members of respondent association or to prevent said tile manufacturers from selling tile to nonassociation tile contractors except at prices substantially higher than the prices at which said tile is sold to members of respondent association; to enhance the cost of placing and laying tile above the prices which would prevail therefor under normal, natural, and open competition, and to hinder the natural flow of commerce in said commodity in the channels of interstate trade.

PAR. 4. The Commission also further finds the facts to be that all such acts and practices of respondents hereinabove referred to, and as hereinabove fully set out and described, are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce.

CONCLUSION

By reason of aforesaid acts and practices of respondents, as hereinabove fully set out, it is concluded by the Commission that the acts and practices of respondents are clearly unfair methods of competition in interstate commerce, and that such acts, practices, and things, hereinabove fully set out are to the prejudice and injury of the

public, and that such acts constitute unfair methods of competition in interstate commerce in violation of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission and upon the answer of the respondents, refraining from contesting the allegations contained in the amended complaint and waiving a hearing upon the charges set forth therein, as fully appears from the record herein, and the Commission having made its findings as to the facts with the conclusion that the respondents, as named in the caption hereof, have violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondents named in the caption hereof, their agents, servants and employees, and all persons acting through them or any of them, or under their control or direction, or any of them, cease and desist:

(1) From agreeing, undertaking, and cooperating with each other to prevent manufacturers of tile from selling and shipping or causing to be shipped tile to tile and mantel contractors engaged in the business of purchasing, laying, and placing tile in the States of Oregon and Washington who are not members of The Northwest Tile & Mantel Contractors' Association; or to prevent manufacturers of tile from selling and shipping or causing to be shipped tile to tile and mantel contractors engaged in the business of purchasing, laying, and placing tile in the States of Washington and Oregon, except at prices substantially higher than the prices at which said tile is sold to the members of the respondent association, or to prevent nonassociation tile contractors from securing contracts, or to prevent them from laying and placing tile by interfering with the procuring of the necessary labor incident to the laying and placing of tile in the securing or in the fulfillment of contracts by cooperation with labor union tile setters or representatives of such unions.

(2) From agreeing, undertaking, and cooperating with each other in preventing the purchase, placing, and laying of tile in the Northwest Pacific States by nonassociation members, or those tile contractors who are not members of The Northwest Tile & Mantel Contractors' Association.

(3) From agreeing, undertaking, and cooperating with each other to coerce tile manufacturers into refusing to supply nonassociation

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members, or those not members of The Northwest Tile & Mantel Contractors' Association, with tile except at prices substantially higher than the prices at which said tile manufacturers sell their products to said respondents who are members of The Northwest Tile & Mantel Contractors' Association.

(4) From agreeing, undertaking, and cooperating with each other to prevent nonassociation tile contractors, or those contractors who are not members of The Northwest Tile & Mantel Contractors' Association, from securing contracts.

(5) From agreeing, undertaking, and cooperating with each other to prevent nonassociation tile contractors, or those who do not belong to The Northwest Tile & Mantel Contractors' Association, from laying and placing tile by interfering with the procuring of the necessary labor incident to the laying and placing of tile in the securing or in the fulfillment of contracts by cooperation with labor union tile setters or representatives of such unions.

(6) From agreeing, undertaking, and cooperating with each other to and notifying tile manufacturers or their representatives that if said manufacturers sell and supply tile and mantel contractors not members of the Northwest Tile & Mantel Contractors' Association with tile, that the respondents will cease purchasing tile from such tile manufacturers.

(7) From agreeing, undertaking, and cooperating with each other, with the purpose and intent of restricting the purchase, laying, or placing of tile to present members of The Northwest Tile & Mantel Contractors' Association, in refusing further membership in said association.

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

Complaint

IN THE MATTER OF

J. A. STRANSKY AND L. G. STRANSKY, COPARTNERS
TRADING UNDER THE FIRM NAME AND STYLE OF J.
A. STRANSKY MANUFACTURING COMPANY

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

Docket 1612. Complaint, Apr. 25, 1929—Decision, June 30, 1930

Where a firm engaged in the manufacture and sale of a so-called "vaporizer and decarbonizer" for automobiles,

(a) Made such statements in advertisements directed to securing salesmen or agents to purchase and sell said device, as, "New patented fuel vaporizer guaranteed to save up to 50 per cent in gasoline; 40 miles per gallon made with Ford car", "Ford runs 57 miles on gallon of gasoline", "enables Ford cars to make as high as 61 miles to the gallon", "Why not buy gasoline for 10 cents per gallon, new invention, cuts fuel bill 25 to 50 per cent"; and others of similar tenor, published along with alleged unsolicited testimonials, the facts being that said representations were exaggerated and much in excess of possible accomplishment through said device; and

(b) Falsely represented said device would remove carbon, prevent spark trouble, overheating, and make engine start more easily;

With capacity and tendency to mislead and deceive purchasers and prospective purchasers:

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

Mr. PGad B. Morehouse for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondents, partners engaged in the manufacture and sale of a device, designated as a "vaporizer and decarbonizer" for automobiles, and with principal place of business at Pukwana, S. Dak., with advertising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, in advertising their aforesaid device in newspapers, magazines, periodicals, and other publications of general circulation and in order blanks, catalogues, pamphlets, letters, etc.,

state or represent that the device in question will bring about extraordinary gasoline mileage, claiming from 40 to 57 miles to the gallon for Fords, with other cars showing equally remarkable gains,¹ that it will remove carbon from parts injuriously affected thereby will prevent spark plug trouble and overheating, and will make the engine easier to start, the facts being that the possible effects from the use of the device, as regards mileage, "are very slight under any conceivable conditions, as compared with the effects" above asserted, the beneficial results in many instances being caused only by readjustment of the original appliances upon the automobile, made simultaneously with the attachment of the device, that upon cars requiring no readjustments, the attachment of the device was followed by no appreciable beneficial results in increase of power or saving of gasoline, and that other claims above set forth as to carbon, etc., are unfounded and deceptive.

The use by respondents of said trade practice and method of competition, to wit: The making and publication of said false, deceptive, and misleading statements, representations, and promises, as above set forth, as alleged, has the tendency and capacity to and probably will mislead and deceive the public and prospective purchasers into the erroneous belief that the same were true, and that purchasers and users of the device will realize therefrom the benefits claimed and thereby to induce the purchase thereof and divert from competitors' purchasers who might otherwise have bought competitive devices from them; all to the prejudice of the public and respondents' competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served a complaint upon the

¹ Among other numerous claims made by respondents, as quoted in the complaint, the following are set forth below:

1. "Five hundred dollars per month selling a new patented Fuel Vaporizer guaranteed to save up to 50 per cent in gasoline; 40 miles per gallon made with Ford car."
2. "Ford runs 57 miles on gallon of gasoline."
3. "Ford makes 40 to 57 miles to gallon; other cars show equally remarkable gains; increases power 25 per cent to 50 per cent."
4. "Fifty-seven miles per gallon made with new patented gasoline vaporizer."
5. "Why not buy gasoline at 10 cents per gallon? New invention. Cuts fuel bills 25 per cent to 50 per cent."
6. "An automobile goes 27 miles on air by using an automatic device which was installed in less than five minutes. The automobile was only making 30 miles on a gallon of gasoline, but after this remarkable invention was installed it made better than 57."

respondents, J. A. Stransky and L. G. Stransky, trading as J. A. Stransky Manufacturing Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondents, after having filed their answer and after the case was set down for the taking of testimony in due course before an examiner of the Commission, stipulated and agreed as to the facts involved, and further stipulated and agreed that the Commission might thereupon proceed to make its report, state its findings as to the facts (including all reasonable inferences which it might draw from the said stipulated facts), make its conclusion based thereon, and enter its order disposing of the proceeding without presentation of argument or filing of briefs.

Thereupon this proceeding came on for final hearing on the complaint, answer and agreed statement of facts, and the Commission having duly considered the record and being fully advised in the premises, makes this its report stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. J. A. Stransky and L. G. Stransky are copartners, trading under the firm name and style of J. A. Stransky Manufacturing Co., with their principal place of business located in the city of Pukwana, in the State of South Dakota. They are now, and for more than one year last past have been, engaged in the manufacture of a device designated by them as a "vaporizer and decarbonizer" for automobiles, and in the sale and distribution thereof in commerce between and among the various States of the United States. They cause said product, when sold, to be shipped from their place of business located in the State of South Dakota to purchasers thereof located in other States of the United States. In the course and conduct of their business the said copartners were, at all times herein referred to, in competition with other partnerships, firms, corporations, and individuals likewise engaged in the sale and distribution in interstate commerce of similar devices or products.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, J. A. Stransky and L. G. Stransky, copartners, caused the product of their manufacture to be shipped in interstate commerce through the United States mails, by parcel post, and otherwise, from their place of business located in the State of South Dakota to purchasers thereof located in other States of the United States. In soliciting the sale of and selling their product in interstate com-

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merce, and as a means of securing the services of salesmen or agents to purchase and sell their product, the said copartners caused advertisements to be inserted in newspapers, magazines and other publications having circulation between and among various States of the United States, the said advertising matter containing such phrases and statements as “\$500 per month selling a new patented fuel vaporizer guaranteed to save up to 50 per cent in gasoline; 40 miles per gallon made with Ford car”; “Ford runs 57 miles on gallon of gasoline”; “Ford makes 40 to 57 miles to gallon; other cars show equally remarkable gains; increases power 25 per cent to 50 per cent”; “57 miles per gallon made with new patented gasoline vaporizer”; “Why not buy gasoline for 10 cents per gallon. New invention. Cuts fuel bills 25 per cent to 50 per cent”; “an automobile goes 27 miles on air by using an automatic device which was installed in less than 5 minutes. The automobile was only making 30 miles on a gallon of gasoline, but after this remarkable invention was installed it made better than 57.”

In soliciting the sale of and selling their product in interstate commerce, and as a further means of obtaining the services of salesmen or agents located in various States of the United States, the aforesaid partners also caused circular letters, leaflets, post cards, and other advertising matter to be distributed in interstate commerce, wherein appeared such statements as: “Ford runs 57 miles on gallon of gasoline * * * 40 to 57 miles on 1 gallon of gasoline”; “You are losing half the power of your gasoline”; “Makes more miles per gallon than any other device on the market, regardless of price”; “How it saved up to 50 per cent, etc.”; together with alleged unsolicited testimonials printed under the headings: “You will notice in testimonials mileage varies from 20 to 57 miles per gallon”; “this will tell you how you can save 50 per cent on your gasoline”; “will tell you how this wonderful invention is saving car owners from 25 to 50 per cent of their gasoline bills”; “this wonderful little device cuts the cost of gasoline in half * * * It made it possible for an auto to go 60 miles on a gallon of gasoline”; “here is a guaranteed, proven device that saves him 25 per cent to 50 per cent of the one thing what he must have, the thing that he uses every time he drives—gasoline”; “an amazing new invention makes practically any car give twice its regular mileage. One car did 56 miles on a gallon”; “enables Ford cars to make as high as 61 miles to the gallon of gasoline”; when in truth and in fact, the aforesaid representations were exaggerated and much in excess of what was possible of accomplishment as the result of the use of said device, and were not founded in truth and in fact. The aforesaid

copartners also made use in the advertising matter distributed by them in interstate commerce of statements to the effect that the alleged vaporizer and decarbonizer "would remove carbon, prevent spark trouble, prevent overheating and make engines start easier"; when in truth and in fact, the said vaporizer and decarbonizer did not destroy or put an end to carbon deposits, or prevent spark plug trouble or overheating, or cause the engine to start easier.

PAR. 3. The foregoing statements, representations, and practices of respondents and each of them have had and do have the capacity and tendency to mislead and deceive purchasers and prospective purchasers of the aforesaid vaporizer and decarbonizer offered for sale and sold by the respondents throughout the various States of the United States.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents and agreed statement of facts, filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondents, J. A. Stransky and L. G. Stransky, trading as J. A. Stransky Manufacturing Co., their agents and employees, in soliciting the sale of and selling, and advertising their product in interstate commerce, and as a means of securing the services of salesmen or agents to purchase and sell their product known as the Stransky vaporizer or the Stransky decarbonizer, do cease and desist from making the following statements or representations:

1. "Five hundred dollars per month selling a new patented fuel vaporizer guaranteed to save up to 50 per cent in gasoline; 40 miles per gallon made with Ford car."

2. "Ford runs 57 miles on gallon of gasoline."
3. "Ford makes 40 to 57 miles to gallon; other cars show equally remarkable gains; increases power 25 per cent to 50 per cent."
4. "Fifty-seven miles per gallon made with new patented gasoline vaporizer."
5. "Why not buy gasoline for 10 cents per gallon. New invention. Cuts fuel bills 25 per cent to 50 per cent."
6. "An automobile goes 27 miles on air by using an automatic device which was installed in less than five minutes. The automobile was only making 30 miles on a gallon of gasoline, but after this remarkable invention was installed, it made better than 57."
7. "Ford runs 57 miles on gallon of gasoline * * * 40 to 57 miles on 1 gallon of gasoline."
8. "You are losing half the power of your gasoline."
9. "Makes more miles per gallon than any other device on the market, regardless of price."
10. "How it saved the 50 per cent, etc."
11. "This will tell you how you can save 50 per cent on your gasoline."
12. "Will tell you how this wonderful invention is saving car owners from 25 to 50 per cent on their gasoline bills."
13. "This wonderful little device cuts the cost of gasoline in half * * * It made it possible for an auto to go 60 miles on a gallon of gasoline."
14. "Here is a guaranteed, proven device that saves him 25 per cent to 50 per cent of the one thing that he must have, the thing that he uses every time he drives—gasoline."
15. "An amazing new invention makes practically any car give twice its regular mileage. One car did 56 miles on a gallon."
16. "Enables Ford cars to make as high as 61 miles to the gallon of gasoline."
17. "That the alleged vaporizer and decarbonizer would remove carbon, prevent spark trouble, prevent overheating, and make engines start easier."

It is further ordered, That respondents aforesaid, in soliciting the sale of, selling, and advertising their said product in interstate commerce, do cease and desist from the use of all other like or similar statements and representations of untrue import or effect.

It is further ordered, That the said respondents, within 60 days from and after the date of the service upon them of this order, shall file with the Commission a report or reports in writing, setting forth in detail the manner and form in which they are complying and have complied with the order to cease and desist hereinabove set forth.

Complaint

IN THE MATTER OF
BOAL'S ROLLS CORPORATIONCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1712. Complaint, Oct. 23, 1929—Decision, June 30, 1930*

Where a corporation engaged in the manufacture and sale of medicinal products, including a laxative, qualities of which were due to the presence therein of phenolphthalein, cascara and senna and not to any fruit ingredient and which was not a preventative for influenza and constipation; made such statements in the advertisements thereof as "to prevent constipation and the flu", and described and labeled the same as a "Delicious fruit laxative composed of figs and other fruit" or "A luscious laxative, real fruit medicated for constipation", together with an illustration of a bowl of various kinds of fruits; with the capacity and tendency to mislead and deceive the purchasing public into believing said product to be a natural fruit laxative and a preventative for constipation and influenza:

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

Mr. Robert H. Winn for the Commission.

Mr. Edward S. Rogers, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation engaged in the manufacture, advertisement, and sale of medicinal products in interstate commerce, and with principal place of business in Chicago, with advertising falsely or misleadingly as to qualities and composition of product, and misbranding or mislabeling in regard thereto, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, in advertising its product in newspapers and other publications made such statements as "Why experiment? Tonight take a Boal's Roll. To prevent constipation and the flu", and in a circular sent out with samples of said product described the same as a "Delicious fruit laxative composed of figs and other fruit" and labeled the containers thereof with depictions of a bowl of various fruits other than figs and raisins, together with the statement "Boal's Rolls. A

luscious laxative real fruit medicated for constipation", the facts being that the laxative properties of the product in question were not due to "a fruit ingredient but to the presence therein of phenolphthalein, cascara, and senna" and that "said product" was not "a preventive for constipation and influenza."

The use of such phrase and illustrations, in connection with or as designating and describing the product concerned, has the capacity and tendency, as alleged, "to mislead and deceive the purchasing public into the belief that its said product so represented, designated, and described is a natural fruit laxative, a preventive for constipation and influenza", and said acts and things as charged, "are to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5".

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Boal's Rolls Corporation, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondent, having entered its appearance and filed its answer to the complaint herein, hearings were had and evidence was introduced upon behalf of the Commission and respondent before a trial examiner of the Commission duly appointed thereto, and said trial examiner having filed his findings of facts herein and counsel for the Commission having filed his exceptions thereto.

Thereupon this proceeding came on for consideration on the record herein, and brief of counsel for the Commission having been filed, and the filing of briefs and oral arguments having been waived by counsel for the respondent, and the Commission having duly considered the matter and being fully advised in the premises makes this its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Boal's Rolls Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located in the city of Chicago in the State of Illinois. It is now and for more than one year last past has been engaged in the business of manufacturing, advertising, and selling

in interstate commerce medicinal products under the trade name of Boal's Rolls. It causes said product when sold to be shipped or transported from its principal place of business located in the State of Illinois to retail dealers or ultimate consumers located in a State or States of the United States other than the State of Illinois. In the course and conduct of its business Boal's Rolls Corporation was at all times herein referred to in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products.

PAR. 2. The respondent in the course and conduct of its business as set out in paragraph 1 hereof in soliciting the sale of and selling its products in interstate commerce causes advertisements to be inserted in newspapers having a circulation between and among various States of the United States, which said advertisements contained among other things the following language:

WHY EXPERIMENT? TONIGHT TAKE A BOAL'S ROLL
TO PREVENT CONSTIPATION AND THE FLU

The circular sent out with samples of the product described it as a—

DELICIOUS FRUIT LAXATIVE COMPOSED OF FIGS
AND OTHER FRUIT

The containers of the product shipped by said Boal's Rolls Corporation had labels affixed thereto upon which appeared an illustration of a bowl of various kinds of fruit, depicting fruits other than figs and raisins with the following among other printed matter:

BOAL'S ROLLS. A LUSCIOUS LAXATIVE, REAL FRUIT
MEDICATED FOR CONSTIPATION

In truth and in fact the laxative properties of the respondent's product are not due to a fruit ingredient, but to the presence therein of phenolphthalein, cascara, and senna, nor is the said product a preventative for constipation and influenza.

PAR. 3. The use by the respondent of such phrases and illustrations as above set out in connection with or as designating and describing its product has the capacity and tendency to mislead and deceive the purchasing public into the belief that its said product so represented, designated, and described is a natural fruit laxative, and also a preventative for constipation and influenza.

CONCLUSION

The practices of the said respondent under the conditions and circumstances described in the foregoing findings are to the prejudice

of the public and respondent's competitors, and are unfair methods of competition in commerce, and constitute a violation of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been considered by the Federal Trade Commission on the complaint of the Commission, the answer of respondent thereto, the testimony, evidence, and brief of counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that respondent has been using unfair methods of competition in commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to Create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondent, Boal's Rolls Corporation, its officers, agents, representatives, and employees in connection with the advertising, offering for sale and sale in commerce among the several States of the United States of the product Boal's Rolls, do cease and desist from directly or indirectly—

1. Representing that Boal's Rolls prevent constipation;
2. Representing that Boal's Rolls prevent influenza;
3. Representing that Boal's Rolls are a fruit laxative.

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

Complaint

IN THE MATTER OF
HAMILTON GARMENT COMPANYCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914*Docket 1713. Complaint, Oct. 23, 1929—Decision, June 30, 1930*

Where a corporation engaged in the sale of various articles of merchandise by mail order, described itself as a manufacturer in its catalogues and made such representations as that it manufactured practically "all of the ready-to-wear in this catalogue", "Buying direct from the manufacturer you eliminate the middleman's profit and save \$5 to \$15", and "With our sanitary daylight factories under our close supervision we can give our customers the assurance of getting only the best quality", etc., the facts being that the women's coats and dresses referred to were made for it under contract pursuant to which the factory's entire output was contracted for, stock was removed from the factory to its workrooms and shipped therefrom to the buyer, it retained ownership of all goods and designs and reserved to itself right of inspection, supervision, and discharge of employees suffering from or afflicted with communicable diseases, or stopping of work on any garment not made in accordance with its design and plan, factories doing its work were large daylight establishments, meeting all requirements of the factory laws, it had thus taken entire output of some factories for ten or fifteen years past, and Bureau of Census insisted on classifying it as a manufacturer of garments and compelled it to report as such, but it had no proprietary interest in aforesaid factories or machines making said garments, or other control over the contractors' factory buildings or employees; with capacity and tendency to deceive and mislead the purchasing public into believing it to be the manufacturer of all or some of the products sold by it, eliminating profit of middleman in such instances:

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

Mr. Robert H. Winn for the Commission.

Mr. Henry Ward Beer, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation engaged in the sale by mail of various articles of merchandise direct to purchasers in various States, and with principal office and place of business in New York City, with advertising falsely or misleadingly as to composition and nature thereof and as to business status, in violation of the provisions of

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section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, falsely or misleadingly described and advertised various articles dealt in by it in its catalogues distributed to its customers and prospective customers in various States, as follows:

(a) Fur coats, fur collars, fur cuffs and/or fur scarves not made from the pelts of the lynx, fox, raccoon, muskrat, squirrel, minx, seal, wolf, wolverine, beaver, or badger as "French lynx", "Atlantic beaver", "Mandel fox", "Mendoza beaver", "French beaver", "Raccoone", "Muskrette", "Silver stream squirrel", "Northern seal (dyed finest French coney)", "Manchurian wolf", "Fine wolvereen", "Canadian wolf", "Canadian fox", "Fine mandel fur", "Mountain beaver", "Foxine", "Striped lynx coney fur", "Pointed French lynx", "Silver pointed Manchurian wolf", "Striped mink mandel fur", "Seal mandel fur", "Silver pointed French lynx fur", "Chinese badger fur", "Striped mink coney fur", "Mandel fox", "Genuine mink marmot fur", "Genuine vicuna fox", or "French fox";

(b) Women's felt hats, not imported into the United States as finished products from any foreign country, as imported, through use of such phrases as "Your choice in imported felts \$1.98";

(c) Leather goods not made from the skins of hippopotamuses or of lizards and snakes, alligators or other reptiles as "Reptile grain leather bag with alligator leather grain flap", "Lizard grain persian leather", "Water snake grain leather", "Snake and lizard grain persian leather", "Alligator grained leather", "Hippo calf leather", "Spanish brown python leather", "Alligator calf", and "Lizard grain trimmed";

(d) "Men's tourist traveling sets" as leatherette cases, when in fact not made of leather but of a product simulating the appearance or finish thereof;

(e) Coats not made from the pelts of any animal but of some other product as "Furtex broadtail fur fabrics", "Kara-kurl fur fabric", and "Fine Kerami fur fabric";

(f) Fabrics made in whole or in part from materials other than silk, the product of the cocoon of the silkworm as "Printed chiffon velveteen", "Printed pongette", "Lustrous silkette", "Silk-o-like", "Silk finished", "Radium satin", "Radium silk", "Fibre silk", "Rayon fibre silk", and "Sateen"; and as "Chiffon finished velveteen crêpe satin", "Very fine chiffon velvet", "Lapinex silk seal plush", "Silk ribbosene", "Silk velvet", "Bengaline silk",

“Satin”, “Lyons velvet”, “Silk Lyons velvet”, “Baronet satin”, “Seco milk”, and “Canton silk”;

(g) Fabrics made in whole or in part from a product or products other than wool as “Flannel”, “All wool and merino yarn”, “Wool velour”, and “Wool mixed”;

(h) Fabrics made of a product or products other than flax as “Crash linene”;

(i) Fabrics faced with metal other than gold as “Embossed gold cloth”;

(j) Women’s gloves made of a product or products other than the skins of animals as “Suede” or “Chamois suede”;

(k) Toilet articles and/or flatware made from a product or products other than ivory, the tusks of the elephant, pearl backs, and handles of toilet articles made from a product other than ivory, the tusks of the elephants, pearl, mother of pearl or amber, as “White ivora”, “Silver pearl”, “Solid sea pearl”, “White pearl on ivory”, “Lustrous pearl”, “Pearl”, “Gray pearl”, “Gray pearl on solid amber”, “Pearl on ivora”, “Super pearl on amber”, “Super pearl on amber pyralin”, and/or “Mother of pearl”;

(l) Watches containing on the outer surface a sheet of gold or of its alloy “less than one three-thousandths of an inch in thickness, and on the inner surfaces of less than one one-thousandth of an inch in thickness”, and with “no marking in the said advertisements to indicate the fineness of the gold which is affixed to the watch cases”, as “Rolled gold plate”, “Guaranteed rolled gold plate”, or “Gold filled”;

(m) Products neither diamonds, pearls, crystals, sapphires, emeralds, jade or quartz but manufactured products as “Diamonds”, “Sapphire cabachon”, “Emeralds and sapphires”, “Fine jade quartz stone”, “Crystal beads”, “Pearl beads”, “Omar pearls”, “Richelieu pearls”, or “Indra pearls”;

(n) Flatware not composed of silver but of another product or products and not composed of nickel in such substantial quantities so as to be properly represented and referred to as nickel, as “nickle silver”;

(o) Flatware, the handles of which were hollow, and made by pressing or welding together thin shells of sterling silver as “solid silver”;¹

Respondent, further, as charged, in its catalogues described itself as a manufacturer making such statements as “Hamilton manu-

¹ Charges embraced in subparagraphs a to o, inclusive, contained in paragraph 2 of the complaint.

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factures practically all of the ready-to-wear in this catalogue. The picture below shows very plainly how to save \$5 to \$15 by buying direct from the manufacturer", "Buying direct from the manufacturer you eliminate the middleman's profit and save \$5 to \$15", "With our sanitary daylight factories under our close supervision we can give our customers the assurance of getting only the best quality of workmanship and finish—The kind of quality clothes that will give you a much better service than you can possibly expect", notwithstanding the fact that respondent does not manufacture any of the goods dealt in by it nor own nor control any mills or machinery making any of said products.

Said acts and things, as alleged, "done by respondent in connection with the representations, designation, and description of its merchandise and status as hereinbefore set out have the capacity and tendency to mislead and deceive the purchasing public into the belief that the respondent's merchandise and status are as represented, designated, and described in respondent's catalogue", and, as charged, are to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Hamilton Garment Co., a corporation, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondent, having entered its appearance and filed its answer to the complaint herein, entered into a stipulation with the chief counsel of the Federal Trade Commission whereby certain facts were agreed upon as the facts in this case and to be taken as such in lieu of testimony.

Thereupon this proceeding came on for consideration on the record herein, and the briefs having been filed, and oral arguments having been heard and duly considered, and the Commission being fully advised in the premises makes this its findings as to the facts and conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Hamilton Garment Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the

State of New York with its principal office and place of business in the city of New York in said State. It is now and has been for more than one year last past engaged in a mail-order business, selling various articles of merchandise direct to purchasers thereof located in various States of the United States. It causes the said merchandise when so sold to be transported from its said place of business in the said State of New York into and through other States of the United States to the purchasers thereof located in a State or States of the United States other than the State of New York. In the course and conduct of its said business respondent is in competition with other corporations, partnerships, and individuals engaged in the sale and distribution of similar articles in commerce between various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, the respondent has been in its various catalogues describing itself as a manufacturer and representing to purchasers and prospective purchasers of respondent's goods that "Hamilton manufactures practically all of the ready-to-wear in this catalogue. The picture below shows very plainly how to save \$5 to \$15 by buying direct from the manufacturer". "Buying direct from the manufacturer you eliminate the middleman's profit and save \$5 to \$15". "With our sanitary daylight factories under our close supervision we can give our customers the assurance of getting only the best quality of workmanship and finish—The kind of quality clothes that will give you a much better service than you can possibly expect". In truth and in fact the respondent Hamilton Garment Co. does not own nor does it have any proprietary interest in any factory or machines that are in any factory in which are manufactured the garments advertised. Respondent Hamilton Garment Co. contracts with corporations, partnerships, firms, and/or individuals owning or controlling factories and machines in factories in which the said garments are made, for the entire output of these said factories while the said contract is in force. In its relations with the contractors, the Hamilton Garment Co. characterizes itself as the "manufacturer". The nature of the agreement between the Hamilton Garment Co. and the contractors is illustrated in the yellow, green, and white sheets which are hereto attached and made a part hereof marked Exhibits 4A, 4B, and 4C. This relationship is based upon the following conditions:

The stock is removed from the factory to the workrooms of the Hamilton Garment Co. and shipped directly from the Hamilton Garment Co. to the buyer. The Hamilton Garment Co. retains the ownership of all of the goods and designs and reserves to itself the

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right to inspect and supervise the work and to discharge employees suffering from or afflicted with communicable diseases, or to stop work at any time on a garment when the garment is not being made in accordance with its design and plan. The factories doing this work are large daylight factories and meet all of the requirements of the factory laws. The shipment to the customer is made by the Hamilton Garment Co. Other than as herein set out or as set out in the contract printed on Exhibits 4A, 4B, and 4C,² the respondent exercises no control over the factory building of, or the employees of the contractors. Some of the owners of these factories have contracted with the Hamilton Garment Co. so that the Hamilton Garment Co. has taken their entire output for the last ten years, Hamilton Garment Co. having been in business for fifteen years. The United States Bureau of Census insists on classifying the Hamilton Garment Co. as a manufacturer of garments and compels it to report as such. The only articles manufactured under this contract are what are known as "ladies' ready-to-wear", ladies' coats, and dresses.

PAR. 3. Catalogues published and issued by respondent and distributed to its customers and prospective customers located in various States of the United States are Exhibits 5, 6, 7, 8, and 9 herein.

PAR. 4. The use by the respondent of the word "manufacturer" to describe itself and the representation that certain of the products by it sold come direct from manufacturer to purchaser, as above set out, has the capacity and tendency to deceive and mislead the purchasing public into the belief that the respondent manufactures all or some of the products which it sells, and that in such instances, the purchaser by purchasing from the respondent is eliminating the middleman's profit.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the stipulation of facts in lieu of testimony and briefs and oral argument, and the Commission having made its findings as

² Exhibits not published.

to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

It is now ordered, That the respondent, Hamilton Garment Co., a corporation, its officers, directors, agents, employees, and successors, in connection with the sale or offering for sale of coats, dresses, hats, furs, fabrics, or other wearing apparel, or merchandise, in commerce among the several States of the United States, or in the District of Columbia, cease and desist from making representations through catalogues, circulars, correspondence, stationery, or by any other means whatsoever, that respondent is a manufacturer of said products or that products so sold by it come direct from manufacturer to purchaser unless and until respondent actually owns and operates or directly and absolutely controls a factory or mill in which the products so sold by respondent are manufactured or made.

It is further ordered, That the complaint herein be and the same hereby is dismissed as to paragraph 2 thereof on the ground that the practices charged therein were abandoned by the respondent prior to the issuance of the complaint.

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

IN THE MATTER OF
VIT-O-NET CORPORATION

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 1679. Complaint, June 3, 1929—Decision, July 7, 1930

Where a corporation engaged in the manufacture and sale of a so-called electric blanket, which (1) was made to be plugged into the ordinary house current, (2) was originated solely as an electric heating pad, fulfilled no therapeutic service other than the supplying of heat treatment, and could be used successfully only where heat could be so used, (3) was originated, promoted, advertised, and sold under the direction and sponsorship of an individual, a purported doctor, but in fact qualified neither as physician, electrician, nor scientist, with eighth-grade education only, (4) was sold through agents and distributors of whom sole qualification demanded was ability to sell, and (5) had been sold to the extent of a few thousand only; in advertising said blanket in newspapers, magazines, and periodicals of general circulation throughout the United States and through pamphlets, booklets, and circulars sent through the mails, and through agents to prospective purchasers, and without scientific tests as a basis therefor,

- (a) Falsely and misleadingly stated and represented, under such captions as "Science discovers the needed power", "To awake the greater health within you", that said blanket was the result of years of scientific research and countless tests, the greatest health discovery in recent years, approved and used by hospitals, physicians, athletes, society people, and persons of prominence, and a demonstrated success through many thousands of sales;
- (b) Falsely and misleadingly stated and represented that said article was of positive benefit in the prevention and cure of disease through its alleged electro-magnetic-radio qualities and their effect upon the cells and organs of the body in the elimination of waste, and the stimulation thereof to a vigorous and healthy condition in 95 per cent of diseases and ailments (attributed to faulty elimination), with many specified, and in the establishment and/or maintenance of vigorous and bouyant health, and great prolongation of life, and was contra-indicated in no ailment; and
- (c) Made numerous other unfounded and elaborate statements as to the supposed scientific and medical qualities, working and effects of said blanket, and through its "sales manual and treatment chart", for its numerous agents and distributors scattered over the country, solicited the prospective purchaser with studied statements and representations of similar tenor, and others calculated to appeal to his apprehensions for himself and/or members of his family, and to impress him with the falsely asserted and implied professional and scientific character and standing of the blanket and/or treatment and those responsible therefor, and associated therewith;

With the capacity and tendency to mislead and deceive customers and prospective customers through such known false and misleading statements, and to cause many to purchase and use said blanket with possible reliance thereon where use thereof would be highly dangerous to health and life, and

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neglect of proper means of treatment, and with effect of so misleading and deceiving:

Held, That such acts and practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Baldwin B. Bane for the Commission.

Mr. J. Groves Cohen, of Chicago, Ill., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Illinois corporation engaged in the manufacture of a blanket with copper wire interwoven, and connected to an attachment for plugging into an electric socket, and in the sale thereof to persons in various States, and with principal office and place of business in Chicago, with advertising falsely or misleadingly, and claiming indorsements, approvals, and tests falsely, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, in advertising its aforesaid so-called Vit-O-Net blanket, which (1) has no curative or therapeutic value apart from the heat generated by the current passing through the wires, that is, except as a heating pad, (2) is neither based on nor makes practical application of scientific discoveries or theories for the thousands of human diseases or ailments, (3) produces no radio-magnetic or electro-magnetic energy transmitted to or affecting the body, and (4) is not and has not been used, tested, indorsed, or recommended by prominent and well-known physicians, scientists, hospitals, educators, and other prominent and well-known persons, causes to be set forth many false, misleading, and deceptive statements and representations, in the newspapers, magazines, periodicals, and other publications of general circulation throughout the United States and certain sections thereof and in the letters, booklets, pamphlets, and circulars describing its said blankets, sent to prospective customers living at points in various States, to the effect:

“(a) That said blanket when used as a cover for the human body will cure and benefit all diseases, ailments, and defects of the human body, a great many of which are specified by name in said advertisements and literature, and that it is the greatest discovery in the great field of electro-therapeutics;

“(b) That said blanket is based upon and makes practical application of the biological, chemical, and other scientific discoveries and theories of well-known scientists and is the result of painstaking and long experience and tests;

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“(c) That the said blanket sets up a radio-magnetic energy which is transmitted to the person within or under the blanket, thus causing an increased activity and revitalizing of the organs and cells of the body and a charging of the blood stream with electro-magnetic energy, and an elimination of many times more poisons and waste matters than is possible by any other method, and a magnetic stimulation of the various cells of the human body with a resulting cure of any disease or ailment of which the party may be suffering;

“(d) That said blanket is used, indorsed, and recommended by prominent and well-known physicians, scientists, hospitals, educators, and other prominent and well-known persons, and has been tested and indorsed by such persons and by institutions for medical and scientific research”, and further sets forth other false, misleading, and deceptive statements and representations of like tenor and effect.

The aforesaid false, misleading and deceptive statements and representations “made by respondent in its advertisements and literature have the capacity and tendency to and do cause many persons to purchase and use respondent’s said blanket in the belief that said statements and representations are true”; all to the prejudice of the public and respondent’s competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Vit-O-Net Corporation, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent entered its appearance and filed answer to said complaint and hearings were had and evidence and testimony adduced upon behalf of the Commission and of the respondent before a trial examiner of the Federal Trade Commission theretofore duly appointed.

And thereupon this proceeding came on regularly for decision, and the Commission having duly considered the record and being now fully advised in the premises, makes this its report stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Vit-O-Net Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business in the city of Chicago, in said State. It was chartered

in about November, 1927, and in November, 1927, it having been organized for the purpose, purchased the plant and other assets, the business and good will of the Vit-O-Net Manufacturing Co. Mr. M. E. Roberts, who organized respondent corporation to take over the properties, assets, and business of the Vit-O-Net Manufacturing Co., was its first president. W. F. Craddick was its first vice president and he continued as such until after he appeared on the witness stand in this case. In April, 1928, Charles R. McClellan succeeded Mr. Roberts as president. On January 23, 1929, C. L. Lang, now president of respondent corporation, succeeded Mr. McClellan. While Mr. Lang took full control at this time, he had been in virtual control for some months in 1928, from June 12 to September 15. In that period, from June 12 to September 15, 1928, Mr. Lang was vice president and treasurer. W. F. Craddick was still vice president and a member of the board of directors, at the time the hearings were held in this case.

PAR. 2. Vit-O-Net Manufacturing Co. was organized about 1920. W. F. Craddick had been connected with like corporations in California and in Washington State about 12 years ago. He has sold electric blankets since 1911. Mr. Craddick transferred his business to Chicago in 1920. Mr. Craddick who was one of the originators of the Vit-O-Net blanket, was the largest stockholder and the president of the Vit-O-Net Manufacturing Co., which manufactured and sold the blanket up to the time respondent took over the business. There were about 60 stockholders in all. Mr. Craddick joined with Mary Deisler and A. A. Gluck in 1920 in organizing the Illinois Holding Co., an Illinois corporation, to collect royalties and other monies due from respondent to the stockholders of the Vit-O-Net Manufacturing Co. At the time of the purchase of the plant and business of the Vit-O-Net Manufacturing Co. Mr. Roberts made a contract with W. F. Craddick for the employment of the latter for five years from January 1, 1928, at a salary of \$8,400 for the first year and progressively increased each year so that for the fifth year under the contract Mr. Craddick is entitled to receive \$14,400. Upon his part, Mr. Craddick agreed that he would "devote all of his time and attention to and give his best efforts and skill exclusively to the business and interests of the party of the first part or his assignees and shall perform such services in and about such business of the party of the first part as may from time to time be assigned to him, and shall in all respects do his utmost to further enhance and develop the business interests and welfare of the party of the first part or his assignees." Mr. Craddick also agreed not to become a competitor or to be interested in any competitor within a radius of 2,000 miles of Chicago for 10 years from January 1, 1928.

Respondent is the assignee of Mr. Roberts, having secured the benefits and having undertaken the obligations of said contract. Under this contract Mr. Craddick has been active in the business of respondent, in charge of sales, promoting sales, acting as head of the medical department, advising with the heads of the medical department, looking after important business matters of the respondent, selling blankets in Chicago, making physical examinations of patients, training agents, lecturing to agents at respondent's schools, lecturing on health, on circulation, hygiene, dietary, on specific diseases, on science and in all covering some 60 or more subjects, and being held out as a doctor of medicine by respondent. In respondent's schools for salesmen and distributors the hygienic and therapeutic phases of the training which was given were left largely in the hands of Mr. Craddick. At these schools the training was largely directed toward making these salesmen medical practitioners, having them diagnose diseases and recommend and treat with respondent's blanket. After Mr. Craddick appeared on the witness stand in this proceeding he was less active in the affairs of respondent. Mr. Craddick has a "degree" of "doctor" from the "College of Drugless Physicians" in Indianapolis, Ind., of which one T. J. Briggs was head. Mr. Craddick had been enrolled as a student for two weeks and had arranged to send students to Briggs in return for the "degree", which ordinarily cost \$250. Mr. Craddick is neither an electrician nor a physician. He is without technical training of any sort and has but a grammar-school education. He is not licensed to practice medicine in any State or Territory of the United States.

PAR. 3. Respondent is engaged in the manufacture, in Chicago, Ill., of a so-called electric blanket, which it calls the Vit-O-Net blanket, and the sale of it in the several States of the United States. The blanket is sold through agents or representatives or distributors who take orders, and orders are secured through the mails. The blankets are then shipped from respondent's plant in Chicago, Ill., to the purchasers in the several States of the United States. Respondent is thus engaged in interstate commerce. Respondent in 1928 had 72 agents in the United States and two in Canada. In addition there were about 20 irregular sales representatives. Many of the agents were distributors having large cities and appended districts as exclusive territory and these in turn appointed other agents. The distributors had 278 agents. At the time of the taking of testimony in this matter there were 35 distributors. Distributors for respondent in 1928 were located at Boston, Mass.; Hartford, Conn.; Philadelphia, Pa.; Wilmington, Del.; Washington, D. C.; Asheville and Charlotte, N. C.; St. Petersburg, Fla.; Savannah and Atlanta, Ga.;

Louisville, Ky.; Columbus and Cincinnati, Ohio; Buffalo, Watertown, Albany, Binghamton, and New York, N. Y.; Detroit, Escanaba, Grand Rapids, Kalamazoo, and Dowagiac, Mich.; Indianapolis and Muncie, Ind.; Springfield, Clinton, Rockford, and Chicago, Ill.; Milwaukee, Warsaw, and Fond du Lac, Wis.; Minneapolis, Minn.; Cedar Rapids and Des Moines, Iowa; Omaha, Nebr.; Birmingham, Ala.; Houston, Tex.; Little Rock, Ark.; Springfield, Kansas City, and St. Louis, Mo.; Denver, Colo.; Los Angeles, San Francisco, and Santa Barbara, Calif.; Portland, Oreg., and Seattle, Wash.

The blanket salesmen and distributors of respondent are almost exclusively persons without substantial training in therapeutics or other branches of medicine. A few irregular salesmen are osteopaths and chiropractors. Respondent requires no educational qualifications of its agents. All it looks for or requires is ability to sell. About 3,300 blankets were sold in 1928. Sales at the time of the hearings in this case were at the rate of about 100 blankets a month. For a time the blanket was leased at \$30 for 30 days with an option to purchase within the period and receive credit for the \$30. This plan was discontinued. During 1928 the blanket was sold for cash at \$102.50. On credit it was higher. The prices at the time of the hearing in this matter were \$105 cash and \$110 to \$115 on deferred payments. In the course and conduct of its business, respondent is in competition with other persons, partnerships, and corporations.

PAR. 4. The Vit-O-Net blanket was originated or developed by Mr. Craddick in collaboration with a Mr. Charles who had also acquired the title of "doctor" but was not a physician. It was first sold in 1918 or 1919 as the "Electronet". It was also sold and is now being sold as the "Magnecoil" by others than Mr. Craddick and his associates in business. Mr. Craddick originated the blanket and first sold it in Seattle, Wash., and it was originated and first sold as an electric heating pad. After it was brought out some electrician told Mr. Craddick that the current passing over the wires in the blanket developed a magnetic field and then Mr. Craddick began to claim magnetic qualities for the blanket and that such magnetic qualities were beneficial to and cured and prevented diseases. No tests or experiments to determine the actual value or effect of the blanket on the human body or on any diseases or ailments of the human body were or have been made by respondent or any of its predecessors. The instructions for the use of the blanket were prepared by Mr. Craddick and others interested in the sale of the blanket originally. No physician assisted in the preparation of these instructions. The same instructions are used to-day.

The blanket, as sold by respondent, is 68 by 78 inches in size and is made up of a jute and cotton fabric base into which is woven at intervals of about one-fourth of an inch longitudinally a cable made up of 12 strands of 36 gage copper wire. There are 15,200 feet of this wire in the blanket, measured singly and not as a cable. The wire cable is looped back at the ends of the blanket so that it is a continuous cable. The ends are connected with a lead cord and socket so that it may be attached to an electric light socket. It is covered on one side with wool blanket material and on the other with velour. When used according to the directions of respondent, it is spread upon a bed, connected with an ordinary house electric light socket of either direct or alternating current, covered with a blanket, a rubber sheet, and a bed sheet. The patient lies naked in the blanket and the whole mass of covering is folded over the patient and the feet and neck are packed with towels wrung out from hot water, and another towel is packed around the shoulders to prevent the circulation of air within the folds of the blanket. This is the so-called "radical" treatment and lasts from 15 to 75 minutes. The heat developed by the blanket runs up to about 48° C. or 118° F. and profuse sweating results. The so-called "tonic" treatment is taken by simply lying upon the blanket which is connected with an electric current.

PAR. 5. In order to promote the sale of this blanket respondent advertises it in newspapers, magazines, and periodicals of general circulation throughout the United States. Respondent also advertises the blanket by means of pamphlets, booklets, and circulars which it sends by mail and through agents and representatives to prospective purchasers throughout the United States. In these advertisements and circulars and through these representatives it offers for sale and describes the blanket as an effective curative agent for any and all diseases. In such advertisements and advertising literature respondent makes many claims as to the curative properties of the blanket, and gives what purports to be scientific explanations of how the magnetic field created by the electric current traversing the wires in the blanket produces curative results. In the Chicago Herald-Examiner of February 20, 1928, appeared an advertisement in which was incorporated the following statements:

SCIENCE DISCOVERS THE NEEDED POWER

Now thousands know how to give their vital organs and tissues this assistance. They have adopted a remarkable method that literally chases poisons from the system; brings new life, health, ambition, happiness, adds years to life; makes normal weight a reality; helps prolong beauty of youth.

This aid, already used by over 1,200 physicians and hospitals, consists of the Vit-O-Net Electromagnetic Blanket. Tests prove that the quantity of

poisons eliminated as a result of Vit-O-Net treatments is many times greater than is possible by any other method.

WHAT VIT-O-NET DOES

You feel the thrill of vigorous new health. Your muscles leap to new vitality. You are refreshed, invigorated, keenly alive—in body and mind. These are the results of Vit-O-Net treatments.

In an unique way, Vit-O-Net combines diaphoresis (elimination by sweating) with magnetic stimulation—two wonderful agents of health and vigor. You merely wrap yourself in it. You rest in a pleasing warmth only two degrees above body temperature. Soothing! Delightful! Perfectly safe!

Vit-O-Net charges your blood stream with electromagnetic energy. Circulation increases. Congestion responsible for ailments fairly melts away. Poisons go out—Health comes in. Vit-O-Net method of maintaining health is safe, sound, sure.

* * * * *

To get started on this new, smooth road to health, mail coupon for book, *Awake the Greater Health Within You*. Tells complete story of Vit-O-Net.

PAR. 6. There appeared in *Physical Culture Magazine* of February, 1929, a monthly periodical of general circulation throughout the United States, an advertisement containing the following statements:

Vit-O-Net Magnetic Blanket, Health—Vitality—Magnetic life—Is the greatest health discovery in recent years. Creates new life—new power. Soothing radio-active treatment relaxes nerves and muscles. Flushes poisons through the waste channels. Dissolves congestion responsible for scores of ailments.

How Vit-O-Net acts. Decayed waste remaining in body kills life forces and causes untold misery. The Vit-O-Net Electro-Magnetic Blanket eliminates more poisonous waste than any other method. Relieves pain. Used by hospitals and physicians for treatment of rheumatism, neuritis, nervousness, catarrh, eczema, blood pressure, kidney troubles, etc. Frequently successful after all other methods fail. Helps to restore health. Pays for itself over and over again.

PAR. 7. There appeared in *Physical Culture Magazine* and in strings of newspapers served by the Western Newspaper Union, 57 served from Dallas, Tex., 51 served from Baltimore, Md., and 88 served from Lincoln, Nebr., advertisements containing the following representations:

ELIMINATE POISON! Read amazing results secured with Vit-O-Net Electro-Magnetic Blanket. Decayed waste kills life forces and cause untold human misery. Vit-O-Net Electromagnetic Blanket produces gentle perspiration, eliminating poisonous waste through pores and other channels. Aids bowels and kidneys. Dissolves congestions responsible for scores of ailments. Creates new life—New power. Soothing magnetic warmth relaxes nerves and muscles. Promotes rest and sleep. Relieves pain.

Many of the country's best hospitals and physicians use Vit-O-Net for rheumatism, neuritis, nervousness, catarrh, eczema, blood pressure, kidney troubles, etc. Frequently successful after all other methods fail. Helps to restore health. Pays for itself over and over again.

PAR. 8. In a letter sent out by respondent to prospective customers, it has the following to say:

It is a generally known fact that influenza and pneumonia are dreaded by the physician because of their seriousness.

NOW READ THIS REMARKABLE RECORD

The Vit-O-Net Health Blanket has been used for the treatment of thousands of influenza and pneumonia cases. Its success in such cases has proved astonishing to the best physicians. The experience of the Vit-O-Net with other ailments is equally remarkable.

* * * Vit-O-Net secures results frequently after all other methods fail.

And in another letter used to promote sales of the blanket:

Would you be interested in knowing that neither you—nor any member of your family—need ever again fear 95 per cent of all diseases?

What would a device be worth to you—a device which, when plugged into a light socket, would send you to work every day filled with zest and zip—brain clear and keen—and would wipe away fatigue at the end of the day?

And while you were away—would stand between your family and the treacherous illnesses which grip your heart with fear?

The same device which thirteen thousand others—ahead of you—have in their homes now—the device which snatched hundreds of them back—hours after they had started through the Dark Valley?

Do you want to add ten years to your life—10 vigorous, vital, sparkling years?

The chairman of the board of one of America's largest banks has asked all his employees, like himself, to possess it.

Just one thing causes 95 per cent of all illness. Avoiding that one thing would shut out that 95 per cent of illness from your family. It would add the 10 years to your life; make your days vigorous, useful, happy.

Why should you be deprived of this—which 13,000 others are enjoying?

PAR. 9. In the pamphlet or booklet, *Awake the Greater Health Within You*, sent to prospective customers and to those that answer its advertisements and solicitations are the following representations and claims:

EXCESS OF WASTE—POISONS IN THE BODY—THE ROOT OF NEARLY ALL DISEASES

Many of the most familiar, painful, and distressing ailments—pneumonia, rheumatism, arthritis, high blood pressure, Bright's and other kidney diseases, neuritis and a host of others—are simply the results of failure of the body to eliminate its wastes; a stoppage in some part of the body's sewage system.

Scientists have long realized that if a method could be found for stimulating the tiny cells to throw off this waste—to arouse the waste channels to carry it out of the system more promptly—all body cells and tissues would be healthy and the largest part of human ills would be wiped out.

This end has been sought for centuries by drugs, by manipulation, by massage, by electric treatments of various sorts, all seeking the same end.

To vibrate the tiny cells; to stimulate them to activity; to hasten elimination; then to encourage assimilation of new food supplies by live, healthy tissue.

It has been realized that drugs are, after all, a foreign element in the body. Manipulation and massage reach localized parts of the body and affect only indirectly the innermost organs.

Electricity has been the greatest hope of corrective therapeutics, particularly since radio has opened a new sphere of science in the study of the unquenchable waves of electromagnetic force which travel the whole world around. At first, high-frequency machines were used, but their application was only local. Magnetism alone had the same limitations.

If only electrical energy, magnetism and a gentle heat could be made to reach all the tissues of the body at once, elimination would be general. So that wastes, removed from local spots, would not be dumped onto other organs to cause new troubles!

Thousands have studied the problem.

During 17 years of patient, at times painful and discouraging effort, in literally thousands upon thousands of tests, the Vit-O-Net Electromagnetic Blanket has worked its slow but sure way to that goal.

Even after perfection was attained in the laboratory and in the factory, it was determined that Vit-O-Net should not be marketed to the general public until ample proof of its health-building properties had been established fully. For years it was sold principally to hospitals, physicians, and sanitariums. These institutions have purchased blankets and used them regularly to relieve suffering and to save life.

Nearly 16,000 actual users, by their grateful acknowledgment of recovery from all manner of "elimination diseases", attest the fact that Vit-O-Net not only has reached the solution of the problem, but has established its success by literally thousands of successful recoveries.

Vit-O-Net vibrates the cells! Gently, as though by thousands of invisible fingers!

Vit-O-Net stimulates cells and blood stream—every tiny particle of both!

Vit-O-Net eliminates wastes! By arousing the human sewage system to action.

Assimilation follows. Healthy cells, tissues, organs, bodies—all follow.

Two of the oldest laws of electrical science—discovered over a century ago—on which all electrical development has been based, giving us the dynamo and the electric motor of industry and the more modern radio, are the whole basis of the action of the Vit-O-Net Electromagnetic Blanket.

Vit-O-Net is not simply a heating and sweating device. Where the average heat treatment weakens Vit-O-Net stimulates and increases energy. It has been notably successful with heart and anemia cases; also with aged people who can not stand the weakening effect of ordinary heat treatments.

In fact, if it were not for this one thing, great scientists are inclined to believe that the span of life would be more than doubled; that persons reaching the age of 100 or 125 would be the rule, rather than the rare exception.

Great physicians and the great scientists, including the famous Metchnikoff, agree that a majority of all human ills are due to a gradual accumulation of waste—poisons—and deposits in the system. In other words, the root cause of most of the ills to which we are heir—is faulty elimination.

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Therapeutic factors in regard to correct temperature and maximum magnetic stimulation have been perfected to correspond with nature's demand. Vit-O-Net operates from any 110-volt alternating current or direct current light socket. A special blanket is made for 32-volt farm lighting plants, also for 220-volt current. The cost of electric current is approximately 1 cent per treatment. The warmth generated by this appliance is only 2 degrees above body heat.

HOW VIT-O-NET WORKS

When you are wrapped in the Vit-O-Net Electromagnetic Blanket your body—with the exception of the head—is entirely surrounded by 15,200 feet of thoroughly insulated magnet wire in which electric current flows back and forth from head to foot. Insulation on the wire, in the blanket and by means of the heavy rubber sheet, remove any possibility of any kind of electric shock. Your body is in a concentrated magnetic field (Oersted's Law) with ribbons of magnetic force streaming uninterruptedly through the entire body. These can not be felt any more than radio can be felt, but soothing effects are quickly apparent.

While electricity can be insulated, lines of magnetic force can not be insulated. The passage of radio energy (electromagnetic waves) thousands of miles through walls of brick, mortar, glass, and steel is the most common example of this. Rubber insulation around a wire holds in the electricity but has no effect on the transmission of magnetic energy.

Red blood corpuscles contain considerable iron; the blood contains other mineral salts—excellent conductors of electricity. The blood stream, itself a good conductor, surges back and forth within this magnetic field.

Under Faraday's Law, just as wire loops in the dynamo pick up electric current, so the blood stream, moving through the magnetic field, becomes charged with tiny, minute currents of electricity. Although these minute electric currents are so small they scarcely are measureable, they are sufficient to stimulate the tiny cells of the body; a heavy current would have overwhelmed these tiny cells.

Both the magnetic lines of force and the electrically charged blood stream reach every cell in the body—the cells in the very marrow of the bones just as readily as the cells of the skin.

They stimulate each cell, the unit of life, to unload accumulation of waste directly into the blood stream and other waste channels.

This explains why the Vit-O-Net produces results which can not be obtained with any other form of treatment.

With the blood stream electrified and all the cells of the body receiving the electromagnetic energy, and under their influences unloading waste into the proper channels, the cells become "hungry" for new nourishment, which is taken up eagerly; naturally each cell becomes sound and well. When all the cells in an organ or in a muscle are well, the organ or muscle is well; when all the organs and tissues are well, the body is well.

There is no guess work about it. Proof has been established in thousands of cases.

Not only those who actually are suffering benefit from Vit-O-Net. Everyone who would like to enjoy life more—who wants to live longer and happier will benefit from Vit-O-Net.

As you lie perfectly relaxed at ease the blanket stimulates every bodily organ in action—increases your circulation and expels the clogging waste. You may

think your pores are open and clean until you find that Vit-O-Net brings forth waste matter out from way down deep, where scrubbing and massaging can not reach.

Is adding 10 or 20 years to your life, worth while? Yes, if each of these years is a happy year.

So we say to you, doctor, lawyer, clergyman, housewife, club-woman, society leader, business man, skilled mechanic, laborer, in whatever walk of life you may be, whether you are sick or well, if you want to feel fit, use Vit-O-Net.

WHO USES VIT-O-NET?

One thousand hospitals and physicians use Vit-O-Net in pneumonia, uremia, eclampsia, surgical shock, and other critical ailments with remarkable success.

Doctors use Vit-O-Net in their practice. Its record in treating flu, rheumatism, neuritis, arthritis, high blood pressure, and kidney disturbances is marvelous.

Athletes use Vit-O-Net to relax tired muscles and nerves, for bruises and sprains and to keep in fit condition.

Business men use Vit-O-Net to restore physical and nervous energy.

Social leaders use Vit-O-Net to keep their magnetic attractiveness.

Beauty shops give Vit-O-Net treatments to clear up the skin, for reducing superfluous flesh, to preserve youthful appearance. Women welcome its comforting aid to the normal functions of life.

Physical culture institutions use Vit-O-Net to tune up the general health and keep up energy so necessary to resist the daily wear and strain of a busy life.

Hotels get from \$3 to \$5 more a day for rooms with Vit-O-Net blankets and thousands who have been suffering are now relieved of pain and are building better and better health with Vit-O-Net.

Factories and offices increase efficiency of employees by providing Vit-O-Net rest baths in rest rooms.

Schools increase grades and lower percentage of sick leave through the use of Vit-O-Net.

The record that Vit-O-Net has shown not only in relieving suffering, but in revealing new sources of energies to the so-called normal human being, is proving a revelation.

Blood pressure
Rheumatism
Arthritis
Neuritis
Sciatica
Pneumonia
Flu
Uremia
Kidney cases
Liver disorders
Asthma
Colds
Acne and pimples
Nervousness
Insomnia
Paralysis

Bright's disease
Stomach troubles
Dropsy
Catarrh
Goitre
Constipation
Auto-intoxication
Eczema
Diabetes
Women's ailments
Obesity
Hay fever
Neurasthenia
Varicose veins
Social diseases
Heart diseases.

How is it possible that all these ailments are being relieved by the same treatment. The answer is simple; they have one common cause—Faulty elimination.

On the last pages of this booklet are the following questions and answers:

Q. What is Vit-O-Net?

A. It is the highest scientific instrumentality in the department of medicine known as physiotherapy.

Q. What is physiotherapy?

A. It is the use of natural forces, such as water, light, heat, air, sunshine, and electricity in the treatment of disease.

Q. What do the outstanding men of to-day in medicine—the students, the competent, intelligent, sincere investigators—think of physiotherapy?

A. It is the outstanding and greatest branch of medicine and that it possesses untold possibilities.

Q. Where does Vit-O-Net stand in the field of physiotherapy?

A. It is one of the new developments and during a period of 15 years, in thousands of cases, has proved itself to be the highest scientific element in that field.

Q. What is the attitude of science with regard to the atom?

A. It is not the finality. It has been broken up into electrons and in turn broken up into still smaller parts until the final force is reached.

Q. What is this final force?

A. It is of the very essence of life, whatever we call it. The earth is surrounded with atmosphere, and likewise surrounded with an unseen envelope of whatever this mysterious force is—call it "magnetism" if you like.

Q. In what manner is Vit-O-Net connected with this force?

A. Vit-O-Net pulls this force out from the unseen by use of the oldest laws of electricity and supplies it to the human body—a wasting human body—wasting for the need of this force, therefore Vit-O-Net is one of the greatest, if not the greatest, appliances in the field of physiotherapy.

Q. Is there any disease in which Vit-O-Net is contraindicated?

A. No—absolutely no—but Vit-O-Net must be used intelligently—for this force must be introduced into the body properly.

Q. What place does Vit-O-Net occupy in the home?

A. It takes its place with food and clothes—should take its place before food and clothes—for it requires health to enjoy and earn food and clothes.

Q. What does Vit-O-Net accomplish?

A. It builds up—restores and charges the battery (the cell) giving to the cell the power or force and food needed that it may function physiologically.

Q. Why should I believe Vit-O-Net does all this?

A. You can't see or feel radio. Yet you know it travels hundreds of miles, through the air, buildings, people—everything—and then a delicate mechanism in your receiver picks it up and transforms it into beautiful music, the talks of your president, and now even into actual pictures of the speakers far away. You can't see or feel the same force, being broadcast from the wires of your Vit-O-Net, yet it is picked up by the delicate mechanisms of your body—the cells—and you feel and see the result in vigorous, vital health.

Q. Why should I believe Vit-O-Net will help me?

A. Because Vit-O-Net is the last word and the first remedy in the successful restoration of health and in the maintenance of health. It paves the way for

the eradication of disease—over sixteen thousand persons have tried it—and proved to their everlasting satisfaction that the use of Vit-O-Net enables them to take out from the unseen that great vital force—that with the use of Vit-O-Net this vital force is introduced into the body—cleansing, healing, nourishing, and building vigorous, healthy bodies and a clean, vigorous, healthy brain.

In the letter accompanying the pamphlet, *Awake the Greater Health Within You*, are the following statements:

The radio active energy created by Vit-O-Net works gently but surely, penetrating every cell, tissue and organ of the body. This is why the Vit-O-Net treatment is so effective in the treatment of internal disorders. No electricity or shock of any kind is felt—simply delightful warmth.

* * * The principals employed in Vit-O-Net have been indorsed by the highest authorities.

The Vit-O-Net magnetic system of elimination not only prevents many ailments—but for scores of ailments, both minor and serious, it brings positive relief.

On the other hand, think of paying but a few dollars for an application that will keep you in perfect health—that will add years to your life—that will enable you to fully enjoy all of the pleasures in life.

If you are suffering from any ailment; whether you feel dull, depressed, or listless, a Vit-O-Net treatment will act like a tonic. It gives a soothing feeling of warmth such as no other appliance can produce. Its improving effect is noticed immediately after the very first treatment.

If you are below par physically—if you feel you could use more energy, more vitality, more health—if you are troubled with any of the thousand and one ailments that handicap people, you need the health building aid of the Vit-O-Net.

P. S.—With each blanket we furnish free, diet prepared by an authority based on the chemical needs of the individual.

PAR. 10. In another pamphlet sent to purchasers and prospective purchasers respondent makes the following representations:

Let us start by saying that all our statements are predicated on experience we have gained in the sale of nearly 15,000 Vit-O-Nets and on the best medical knowledge and supervision.

Nearly all cases reaching our health division are ones in which many of the various agencies in the art of healing have been tried and failed.

Your ailment, like all disease, has one basic cause. That cause may not have shown itself severely until recently, but it has, no doubt, been present or latent in your body for years. Your ailment was caused by excess deposits of Toxic Poisons in your organs and tissues. Vit-O-Net does rid the body of Toxic Poison as no other healing agency can or will do.

Brisbane, famous editor, aptly said "What we need in this country is intelligent prevention of disease". Our answer to this is, that intelligent use of Vit-O-Net in the homes of our Nation is intelligent prevention of disease. Are you going to begin using Vit-O-Net in your family to avoid this awful penalty of distress, disease and great financial loss?

Vit-O-Net is the most effective method known to medicine or physiotherapy for ridding the body of toxic poisons—poisonous wastes—that are the cause of nearly all ailments. In treating disease, Vit-O-Net does remove the cause.

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It does more. It stimulates, energizes, builds up the wasting and diseased cells of the body. It truly aids Nature—the true physician—to repair and restore herself.

Vit-O-Net for the sick, gives back health—Vit-O-Net for the well keeps disease away.

Vit-O-Net never fails because it goes after the cause—removes it. It cleanses the body of its accumulated waste and poison and a clean body is a healthy body.

Remember you are not experimenting.

Thousands before you have found health—real health—vibrant radiant health with Vit-O-Net.

Be faithful—be patient—go through to the end and you will find your courage and patience rewarded.

VIT-O-NET CAN NOT FAIL

The marvelous result secured by physicians and hospitals through intelligent, persistent use of Vit-O-Net should be all the proof necessary that you using the same intelligence and persistency can win real Health right in your home.

What a comforting thought for fathers and mothers to know that with Vit-O-Net at hand for the sick will give back health and that Vit-O-Net for the well will keep disease and illness away.

If Vit-O-Net can do this in active rattlesnake poison, it can be better understood how Vit-O-Net accomplished marvelous results in moving out of the human body, the slow, toxic waste and poisons, which are the cause of nearly all human illnesses.

Vit-O-Net treatment in any type of disease does give relief. Similar results in thousands of cases, representing nearly all types of disease may be cited, but suffice it to say that the duration of Vit-O-Net treatment in any ailment can not be accurately forecast.

PAR. 11. Respondent's claims and representations are but a continuation of those of its predecessor, Vit-O-Net Manufacturing Co., with which no one with medical training had been connected and which had made no tests or experiments of any kind whatsoever as to the therapeutic value of the blanket. In a pamphlet circulated by the Vit-O-Net Manufacturing Co. and by respondent for a while appeared the following representations:

Tests have proved that the quantity of poisons eliminated as a result of the Vit-O-Net Blanket treatments is many times greater than is possible by any other method.

No system exists that promotes elimination as healthfully as the Vit-O-Net Electromagnetic Blanket. Leading physicians, after experimenting with all forms of elimination, have pronounced the Vit-O-Net the safest and most successful.

* * * Magnetism is the "sister-force" of electricity. Experiments by scientists have proved that these electromagnetic waves can be used therapeutically for the benefit of suffering humanity.

It remained for the Vit-O-Net Manufacturing Co. to concentrate these magnetic waves in the Vit-O-Net Electromagnetic Blanket, so that such energy will enter the human body, magnetize the elements in the blood and tissues. A vibratory action is produced in the deepest organs, stirring every cell into

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activity, increasing metabolism, and hastening the elimination of waste products. The circulation is improved. The fatty tissue is used up instead of accumulating. At the same time the entire muscular and nervous system is toned up and strengthened.

So revolutionary in character was this system of elimination that thousands of tests have been made by various physicians. And the results have amazed them. Many cases which were thought incurable, have responded to these treatments.

Such noted doctors of medicine as Edwards, Muller, Ward, and others devoted years to discover a medium through which perfect circulation could be effected and disease eliminated. After taking into account the findings of Edison, Osteaga, and other famous electrical scientists, the doctors came to the conclusion that if the medium was ever discovered it would be through nature's wonderful force—electricity. They were right. Electricity is the solution. And Vit-O-Net is the medium which makes this solution practical.

WHAT CLINICAL TESTS HAVE PROVED

A Vit-O-Net treatment will eliminate many times more poisonous perspiration than can be eliminated by any other bath.

The magnetism generated by Vit-O-Net increases the resistance of the body, thus fortifying it against disease.

Physicians report splendid results in the treatment of venereal diseases.

Hospitals and physicians have given Vit-O-Net credit for saving life in such cases as eclampsia, pneumonia, shock, etc.

* * * The application of this system will cause congestions responsible for disease to disappear before these magnetic waves. The treatments can be taken in your own home in well-ventilated rooms and you need lose no time from your regular duties. Vit-O-Net might be compared to a recharger of run-down radio or automobile batteries. We recharge the run-down human dynamos with health-building magnetism.

HOW VIT-O-NET WORKS

The magnetic waves of Vit-O-Net act on the deep tissues, cells, and lymphatics, causing waste to be thrown into the blood stream where the kidneys can filter out the poisons and carry them away.

* * * When you are wrapped in the blanket, your body with the exception of the head, is entirely surrounded by a current of electricity. You are in a magnetic field. * * * The metallic salts in the blood being an excellent conductor, the entire blood stream, a moving body, becomes charged with magnetic energy.

Thousands of experiments have demonstrated the exact amount of wire necessary to generate the maximum amount of magnetism to secure the greatest value. It is not only an electric blanket—it is a generator of magnetism.

PAR. 12. In a pamphlet distributed among its agents to assist them in selling the blanket and in diagnosing diseases and prescribing the use of and treatments with the blanket, and in some instances, distributed to purchasers and prospective purchasers, respondent has the following to say:

MANUAL OF VIT-O-NET TECHNIQUE

Vit-O-Net technique is based upon its two primary applications. The technique in each case depends upon that case's mechanical need in body chemistry. Body chemistry is the changing of food into flesh, energy, and heat; and the mechanical and chemical operation of a living organism.

To determine the technique in each case; first, determine the pathological or physical condition of all parts of the body in question. Next, decide on its principal need, if it is to be restored to normal. Or whether there be two or more "principal needs"; if so, which must be given first consideration—conditioned upon the comfort of the patient and the emergency existing.

Primarily, Vit-O-Net causes an increased activity of body chemistry in the atomic structure of the cells—the ordinary body chemistry which, if it had not been interfered with or cut down, would have kept the body in normal health. A technical name for this body chemistry is metabolism.

Where this body chemistry has fallen behind, through lack of the necessary power or force to carry it on, Vit-O-Net simply carries into the body this power or force which is lacking, so that normal body chemistry can go on at its proper rate—causing health.

The second primary application of Vit-O-Net is to continue carrying this power or force into the body until the existing body balance is overturned and elimination of wastes and congestion begins.

WHEN VIT-O-NET IS INDICATED

There is absolutely no condition known to medical science in which Vit-O-Net is contraindicated. It strengthens the weakest heart. It adds strength, vitality and resistance to a carcinoma or cancer patient. It gives rest and strength to tuberculosis patients or kidney disease patients in gravest conditions. It soothes and quiets the most overwrought nerves. It softens and stops the severest convulsions. Its effect on all ailments of less serious character can thus be understood.

ALWAYS USE VIT-O-NET

With the foregoing understanding it is evident that "Use Vit-O-Net on any condition—no matter what it is, it always can help, never harm."

And in still another pamphlet circulated among agents to assist them in treating with and selling the blanket:

THE VIT-O-NET CLINIC

The Vit-O-Net clinic will be issued now and then principally to instruct you how the better to alleviate human suffering and, secondarily, to give you better understanding enabling you to build a better business for yourselves and for us.

* * * then Vit-O-Net has massaged these glands, exercised them, made them healthy, and thus aids in the maintenance of blood potency and aids in the restoration of lost potency. Therefore, it is easy to see why Vit-O-Net is priceless.

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* * * Vit-O-Net creates a diathermy in its sweating treatment, the heat from the appliance and the heat from the body, creating a perfect diathermy, mild, yet potent. And thus we overcome inflammatory diseases.

Present these facts, scientific facts, undeniable facts, honest facts to the public and they will understand and soon the world will have a new slogan.

You are the ambassador of health—carrying with you the one instrument which guarantees a maintenance of good health, a prolongation of life, the eradication of disease.

Aye, indeed, Vit-O-Net is priceless.

Theoretically, Vit-O-Net is the remedy par excellence—does it help these cases? The answer is, it does.

In another circular to agents and which was distributed to some extent to purchasers and prospective purchasers, and signed by the doctor in respondent's employ:

If you, or anyone else has conceived, even in the remotest way that Vit-O-Net is not all that is claimed for it, let me make it plain to you right now that Vit-O-Net is a highly scientific element in the department of medicine known as physiotherapy.

Physiotherapy is defined: "The use of natural forces, such as water, light, heat, air, sunshine, electricity, in the treatment of disease."

In this field of physiotherapy our Vit-O-Net is one of the newer discoveries. Had its inventor given it to the medical profession without any remuneration, it would have been accepted immediately, and William F. Craddick would have been placed in the hall of fame and a monument erected to his memory as one of our greatest scientists.

William F. Craddick, however, decided to place at the command of the public his marvelous invention, and to-day many thousands bless his name with untold thousands more to be his debtors.

Vit-O-Net has had to fight its way and a gallant fight it was! but Vit-O-Net has won.

Vit-O-Net is one of the greatest. If not absolutely the greatest, of physiotherapy appliances.

There is no disease in which Vit-O-Net is contraindicated. Get that now and don't forget it. But Vit-O-Net must be used intelligently. In cases of low blood pressure, heart disease, anemia, tuberculosis, or paralysis, you must explain to the patient that the Vit-O-Net instructions (see manual) are so and so, and it must be used in no other way unless the advice comes from the division of health.

It is perfectly absurd, from me, a doctor, one who knows little or nothing of commercialism, perhaps the poorest business man in the city of Chicago, to attempt to guide you along the lines of sales arguments—but I do feel, after careful reflection and study and discussion with our president, that one of your basic arguments in your sale of Vit-O-Net is:

(a) A full and careful explanation of what physiotherapy is.

(b) What position Vit-O-Net occupies in that particular field, and then clinch the argument along the following lines:

The very foundation of successful treatment of diseased conditions lies in the bringing about a perfect elimination of toxins (poisons) which are found in all pathologic (diseased) conditions.

Incidentally, in your talk to prospects, I think it is a good plan for you to occasionally use the word "toxic" when referring to bodily poisons. The

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average layman rather enjoys hearing a word whose meaning is beyond his comprehension—so shoot this word across once in a while.

* * * No one force at the command of medicine produces the power of natural elimination equal to Vit-O-Net and that is the honest to God truth.

* * * There is no reason why we should not maintain our full mental and physical capacity up to the very minute we “kick-out” in our one hundred and fiftieth year, but to accomplish this we must maintain perfect elimination—which means in all sincerity—Vit-O-Net.

With perfect elimination, health will be easier restored and easier retained. Therefore, Vit-O-Net for the well.

Sell it for the sick one, and then capitalize upon what it will do for the well members of the family.

Vit-O-Net for the home—it takes its place with food and clothes and is as important if not more so than either food or clothes. * * *

Now, Vit-O-Net builds up, restores and charges the battery, and gives to the cell the power or force or food needed, that it may function physiologically.

Guarantee it! We will deliver the goods in the form of health if directions are followed.

Vit-O-Net can, and does, do wonders.

Vit-O-Net is the last word and the first remedy in the successful restoration of health and in the maintenance of health.

PAR. 13. Respondent's sales manual and treatment chart is the basic document distributed among respondent's agents to instruct them in how to present the blanket, the claims and arguments to advance for it and teach them to diagnose diseases and prescribe the use of and treat with the blanket. It contains, among others, the following directions and representations:

SALES MANUAL AND TREATMENT CHART

It is a serious matter to know that another's health is impaired—another's life is slipping away—because you have not set Vit-O-Net between him and dissolution.

TRAINING TO SELL VIT-O-NET

What is a sales manual?

This sales manual has been prepared for the benefit of Vit-O-Net distributors and their salesmen, and all other persons employed in selling Vit-O-Net.

In it we have attempted to give the proper information the salesman should have about Vit-O-Net and how it is sold successfully.

APPROACH

If I should say to you as man to man—in all sincerity—that there is a man in Chicago who has perfected a device which you can plug into a wall socket so that you can rid the human body of the basic cause of disease—what would you say?

Pause. Do not answer him but continue.

Could anything be more important than that?

Wait for answer.

And if I should say to you that this man has harnessed radio energy so that with this device neither you nor any member of your family ever need

die of typhoid—scarlet fever—pneumonia—or any similar disease—that would sound like a fairy tale, wouldn't it?

But—if you could add 10 healthy, useful years to your life by means of this invention, that would interest you, wouldn't it?

Make him say yes.

How much would it mean to you—in dollars and cents alone—leave out any other consideration—how much would it mean to you if you could have something in your home that would assure you and your family—beyond any reasonable doubt—that, for the rest of your natural lives, each and every one of you could have perfect health? (Or vibrant and radiant health.)

If you had an opportunity to see with your own eyes and feel with your own hands, the proof that radio energy has been harnessed and can give you assurance of health, it would be worth 40 minutes of your time to investigate, wouldn't it?

And again don't go on until he has said yes. You will begin getting upsetting questions at about this point, such as What is this thing? or Have you some literature on it? (See answers to questions at end of this section.) Don't move till you get his yes. Don't wait to let him ask a lot of questions. Go after that yes.

Thirteen thousand persons before you have found out for themselves that radio energy has been harnessed as I said, and that it does give that health assurance. One of my own friends already has had six years added to his life.

My company has provided me with a simple device which makes the action of this radio energy visible to the naked eye. It will show you just what goes on within the body to bring about this result.

When may I come to your home and show you and all the members of your family, the proof?

If you find my statements true, then from the moment of possession you and your family have found health—not ordinary health, but vibrant, radiant, health. And better still, you will have found happiness, too.

I am sorry you will not let me tell you of this device, though it may sometime be the means of saving a life in your family. Remember, the next time you or any member of your family becomes ill, that today, May 10 (date) it was not worth 40 minutes of your time to investigate a method which would have eliminated the cause of that illness.

1. What is the nature of your ailment?

(Why asked: To know what you are to cure; so later you can bring out the cause of his ailment; to establish sympathetic understanding; so it will be reasonable that you can talk cause and cure; to let him get through talking so you thereafter can control the conversation.)

2. What medical help have you had?

(Why asked: To start forming in his mind the idea he has had the "medical" but not the "help." To break down without his knowing it, his instinctive idea that a physician is the only one who can help. To give a realization that physicians don't promise cures.)

3. Have you ever been told what was the original cause of your ailments?

(Why asked: Furthering the purpose of Question 2. To start his own reasoning powers to work. Laying ground for next question.)

4. Don't you think we should know the cause, if we are going to do anything intelligent toward curing it?

(Why asked: Awakening interest, hope that help is coming. His own reasoning is now awake and under way. Interest is continued by the declaration:

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Any physician could have told you the cause; you can figure it out for yourself, I'll tell you the cause.)

5. Physicians have told us for years that 95 per cent of all human ailments are caused by failure of the body to get all the wastes out. But that statement fools many people.

(Why said: You now start his reasoning powers toward the premise, by way of waste, poisons, his own ailment, and a common understanding. You are resting your discussion not on your own words, but on known scientific fact.) You explain why the statement deceives, thus:

Many persons think that if their bowels work all right, the waste is being moved out of the body. But they forget the skin and kidneys, the liver and lungs, and the lymphatics. And the failure of the skin and kidneys alone causes more ailments than the bowels themselves. We all know our skin doesn't perspire enough. That failure piles work up onto the other organs and they fall behind. What is the result?

6. Waste is left in the body.

7. This waste turns to acids and poisons, or the minerals lodge in the tissues.

(Why? Now we're getting him close to his own ailment. Keeping his reasoning powers at work to build conviction in his mind.)

8. What would you expect to happen when the acid and poison, or the minerals, lodged in the tissues? This is the cause of your ailment.

(Why asked: Brings him right up to the premise.)

So, then, it is perfectly simple that—

A. A body free from that waste and poison is a healthy body, isn't it?

(This is the premise, the great foundation on which all your sales talk rests. With the following qualification, it is the backbone of all your effort.)

B. And if Vit-O-Net, in a manner I will show you presently will move that waste and poison out of your body, you will have a healthy body and will want one, won't you—if Vit-O-Net will do it?

(Why A and B? They establish a common understanding; they fix, exactly, what you must prove to sell Vit-O-Net. Hereafter, your minds will go along together, like wagon tracks. Now you are ready to bring Vit-O-Net into the picture, which is all set for it.)

1. I will show you a Vit-O-Net, and tell you how it works.

(Why: Having established, by his own reasoning powers, exactly what will be the task in curing him, you now show and explain the tools with which you plan to accomplish it. Vit-O-Net. What do you do and say?)

Answer: You show its size, its coverings and a sample of the inner element. You show and tell of the 15,200 feet of finest pure copper magnet wire (not heating wire).

2. It uses radio, or electromagnetic energy, not ray electricity.

(Why said: To identify the force which is going to do this work; to assure him he will not feel a shock; and to tie it up with the other remarkable accomplishments of radio with which he is familiar.)

3. This magnetic energy streams through the body reaching every cell.

(Why said: To show him where the energy goes to do its work. It hooks up with radio again, for it produces results in the delicate human mechanism just as radio does in the delicate receiving mechanism.)

4. It vibrates and stimulates every cell, every organ, to do its work of carrying off waste, and to assimilate new food and strength.

(Why said: Shows just how Vit-O-Net works. The vibration comes from the fact electricity and magnetism are vibrations, just as sound is a vibration. In addition, with alternating current, a secondary vibration of 60 per second is set up.)

5. This actually moves more waste out of the body through lungs, liver and bowels, kidneys and skin, leaving a healthy body, which is what you really want, isn't it?

(Why said: Completes the story of Vit-O-Net's work, showing him it does exactly what he said in qualification B above, would give him a healthy body and would make him want a Vit-O-Net. It defines exactly what you must prove to him.)

* * * Remember this: Vit-O-Net is the last word and the first remedy in the restoration and maintenance of health by physiotherapy. Physiotherapy is the greatest development of modern medicine—the maintenance of health by natural forces—sunlight, heat, water, electricity, and air.

(Why said: Create desire and build hope of recovery and health, through having not only Vit-O-Net but this medical service. To show him he is not just buying some cloth and wire, but real health. Now you are ready to prove up on him and to close.)

1. We have drawn all the wire out of one Vit-O-Net and wound it into this coil, so as to concentrate into one spot all the mild energy which is diffused over the entire Vit-O-Net—combining its strength in one spot so you can see with the naked eye just what it does and how it does it.

(Why said: It explains why you don't use the Vit-O-Net itself.)

2. It must be something besides electricity, to get through all that insulation, mustn't it?

(Why asked: To pin him down on each proof as offered. This follows showing him the filings vibrated through rubber and glass and air.)

3. You see it actually going through your body don't you?

(Why asked: Same as 2 above. It follows showing him filings actuated through his hand.)

4. You see the filings actually stimulated and vibrated, don't you? That's the whole story of Vit-O-Net.

(Why said: Same as 2 and 3 above. Note: You may be able to close him right here, by following through the description of how the vibrated and stimulated cells throw off waste and by asking when he will get into a Vit-O-Net and let it start making his a healthy body.)

(Also, you apparently set a trap for yourself, in not showing him the waste and poison coming out of his body. If he catches you up on it, you've got him cinched on getting into Vit-O-Net for the final proof, which is just what you want. If he calls you, arrange a home demonstration and point out the wet rubber sheet.)

5. There, on that rubber sheet, Mr. Blank, is the waste and poison which you have seen brought right out of your own body. Vit-O-Net already has started to give you a clean and healthy body. You, right now, are on the way to being cured. Your signature, placed here, will keep Vit-O-Net at work until you are completely restored. You and every member of your family need never again fear any disease.

After showing him the effect of magnetism on iron filings held in the hand—

You have seen this magnetic energy passing through your body like millions of tiny fingers stimulating and massaging every body cell. The cells in every

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organ of the body, including the bowels, kidneys, the lungs and the skin are stimulated in this manner, enabling those organs to perform their full duty.

Each organ begins passing more waste out of the body. This enables the blood to pick up the waste from the various tissues and start it moving out.

You and I agreed that a body free from accumulated waste and body poison was a healthy body. That being true—and it is—if the Vit-O-Net pulls those poisons out of your body, which are responsible for your (name of disease) then the quicker we get you into it, the quicker you will have that body of yours restored to full radiant health and that's just what you want, isn't it?

If the prospect insists on consulting a doctor before buying, the salesman is to say:

That's all right. You see him. If he is a progressive, up-to-date doctor who knows modern practice, he will be enthusiastic over it. If he is behind the times, and doesn't know about it, and if he says it's no good or it won't do anything for you, will you do me just this one favor. After you've come out of his office, will you stand perfectly still for a moment, shut your eyes and ask yourself this: Well, how about myself? Is my health any better? Has he cured me? Has he promised to cure me? He doesn't want anyone but himself to try to cure me and get the pay for it? But where will I be a month from now, if I don't try Vit-O-Net? Will the doctor do any more in the next month than he has in the past months, and why need I expect any more? Vit-O-Net's health division says it will work with me without cost. Since I see no hope ahead otherwise, why wouldn't it be good sense to use Vit-O-Net?

If the doctor tells the prospect the truth about the blanket, that it is a fake and dangerous in many cases, the salesman is to say:

Thirteen thousand persons have used Vit-O-Net and have gained permanent, vigorous health with it. Men are found unconscious dying, Vit-O-Net restored them. Do you think they believe it is a fake? Others are bedridden and are given up by their physicians as beyond cure. Vit-O-Net gets them up so they can walk. Do these people think it is a fake? Has the doctor used Vit-O-Net? Has he actually seen it used? Is it a fake only because he doesn't get any fee out of it when people cure themselves with its use? Vit-O-Net has as high a scientific standing as any doctor living—a higher standing than many. You don't suppose he is jealous of its ability to cure people whom he can not help, do you?

WHY HAVEN'T I HEARD OF IT BEFORE?

A. Probably because it was marketed only to doctors and physicians, and to those who had heard of it and wrote to the company. That was during the 14 years when it was being perfected and tested, before being offered to the general public. Having proved itself, over a decade, it is now a tested product, ready to be offered to everyone with an assurance of what it will do, backed up by its history of performance.

THE PHILOSOPHY OF VIT-O-NET

Life is the manifestation of energy in a body.

Energy is the manifestation of the magnetic force of nature.

Vit-O-Net is the dispersal of vital magnetism through the medium of a woven network of conductors of electricity. Electricity may be said to be concentrated magnetism.

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The human body—same as any animal body—derives its driving power from the magnetic forces of the solar system. It is therefore highly susceptible to the applicant of magnetic forces.

Vit-O-Net and the human body—the effect of Vit-O-Net upon the human system is the supply of additional magnetism to the body—thus energizing same to greater activity of its vital functions.

Civilization has gradually resulted in a form of life which can not any longer be called natural.

The application of Vit-O-Net to the human body supplies that additional natural energy enabling same to reestablish its normal functions. It normalizes the body.

HOW VIT-O-NET WORKS

A liquid, particularly when a carrier of oxygen, is an excellent conductor of electricity. The blood, with its corpuscles carrying oxygen by means of the organic iron content, is an excellent conductor.

In the Vit-O-Net, the body is in a mild magnetic field, affecting the polarity and electric potential of all cells of the body.

When the blood stream, a conductor, moves in this magnetic field, it sets up within itself tiny, minute electric currents which, because surrounding tissue is also a conductor, are imparted at once to every cell of the surrounding tissue of the body. These tiny currents purposely are made minute scientifically, so that they may be of only such intensity as to stimulate the minute cells which are so small that it requires a powerful microscope to see them.

The effect of these minute currents is to set up minute vibrations of the cells—to stimulate them to action and to enable them to throw off or eliminate therefrom all those matters which by the laws of nature do not belong there.

The thus cleansed cell is then enabled to assimilate properly those food juices which are dumped into them by the blood and by the lymphatic streams which circulate continuously throughout the system. The force drawn from the unseen which we believe to be the very vital essence of life, likewise is absorbed.

Thus we have the following sequence of events:

VIBRATION STIMULATION ELIMINATION ASSIMILATION

In this way Vit-O-Net assists nature to perform its normal functions. It normalizes the system which in consequence of the effects of civilization had become denormalized.

For that purpose, it utilizes by-products of electricity in a similar way as X ray and ultra violet ray are by-products of electricity and not raw electricity.

HISTORY OF VIT-O-NET

Wm. F. Craddick, the inventor of Vit-O-Net, was one of the first men to apply magnetism to the relief of human ailments. Around 1911 he was experimenting with electric-heating pads. When increasing their size, he noticed certain additional, and at the time unexplainable, beneficial results. In developing these additional benefits, he was led away from heat as the primary factor, when he discovered that these benefits came from electromagnetic vibration and stimulation, which exerted a therapeutic potency far in excess of the heat alone. Here was the birth of Vit-O-Net.

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Up to the end of 1927 Vit-O-Net was sold on a strictly limited scale. Then a group of Chicago business men obtained control, placed the manufacture on a proper large basis, and it is now being made available to the population at large.

Vit-O-Net is in regular use in hospitals and institutions throughout the United States and is similarly used by doctors.

HOW TO OBTAIN GREATEST BENEFIT FROM VIT-O-NET

Spread Vit-O-Net on the bed with lining side up, and connecting cord at head. Have top of blanket far enough from head of bed, so it will come to the patient's neck line. Turn on the current.

Spread an ordinary cotton or wool bed blanket on top of Vit-O-Net, with its top even with Vit-O-Net. Place rubber sheet on top of bed blanket, allowing it to extend three inches above Vit-O-Net at head.

Next spread a bed sheet on top of rubber sheet, letting it extend 6 inches above rubber sheet; then turn the extended end of rubber and bed sheet down under the edge of Vit-O-Net to protect it from becoming soiled and disarranged.

Fold entire equipment in half lengthwise. Turn excess length at foot down at right angles to edges of bed. (Do not fold under as this increases heat.)

First. Wring out two large Turkish towels from hot water. The hotter the better.

Second. Place one hot towel lengthwise from the top of your Vit-O-Net or the neck line, downward.

Third. Lie on this hot towel.

Fourth. Take other hot towel, place one-third lengthwise under, and bring around bottom and over the top of feet and legs.

Note.—This arrangement will have a soothing effect and will start elimination much more rapidly. In fact, usually within 30 minutes, one will perspire sufficiently so current may be turned off, cutting down time of treatment at least 25 per cent.

Fifth. Pull blanket over body—loosely—not tightly.

Sixth. See that edges alongside of patient meet and that no air enters.

Seventh. Tuck a dry towel around shoulders and under chin so no air comes in from in or around neck and shoulders.

Remember, you are not experimenting—that over 13,000 persons have tried it and have found real health—not ordinary health—but vibrant, surging health.

Vit-O-Net used intelligently and persistently can not hurt you—it can only help you.

Help Vit-O-Net cleanse the poisons—drink two or three large glassfuls of warm water—add a little lemon juice if possible—never any sugar—before you get into your Vit-O-Net for a treatment.

Water is an excellent conductor of electrical energy.

VIT-O-NET TREATMENT CHART—KEY

R 1.—Radical treatment for 30 minutes or more of profuse sweating; maximum time under treatment, 70 minutes.

R 2.—Moderately radical; 15 minutes of profuse sweating; maximum time under treatment 45 minutes.

R 3.—Mildly radical; 5 to 10 minutes of profuse sweating; maximum time under treatment, 35 minutes.

R. 4.—Discontinue as soon as body is bathed in sweat; maximum time under treatment, 30 minutes. Maximum time limits for treatment must be observed, whether patients sweat or not.

And then follows a statement of the treatment to be prescribed and given with the blanket in some 65 or more diseases or ailments. It concludes with—

The legal end.—Please bear in mind that any instructions given by our health director, any prescriptions sent in by him, any line of treatment advised by him, may be carried out by you without any danger of coming in conflict with any medical practice law. He is licensed and registered and in good standing so has a right to prescribe or advise anywhere and you have the right to carry out his orders.

This booklet contains also a section on "The medical profession", a section purporting to give a description of "The human body and its ailments", and another purporting to describe "The organs of the body and their main functions". These last three sections, together with that setting forth the treatment to be prescribed and given in the various diseases, and diseased conditions, the "Philosophy of Vit-O-Net", "How Vit-O-Net works", and "History of Vit-O-Net" in separate pamphlet form are circulated among customers and prospective customers. This booklet was followed in instruction in respondent's schools for agents.

PAR. 14. Respondent as an inducement to purchasers and prospective purchasers of its blanket represents that the blanket is the greatest health discovery in recent years; that it was developed during 17 years of patient, at times discouraging, effort in literally thousands upon thousands of tests; that it was developed scientifically upon a foundation of scientific principles and the inventor was a great scientist; that it embodies principles for the cure of diseases of the human body of great scientists; that the blanket is a cure-all, not contraindicated in any disease and of positive benefit in all diseases; that it will prevent illness; will benefit after all other agencies fail; will give special energy and exceptional health and will greatly prolong life; that the important curative and ameliorative therapeutic agencies furnished by it are electricity and magnetism; that the effect upon the human body enveloped in it or lying upon it is to magnetize the human body and the bodily organs and tissues and cells, set up electric currents in the blood streams and tissues, stimulate and vitalize the cells, impart vital energy, suppress and assuage all diseased conditions and give health; that its magnetic field accelerates chemical reactions in the human body and in the tissues and cells of the human body; that it develops a radiomagnetic energy and transmits it to the patient using the blanket as directed,

charges the blood stream with such energy, magnetizes the body cells as a magnetic field does iron filings, thus causing the elimination of poisons and waste matter to a greater extent than is possible by any other sort of treatment and that since faulty elimination is the cause of 95 per cent of all diseases it will be of benefit to all such diseases; that the blanket is indorsed and recommended by prominent and well-known physicians, scientists and hospitals and used by them and by athletes, business men, social leaders, beauty shops, physical culture institutions, hotels, factories, offices and schools to cure and prevent disease and maintain health; that it is used by 13,000 or 16,000 persons who have found its health-giving qualities to be as respondent represents and claims; that the Vit-O-Net blanket is not merely a heating pad and sweating device, for where the average heat treatment weakens, Vit-O-Net strengthens and increases energy, and has been noticeably successful with heart and anemia cases and with aged people who can not stand the weakening effect of the ordinary heat treatments; that the temperature in the blanket is but two degrees above body temperature; that the human body acts as a core in the blanket and increases the strength of the magnetic field of the blanket; that the body is in a concentrated magnetic field; and that the representations and claims for the blanket are based upon scientific principles and elaborate tests have been made which establish the truth of such claims and representations.

PAR. 15. The Vit-O-Net blanket was originated and developed by a man who is not a scientist, electrician, or physician, and having only an eighth-grade education and was first suggested to him when he saw electric heating pads in use. The blanket was first made and sold as a heating pad. Claims of curative properties upon any other basis than that of a heating pad were an afterthought. Neither respondent nor any of its predecessors have made or caused to be made any scientific tests or experiments with the blanket. The blanket is in no sense a cure-all and is contraindicated in many diseases and diseased conditions and its use in certain diseases and diseased conditions is dangerous to health and life. When an electric current is run through the wires in it and it is wrapped around the human body or the person lies upon it as directed by respondent, it does not magnetize the body or any part of it or set up electric currents in the body or any part of it that have any effect upon the bodily functions. The statements and claims of respondent as to the properties and effects of the use of the blanket are unsupported by scientific data and are contrary to facts and principles scientifically established. The blanket does not develop radiomagnetic energy in appreciable quantities and does not im-

part such to the human body. Faulty elimination is but remotely associated if at all, with many of the diseases named by respondent and the effect of the blanket in eliminating harmful wastes is almost negligible as compared with the usual action of the kidneys in performing such function. The blanket has no tendency to stimulate kidney activity but on the contrary by eliminating water through the skin tends to make the kidneys less active. The blanket has not been endorsed or recommended by prominent or well-known physicians, scientists or hospitals and is not used by them or by athletes, business men, social leaders, beauty shops, physical culture institutions, hotels, factories, offices, or schools as claimed by respondent, and there is no warrant whatsoever for the statements that the blanket is used by these specific classes or for the specific purposes or to the extent claimed by respondent. Less than 10,000 blankets have been sold by respondent and its predecessors.

PAR. 16. Because of the way that the wires are woven into respondent's blanket the magnetic field surrounding one wire tends to neutralize the magnetic field of the wire next to it, outside of the plane of the blanket, while it strengthens the magnetic field within the plane of the blanket. The actual strength of the magnetic field of this blanket 1 centimeter from the surface of the blanket is very small, about one-third the strength of the magnetic field of the earth in which everyone lives. The human body within or upon the blanket does not increase the strength of the magnetic field of the blanket. The ordinary alternating house electric current has but 60-cycle frequency a second. High frequency currents are above 30,000 cycles a second and up to many millions. High frequency currents are used in diathermy, usually 800,000 cycles or more a second, and the electric current is applied directly to the body. Respondent's blanket does not increase the frequency of the current run into it. Magnetism does not produce diathermy. No electric current is applied directly to the body from the blanket. No diathermy is possible from the use of the blanket. The reactions of living tissue to electricity and magnetism are not the same as the reaction of metals in these agencies. The human body within or upon the blanket absorbs no energy or waves from the magnetic field of the blanket. The magnetic field of the blanket in no way accelerates chemical reactions within the body. Experiments with the most powerful magnets have failed to develop any effect of magnetism upon the human body or upon any tissue or cell of the human body. Magnetism has no therapeutic effect on the human body or on any of the tissues or cells or on any diseases of the body.

An electric current set up within the human body from the blanket, if such were possible, could not cleanse or purify the cells, but if in

sufficient strength to affect the cells at all, would polarize them and kill them. There is nothing in the blanket or from the blanket to massage or vibrate the cells of the body. No energy of any kind sufficient to have any effect goes from the Vit-O-Net blanket to the human body wrapped in it, or lying upon it. The temperature within the blanket mounts to 118° F., more than 18° above normal body temperature. The only therapeutic service of respondent's blanket is as a means of supplying heat treatment and the blanket can not be used successfully where heat can not be used successfully. In every case in which respondent claimed that it had some clinical data to support its claims as to the curative and beneficial properties of the blanket, the blanket was used in connection with restricted diet and other curative means. No case was controlled so as to isolate the blanket as the sole curative agency or to demonstrate its influence. In no case was the patient under respondent's constant observance and control. The results which were obtained were easily explainable upon the basis of and were due to these other recognized treatments and agencies. Respondent's Vit-O-Net blanket has no therapeutic value other than as a convenient means of applying heat generally to the human body and thus causing sweating or diaphoresis and it will not benefit, cure or prevent diseases or diseased conditions as respondent represents and claims. Respondent has no clinical data which would make a proper foundation for the representations and claims made by it as to the therapeutic qualities of the Vit-O-Net blanket.

PAR. 17. The statements, representations, and claims of respondent concerning its Vit-O-Net blanket, set out above, are false and misleading and have the capacity and tendency to and do mislead and deceive customers and prospective customers and cause many persons to purchase and use the blanket. Respondent knew such statements, representations, and claims were unfounded and false. In many cases such false and misleading statements may be relied upon to the extent of causing patients to use the blanket in cases where its use would be extremely dangerous to health and life and to neglect proper means of treatment.

CONCLUSION

The acts and practices of respondent set forth in the foregoing findings as to the facts constitute, under the circumstances therein stated, unfair methods of competition in commerce in violation of the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

Order

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, the testimony and evidence submitted, the trial examiner's report upon the facts and respondent's exceptions thereto, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That respondent, Vit-O-Net Corporation, its officers, directors, agents, employees, and successors do cease and desist from advertising, representing, claiming, or otherwise stating in connection with the sale of the Vit-O-Net blanket in commerce between and among the several States of the United States, or between any State and the District of Columbia, or between any State or the District of Columbia and any foreign country, or in the District of Columbia:

1. That said blanket will prevent, relieve, benefit, or cure all diseases of the human body.
2. That said blanket is based upon or makes practical application of scientific discoveries or theories of well-known scientists for the benefit, cure, or prevention of human diseases or ailments.
3. That said blanket was discovered, originated, invented, or developed by a scientist.
4. That numerous tests or experiments have been made with said blanket which prove it to have any therapeutic value except as a heating pad and because of the heat generated in it by the electric current passing over the wires in it.
5. That said blanket sets up a radiomagnetic or electromagnetic energy which is transmitted to the person using said blanket or which had any effect upon a person using said blanket.
6. That the magnetic field of said blanket magnetizes the body or any part of the body or sets up electric currents in the body or any part of the body.
7. That said blanket is used, indorsed or recommended by prominent or well-known physicians, scientists, hospitals, educators or other prominent or well-known persons or has been tested by institutions for medical or scientific research when such is not the fact.
8. That from the use of said blanket there is any effect upon the human body or any part thereof or any tissue or cell thereof other

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than that caused by the heat generated in the blanket by the electric current passing over the wires of said blanket, that is, except as a heating pad.

9. Falsely the number of said blankets sold, the users of said blankets or the purposes for which used.

It is further ordered, That the respondent, Vit-O-Net Corporation, shall within 30 days after the service upon it of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

Complaint

IN THE MATTER OF
 PRO-PHY-LAC-TIC BRUSH COMPANY

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

Docket 1825. Complaint, May 5, 1930—Decision, July 7, 1930

Where a corporation engaged in the manufacture of toothbrushes and in the sale thereof to jobbers and retailers; in enforcing a merchandising system adopted by it, in cooperation with a selected number of jobbers throughout the United States, directed to the fixing and maintaining of specified uniform prices at which its products should be sold by jobbers to retailers and by the latter to purchasing public,

- (a) Entered into contracts, agreements, and understandings with its jobber and retailer dealers looking to the maintenance by them of the resale prices fixed by it and made known to them, together with its policy, as a condition of opening accounts with them or continuing their supply of said brushes;
- (b) Procured and induced groups of dealers in given localities to agree among themselves and with it to observe and maintain the resale prices specified by it;
- (c) Sought and secured information from its dealers touching price cutting on the part of others and used such information to induce and coerce such price-cutting dealers to maintain its prices thereafter; and
- (d) Refused further to supply its brushes to price-cutting dealers unless and until they had given satisfactory promises and assurances that they would in the future maintain and observe its price;

With the result that said resale prices were generally maintained, competition among dealers in the distribution and sale of its said product was suppressed, dealers were constrained to sell the same at the prices fixed by it and prevented from selling the product at such lower prices as they might desire, and purchasers were deprived of the advantage in price otherwise obtainable by them from a natural and unobstructed flow of commerce in said brushes under methods of free competition;

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

Mr. Alfred M. Craven, for the Commission.

Macleod, Calver, Copeland & Dicke, of Boston, Mass., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Massachusetts corporation engaged in the manufacture of toothbrushes and in the manufacture of Pro-phy-lac-tic toothbrushes and in the sale and distribution thereof to job-

bers and retailers throughout the United States, and with principal office and place of business at Florence, Mass., with maintaining resale prices, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, "for many years, last past, in the course and conduct of its said business, enforced and now enforces the merchandising system adopted by it in cooperation with a selected number of jobbers and retailers throughout the United States, of fixing and maintaining specified uniform prices at which said toothbrushes shall be sold by jobbers to retailers and by retailers to the purchasing public. Respondent enlists and secures, and has enlisted and secured, the support and cooperation of dealers, both jobbers and retailers, in enforcing said system.

"In order to carry out said system, respondent has employed and still employs the following means whereby it and those cooperating with it have undertaken to prevent and have prevented dealers from selling said toothbrushes at prices less than the prices specified by respondent":

(a) Fixing uniform minimum prices at which jobbers and retailers shall resell the same and making it generally known to both classes of dealers that it expects and requires all dealers to resell its products at the prices fixed by it as above set forth;

(b) Entering into contracts, agreements, and understandings with both classes of dealers for the maintenance by them of its said resale prices, as a condition of opening accounts with them or continuing their supply;

(c) Procuring and securing groups of dealers in a given locality to agree among themselves and with it to observe and maintain resale prices specified by it;

(d) Seeking and securing from its dealers information and evidence concerning price cutting on the part of other dealers and using information thus obtained to induce and coerce such price cutters to maintain its prices thereafter; and

(e) Refusing further to supply its brushes to price-cutting dealers unless and until they have given it satisfactory promises and assurances of thereafter maintaining and observing its prices.

"As a result of the foregoing acts and practices of respondent", as alleged, "said resale prices have been generally maintained", and "the direct effect and result of the above alleged acts and practices of respondent has been and now is to suppress competition among dealers in the distribution and sale of respondent's said product, Prophylactic toothbrushes; to constrain dealers to sell said product

at the prices fixed by respondent, and to prevent them from selling the product at such less prices as they may desire, and to deprive the purchasers of said product of the advantage in price which otherwise they would obtain from a natural and unobstructed flow of commerce in said brushes under methods of free competition.

“Wherefore, said acts and practices of respondent are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of section 5.”

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled “An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes”, the Federal Trade Commission on the 5th day of May, 1930, issued and served its complaint upon the respondent, charging it with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

Respondent thereafter filed its answer to the complaint and in said answer states that it does not contest the complaint and consents that the Commission may make, enter, and serve upon respondent an order to cease and desist from the violations of law alleged in the complaint.

Thereupon this proceeding came on for decision, and the Federal Trade Commission having duly considered the record and being fully advised in the premises, pursuant to subdivision (2) of Rule III of the Rules of Practice heretofore adopted by the Commission, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Pro-phy-lac-tic Brush Co. is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts with its principal office and place of business at Northampton, in said State. It was for many years prior to February 19, 1930, engaged in the manufacture of toothbrushes and in the sale and distribution thereof from its factory and principal place of business in the State of Massachusetts to jobbers and retailers throughout the United States. It caused its said toothbrushes when so sold to be transported from its principal place of business in the State of Massachusetts, in interstate commerce, into and through States of the United States other than Massachusetts to its purchasers at their respective points of location. In the course and conduct of

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its said business, respondent was in competition with other individuals, partnerships, and corporations engaged in the manufacture and/or sale and transportation of toothbrushes in interstate commerce between and among the various States of the United States.

Respondent on the 19th day of February, 1930, transferred its plant and factory to the Pro-phy-lac-tic Brush Co., a Delaware corporation, which corporation conducts the business theretofore conducted by respondent.

PAR. 2. Respondent for many years prior to February 19, 1930, in the course and conduct of its said business, enforced a merchandising system adopted by it in cooperation with a selected number of jobbers and retailers throughout the United States, for fixing and maintaining specified uniform prices at which said products should be sold by jobbers to retailers and by retailers to the purchasing public. Respondent enlisted and secured the support and cooperation of dealers, both jobbers and retailers, in enforcing said system. In order to carry out said system, respondent employed the following means whereby it and those cooperating with it undertook to prevent and did prevent dealers from selling said toothbrushes at prices less than the prices specified by respondent:

(a) Respondent fixed uniform minimum prices at which jobbers should sell said brushes to retail dealers, and also fixed minimum prices at which retail dealers should sell said brushes to the purchasing public, and made it generally known to both classes of dealers that it expected and required all dealers handling said product to resell the same at such fixed prices.

(b) Respondent entered into contracts, agreements, and understandings with its dealers, both jobbers and retailers, for the maintenance by them of said resale prices as a condition of opening accounts with such dealers, or continuing their supply of said brushes.

(c) Respondent also procured and induced groups of dealers in given localities to agree among themselves and with respondent to observe and maintain the resale price specified by respondent.

(d) Respondent sought and secured from its dealers information concerning and evidence of the failure of other dealers to observe and maintain said resale prices, and used the information thus obtained to induce and coerce dealers who had failed to maintain said prices to maintain same in the future.

(e) Respondent refused to further supply its said brushes to dealers who had failed to maintain said resale prices, unless and until such dealers gave respondent satisfactory promises and assurances that they would in the future maintain and observe such prices.

As a result of the foregoing acts and practices of respondent, said resale prices were generally maintained.

PAR. 3. The direct effect and result of the above alleged acts and practices of respondent were to suppress competition among dealers in the distribution and sale of respondent's said product, Pro-phy-lac-tic toothbrushes; to constrain dealers to sell said product at the prices fixed by respondent, and to prevent them from selling the product at such less prices as they may desire, and to deprive the purchasers of said product of the advantage in price which otherwise they would obtain from a natural and unobstructed flow of commerce in said brushes under methods of free competition.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is now ordered, That the respondent, Pro-phy-lac-tic Brush Co., its officers, agents, and employees do cease and desist from:

(1) Entering into or procuring from any of its dealers contracts, agreements, understandings, promises or assurances that respondent's products or any of them are to be resold by such dealers at prices specified or fixed by respondent.

(2) Procuring groups of dealers in any given locality to agree among themselves and with respondent to observe and maintain any resale prices specified by respondent.

(3) Requesting its dealers or any of them to report the names of other dealers who do not maintain respondent's resale prices or who are suspected of not maintaining same.

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(4) Seeking by any manner the cooperation of dealers in making effective any policy adopted by the respondent for the maintenance of prices or cooperating in any manner with any of its dealers in making effective any policy of price maintenance.

It is further ordered, That the respondent, Pro-phy-lac-tic Brush Co., shall within 30 days after the service upon it of a copy of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

Findings

IN THE MATTER OF
N. SHURE COMPANY

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

Docket 1827. Complaint, May 8, 1930—Decision, July 7, 1930

Where a corporation engaged in the sale of various articles of merchandise, advertised as "Beacon Casco Indian Blankets", "Casco Indian Shawls" and "Oneida Indian Blankets", articles not made by American Indians but woven or knit by machinery in mills or factories, with the capacity and tendency to mislead, deceive, and confuse the purchasing public into believing the same to have been made by hand by Indians:

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

Mr. Robert H. Winn for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Illinois corporation, engaged in the sale of sundry articles of merchandise to purchasers in the various States, and with office and place of business in Chicago, with advertising falsely or misleadingly as to nature of manufacture of products dealt in, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that in its advertising in its catalogues it falsely described the blankets and/or shawls, dealt in by it and woven or knit by machinery in mills or factories, as "Beacon Casco Indian Blankets", "Casco Indian Shawls", and "Oneida Indian Blankets", with the capacity and tendency to mislead and deceive the purchasing public into the belief that said articles had been woven or knit by American Indians, to the prejudice of the public and its competitors and in violation of the provision of section 5, as above set forth.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served its complaint

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upon the respondent, N. Shure Co., a corporation, charging it with the use of unfair methods of competition in interstate commerce, in violation of the provisions of said act.

Respondent having entered its appearance and filed its written return and answer to the complaint herein, admitted therein substantially all allegations of such complaint, and alleged the cessation of the methods of competition charged in said complaint. In such answer respondent consented that the Commission should proceed upon such complaint and respondent's said written return and answer to make its findings as to the facts and such order as it may deem proper to enter therein, without the introduction of testimony or the presentation of argument in support of same. And the Federal Trade Commission being now fully advised in the premises makes this its findings of the facts stated in the complaint and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business in the city of Chicago, in said State. It is now and for more than one year last past has been engaged in selling various articles of merchandise to purchasers thereof located in various States of the United States. It causes its said merchandise, when sold, to be transported from its place of business in the State of Illinois into and through other States of the United States to the purchasers thereof located in a State or States of the United States other than the State of Illinois. In the course and conduct of its business respondent is in competition with other corporations, partnerships, and individuals engaged in the sale and distribution of similar articles of merchandise in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, the respondent has been and is now soliciting the sale of and selling and transporting in commerce, certain blankets and/or shawls described and advertised in catalogues published and issued by it and distributed to its customers and prospective customers located in various States of the United States. The descriptive matter in such catalogues advertising the said blankets and/or said shawls, contain the representations that the said blankets and/or shawls are:

Beacon Casco Indian Blankets
Casco Indian Shawls
Oneida Indian Blankets

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when in truth and in fact, the said blankets and/or said shawls are not manufactured by American Indians, but are made, woven, or knit by machinery in mills or factories.

PAR. 3. The use by the respondent of the phrases Beacon Casco Indian Blankets, Casco Indian Shawls, and Oneida Indian Blankets, to represent, designate, or describe and refer to its said products in the manner hereinbefore set out, has the capacity and tendency to mislead and deceive and to confuse the purchasing public into the belief that its said products so represented, designated, described, and referred to, are manufactured by hand by American Indians.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is now ordered, That the respondent, N. Shure Co., a corporation, its officers, agents, and employees, in connection with the advertising, offering for sale, and selling in interstate commerce among the several States of the United States of blankets and shawls, do cease and desist from the use of the phrases, Beacon Casco Indian Blankets, Casco Indian Shawls, Oneida Indian Blankets, or any other phrase or word which would convey to the purchasing public the representation that the blankets and/or shawls are made by hand by American Indians, unless the said blankets and/or shawls are manufactured by hand by American Indians.

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

IN THE MATTER OF
PHILADELPHIA LEATHER HOUSE, A CORPORATION,
TRADING AS WESTERN TANNING COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 1835. Complaint, May 21, 1930—Decision, July 7, 1930

Where a corporation engaged in the sale of leather of different kinds, shoe findings, shoe machinery, and shoe-store supplies to retailers in various States, and neither owning, controlling, nor operating any tanning plant, or factory tanning the leather dealt in by it, used and featured in its mail-order business in different leathers a trade name including the word "tanning" and displayed said name in printed circulars, handbills, price lists, and on letterheads, billheads, etc., together with such statements in its advertising as "Buy direct from us for cash," "We sell our leather direct to the man who uses it", "Buy direct from us and save the difference"; with capacity and tendency to mislead and deceive the public and retail dealers and to cause a substantial number thereof to purchase leather from it as and from a tannery, with cost or profit of the middleman eliminated, and to divert trade from and otherwise injure competitors:

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

Mr. James W. Nichol for the Commission.

Mr. Benjamin S. Baker, of Omaha, Nebr., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Nebraska corporation engaged as a jobber in the sale and distribution of leather of different kinds, shoe findings, shoe machinery, and shoe-store supplies, to retailers in various States, and with its principal office and place of business in Omaha, with using misleading trade names and with advertising falsely or misleadingly as to business status, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, in carrying on a part of its business, to wit, a mail-order business in leather of different kinds, with retail dealers, adopted the trade name "Western Tanning Company" and featured said name in its circulars and bills, price lists, and other similar literature, and on letterheads, billheads, envelopes, and other stationery, and made such statements therein as "Buy direct from us for cash"; "We sell our

leather direct to the man who uses it—the shoemaker and harness maker”; “Buy direct from us and save the difference”; “Western Tanning Company—Sole and harness leather—Buy your leather now”, etc., notwithstanding the fact that said corporation neither owned, controlled, nor operated any tanning plant or factory, but purchased the leather sold and distributed by it from tanneries which it neither owned, controlled, nor operated.¹

The adoption and use by respondent, as alleged, of the aforesaid trade name, with or without the statements and representations made in its advertising, as above set forth, is calculated to and has had and has the capacity and tendency to mislead and deceive the public and retail dealers, and/or does mislead and deceive the public and retail dealers, and to cause a substantial number thereof to purchase leather from respondent under the erroneous belief that in so doing they the purchasing leather direct from a tannery, without the intervention of a middleman or any element of cost and/or profit of such middleman, and the aforesaid false, misleading, and deceptive acts and practices of respondent, under the circumstances and conditions set forth, have, and had, as charged, the capacity, tendency, and effect of unfairly diverting trade from and otherwise injuring the business of respondent’s competitors, are to the prejudice and injury of the public, and constitute unfair methods of competition in commerce within the intent and meaning of section 5.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled “An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes”, the Federal Trade Commission issued and served a complaint upon said respondent, Philadelphia Leather House, a corporation, trading as Western Tanning Co., charging said respondent with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act. The respondent having entered its appearance and filed its answer herein, pursuant to section 2 of Rule III of the Commission’s Rules of Practice, and stating that it refrained from contesting said proceeding.

¹ As alleged in the complaint, the word “tanning” in the mind of the public and the leather trade, signifies a process by which hides or skins are converted into leather and the use by respondent of said word as a part of its said trade name Western Tanning Co., as hereinbefore set forth, signifies in the mind of the public and the leather trade that said Western Tanning Co. is a concern which owns, operates, or controls a tanning plant or factory where hides or skins are converted into leather.

Findings

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Thereupon, this case came on for decision, and the Federal Trade Commission, having duly considered the record, and having been fully advised in the premises, now makes this its findings of the facts, as stated in the complaint, and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Philadelphia Leather House, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska, with its principal office and place of business in the city of Omaha, in said State. It is now and has been engaged as a jobber, in the business of selling and distributing leather of different kinds, shoe findings, shoe machinery and shoe-store supplies, to retail dealers located in various States of the United States. It causes its merchandise, when so sold, to be transported from its said place of business in the city of Omaha, in the State of Nebraska, into and through other States of the United States to said vendees at their respective points of location. In the course and conduct of its said business, respondent is in competition with individuals, partnerships, and other corporations engaged in the sale and distribution of like articles of merchandise in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent adopted the trade name and style of Western Tanning Co., and carried on and conducted a part of its said business, to wit, a mail-order business in leather of different kinds, with retail dealers, under said trade name and style. Under said trade name and style, prominently displayed, it caused advertising matter in the form of printed circulars, handbills, price lists, and other similar literature to be circulated in interstate commerce among customers and prospective customers, and also used said trade name on letterheads, billheads, envelopes, and other stationery; and in such advertising matter—in which said trade name Western Tanning Co. was prominently displayed—made the following and other similar statements and representations:

- (a) Buy direct from us for cash;
- (b) Direct to you;
- (c) We sell our leather direct to the man who uses it—the shoemaker and harness maker;
- (d) Buy direct from us and save the difference;
- (e) Western Tanning Co.—Sole and harness leather—Buy your leather now—Whether you buy your leather from us or from your jobber, buy it now;
- (f) We sell our leather direct to the shoemaker or harness maker by mail, not through a salesman;
- (g) Buy western oak sole and harness leather direct from us and save the difference;

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when, in truth and in fact, said Philadelphia Leather House was, at the times herein referred to, and now is, a jobber of such leather, and did not and does not now own, control, or operate a tanning plant or factory where the leather sold and distributed by said corporation under the trade name Western Tanning Co., or otherwise, was and is tanned, but purchased, and now purchases said leather which it sold and distributed, and now sells and distributes, as set forth above, from tanneries which it did not now own, control, or operate.

PAR. 3. The word "tanning" in the mind of the public and the leather trade, signifies a process by which hides or skins are converted into leather, and the use by respondent of said word as a part of its said trade name Western Tanning Co., as hereinbefore set forth, signified in the mind of the public and the leather trade that said Western Tanning Co. was a concern which owned, operated, or controlled a tanning plant or factory where hides or skins were converted into leather.

PAR. 4. The adoption and use by respondent of the trade name Western Tanning Co., with or without the statements and representations made in its advertising matter, all as hereinbefore set forth, was calculated to and had the capacity and tendency; (a) to mislead and deceive the public and retail dealers, and to cause a substantial number thereof to purchase leather from respondent under the erroneous belief that in so doing they were purchasing leather direct from a tannery, without the intervention of a middleman or any element of cost or profit of such middleman; and (b) to divert trade from and otherwise injure the business of respondent's competitors.

CONCLUSION

The practices of said respondent, Philadelphia Leather House, under the conditions and circumstances set forth in the foregoing findings, are to the prejudice of the public and of respondent's competitors, and are unfair methods of competition in interstate commerce, and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and the answer of the respondent filed under the provisions of section 2 of Rule III of the Commission's Rules of Practice, in which respondent stated that it refrained from contesting this proceeding—as fully appears from

the record herein; and the Commission, having made its report stating its findings as to the facts, with the conclusion that the respondent Philadelphia Leather House has violated the provisions of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914,

It is now ordered, That the respondent, Philadelphia Leather House, its officers, directors, agents, servants, employees, and successors, cease and desist, in connection with the sale and distribution of leather in interstate commerce between and among the various States of the United States, from the use of the word "tanning" or a word or words of like import, either independently or in connection with any other word or words, as a part of the trade name and style of any business conducted by it as a jobber of leather, on circulars, handbills, price lists, letterheads, billheads, envelopes, and other business stationery and advertising matter, or otherwise; and from the use, in its advertising matter, or otherwise, of any statement or representation, direct or implied, to the effect that respondent is a tanner of the leather sold and distributed by it, and that purchases of leather made directly from it will eliminate the profit of the jobber or middleman—unless and until said respondent actually owns and operates, or directly and absolutely controls a tanning plant or factory where the leather sold and distributed by it is tanned.

And it is further ordered, That the respondent, Philadelphia Leather House, shall, within 60 days from the date of service upon it of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

Complaint

IN THE MATTER OF

L. M. WHITNEY, INDIVIDUALLY, AND TRADING AS
MOTOR SNAP COMPANY AND AS WHITNEY SALES
COMPANY

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

Docket 1759. Complaint, Feb. 10, 1930—Decision, July 8, 1930

Where an individual dealing in "Motor Snap Gas-Garets" or "Motor Snap" tablets, composed of naphthaline, active ingredients of moth balls, represented through pamphlets, leaflets, labels, letters, and other advertising matter that said tablets, added to gasoline in the proportion of one to the gallon, would remove carbon, give 30 per cent more mileage, lessen odor, smoke, and engine knocking and generally promote higher engine efficiency, the facts being that they did not cause gasoline to which added to give more power or mileage, dissolve or remove carbon or have an antiknock value; with capacity and tendency to mislead, deceive, and confuse the purchasing public in reference to the qualities thereof, as above set forth:
Held, That such practices, under the circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. Richard P. Whiteley for the Commission.

Mr. Emile H. Ruch, of Providence, R. I., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an individual engaged in the sale and distribution of a product known as "Motor Snap-Gas-Garets", in the form of small tablets for placing in gasoline tanks of automobiles and other motor vehicles, to promote higher engine efficiency, and with principal place of business in Providence, R. I., with advertising falsely or misleadingly as to results or characteristics of product dealt in, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, falsely represented in his advertisements of his product in circulars, form letters, pamphlets, magazines or newspapers that his product, added to gasoline, would give more power, more mileage per gallon, greater economy, dissolve or remove carbon from cylinders, and result in a smoother motor, the fact being that gasoline so treated was not more

efficient in the aforesaid respects than gasoline of similar kind and quality to which said product had not been added.¹

The representations made by respondent, as alleged, "of his product called Motor-Snap or Motor-Snap-Gas-Garets in soliciting the sale of and selling his aforesaid product in the manner heretofore set out has the capacity and tendency to mislead and deceive and to confuse the purchasing public into the belief that respondent's said product when added to gasoline burning motors, causes the gasoline to which it is added to produce more power, to give 30 per cent more mileage and to remove carbon, when in truth and in fact gasoline to which respondent's product has been added in the quantity specified does not give more mileage per gallon and does not dissolve or remove carbon from gasoline engine cylinders, and is no more efficient in said respects than gasoline of similar kind and quality to which respondent's product has not been added"; all to the prejudice of the public and of respondent's competitors.

¹ Excerpts from respondent's advertising as set forth in the complaint follow:

"MOTOR SNAP

AMERICA'S STANDARD

CARBON REMOVER

AND POWER PRODUCER

Removes carbon—Gives more power and smooth easy-running engine with 30 per cent more mileage

DROP MOTOR SNAP INTO YOUR GASOLINE."

"GASOLINE ECONOMY AND EFFICIENCY

"Do you realize that you are spending too much money on your motive power, and did you ever think there was a way out of cutting down the fuel bills?

"MOTOR SNAP

"America's Standard Carbon Remover and Power Producer Guaranteed to give 30 per cent more mileage and power.

"An all therefore absolutely noninjurious to the finest motor. Easily applied.

"WHAT MOTOR SNAP WILL DO

Dissolves and Removes Your Carbon

"Therefore it gives you an easier hill-climbing car, better sparking motor, more power, car will run better in cold weather, prevents carbon, will not injure your motor, faster ignition. By keeping your car clean on the inside, Motor Snap makes your car 100 per cent efficient, improves the fuel and carburation to the motor, improves lubrication, lessens odor and smoke; gives uniform combustion, perfect ignition, easier starting, quicker 'pick up' and a quicker acting motor. Drop tablets directly in your gasoline. Dissolves readily.

"Can be used in gasoline for automobiles, stationary gasoline engines, motor boats, motor cycles and tractors."

"TO THE AUTOMOBILIST

"Scientific efficiency is the order of the day.

"How can a motorist expect engine efficiency if it's wheezed to the gills with the black plague of motordom, called carbon.

"Let science relieve your troubles. Old fogylism never gets anyone anywhere. Our magazines are busy advertising a way to handle a wonderful antiknox marvel called Deadethyl gas. Use with any grade of gasoline anywhere.

"A TABLET TO EACH GALLON OF GAS IS RIGHT

"BE SURE YOU'RE RIGHT, THEN GO AHEAD"

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondent L. M. Whitney, individually and trading as Motor Snap Co., and as Whitney Sales Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having filed his answer herein, hearings were had and evidence was thereupon introduced on behalf of the Commission before an examiner of the Federal Trade Commission duly appointed. The respondent appeared through his counsel and stated that he did not desire to contest the proceedings. Thereupon this proceeding came on for final hearing on the brief of counsel for the Commission, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, L. M. Whitney, is an individual doing business as the Motor Snap Co., and as the Whitney Sales Co., with his office and place of business at his residence at 293 Indiana Avenue, Providence, R. I.

PAR. 2. For several years last past and at all times herein mentioned respondent has been engaged in the sale of a product known as Motor Snap Gas-Garets, or Motor Snap, which product is in the form of small tablets to be placed in the gasoline tanks of automobiles and other motor vehicles in the proportion of one tablet per gallon of gasoline to promote engine efficiency and increase mileage, and has caused said tablets, when sold, to be transported from his place of business located in the State of Rhode Island to purchasers located in other States of the United States. In the course and conduct of his said business respondent is and has been in competition in commerce in the sale of his said product with other individuals, firms and corporations engaged in the manufacture, sale, and distribution of specially treated gasoline or other motor fuels.

PAR. 3. Respondent, in the course of his business, as set out in paragraph 2 hereof, causes to be manufactured for him and thereafter sells and causes to be transported packages containing 100 tablets each of tablets described as Motor Snap Gas-Garets, or Motor

Conclusion

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Snap, which said tablets are composed essentially of naphthaline, the active ingredient of moth balls; and in the sale and distribution of said tablets, the respondent by means of pamphlets, leaflets, labels, letters, and other forms of advertising matter, which respondent has caused to be distributed among prospective customers in various States of the United States other than the State of Rhode Island, has represented that the said tablets when placed in gasoline in the proportion of one tablet per gallon of gasoline will remove carbon, give 30 per cent more mileage and, when added to gasoline as stated, will lessen odor and smoke and engine knocking, and will promote higher engine efficiency generally.

PAR. 4. The addition of the product of respondent, described as Motor Snap Gas-Garets or Motor Snap to gasoline does not cause said gasoline to which it is added to give more power or to give more mileage per gallon, and does not dissolve or remove carbon from gas engine cylinders; and the addition of respondent's said product to commercial gasoline has no antiknock value or tendency to remove the knock caused by gasoline combustion in gasoline engine cylinders.

PAR. 5. The representations made by respondent of his product called Motor Snap or Motor Snap Gas-Garets in soliciting the sale of and selling the aforesaid product in the manner heretofore set out has the capacity and tendency to mislead and deceive and to confuse the purchasing public into the belief that respondent's said product, when added to gasoline burning motors, causes the gasoline to which it is added to produce more power, to give 30 per cent more mileage, to remove carbon and to lessen knocking, when in truth and in fact gasoline to which respondent's said product has been added in the proportion specified does not give more power, does not give more mileage per gallon, does not dissolve or remove carbon from gasoline engine cylinders or lessen knocking, and is no more efficient in said respects than gasoline of similar kind and quality to which respondent's said product has not been added.

CONCLUSION

The practices of the respondent, under the conditions and circumstances set forth in the foregoing findings, are to the prejudice of the public and of respondent's competitors and are unfair methods of competition in commerce and constitute a violation of section 5 of an act of Congress approved September 28, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

Order

ORDER TO CEASE AND DESIST

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

It is now ordered, That the respondent above named, L. M. Whitney, his agents, representatives, and employees, in connection with the sale or distribution in interstate commerce of his product described as Motor Snap or Motor Snap Gas-Garets, do cease and desist from making any assertion, representation, claim, or statement that the said tablets described as Motor Snap or Motor Snap Gas-Garets when added to gasoline cause said gasoline to which they have been added to produce more power, or to give more mileage per gallon, or to dissolve or remove carbon from gasoline engine cylinders, or to remove the knock caused by gasoline combustion in gasoline engine cylinders.

It is further ordered, That the respondent, L. M. Whitney, shall within 60 days after the service upon him of this order, file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which he has complied with the above order to cease and desist.

IN THE MATTER OF
**H. L. LOMAX, DOING BUSINESS UNDER THE TRADE
 NAME OF LOMAX RUG MILLS**

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

Docket 1715. Complaint, Oct. 29, 1929—Decision, July 26, 1930.

Where an individual engaged in the sale of rugs to retail dealers and, largely, direct to the consumer, included the words "rug mills" in his trade name and featured and employed the same and such slogans, statements, and representations in his advertisements in daily papers, circulars, and mailing cards as "Buy direct from the mills and save", "Eight years ago we originated the plan of direct selling from the mill to the consumer. * * * The best brains * * * were trying to devise ways and means of reducing the high cost of living. Our method * * * was just the thing. We eliminated the middleman and his profits. * * * We saved the buyers of rugs many thousands of dollars. We raised the quality of our product; * * *." "Just off the looms", "Buy direct at mill prices", "Factory to you", "The only firm which can show you the looms weaving"; notwithstanding the fact that said individual had no looms and manufactured none of the rugs dealt in by him, but fabricated 10 per cent thereof from standard carpet material and purchased the balance, chiefly trade-marked, from leading manufacturers, and from his father's separate and distinct carpet mill business or enterprise, which he managed and had come to be financially interested in, and which was conducted in the same building as his own, under certain mutual arrangements; with capacity and tendency to mislead and deceive the purchasing public into buying rugs and carpets from said dealer as from the manufacturer, with a supposed saving of the middleman's profit, and at a price supposedly lower than if bought from the retailer, all to the prejudice of the public and competitors:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. G. Ed. Rowland for the Commission.

Mr. Albert T. Bauerle, of Philadelphia, Pa., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged as Lomax Rug Mills in the sale of rugs and carpets to purchasers in various States, and with principal place of business in Philadelphia, with using misleading trade name, and advertising falsely or misleadingly as to business status, in vio-

lation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, features his aforesaid trade name in his business and in his advertisements in newspapers of general circulation and in his trade literature further represents himself as a manufacturer of the rugs and carpets dealt in by him, through such slogans, statements, and phrases as "Buy direct from the mill and save", "Eight years ago we originated the plan of direct selling from the mill to the consumer. This was just at the time when the country was groaning under the burden of war-time inflation. The best brains of the land were trying to devise ways and means of reducing the high cost of living.

"Our method of direct selling was just the thing. We eliminated the middleman and his profits; we eliminated several other items of overhead expense.

"We saved the buyers of rugs many thousands of dollars; we raised the quality of our product; we brought to many a house the fine atmosphere of home. * * *"² notwithstanding the fact that respondent does not own or operate a rug or carpet mill or factory, nor sell direct from factory to user, but purchases the merchandise dealt in by him from other rug or carpet manufacturers.

Said false and misleading representations, and use by respondent, of his aforesaid trade name, as alleged, "have the tendency and capacity to cause, and have caused many of the purchasing public residing in various States of the United States to purchase respondent's merchandise in and on account of a belief in the truth of such representations", and that respondent owned or operated a rug mill or factory and said alleged acts and practices, as charged, are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of section 5.

²Other such statements and representations as set forth in the complaint were as follows:

"You save \$5 to \$50 on each rug that you buy from our mills." "Buy rugs from the mill." "Just off the looms." "You save buying from the mill." "Buy direct at mill prices." "Our mills are easily accessible by motor from every direction. Plenty of parking space in our mill yard." "Factory to you." "Lomax is the only firm which can show you the looms weaving." "Every day is a sale day at the Lomax Rug Mills. * * *"

"Rugs. Come to the mill. Lomax Rug Mills makes and sells direct to you." "Sold where they are made. Lomax rugs. From loom to home." "Rugs. Loom to room, Save \$5 to \$50." "Rugs, \$200,000 stock, all kinds, all sizes, at less than wholesale prices."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress, approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon H. L. Lomax, doing business under the trade name of Lomax Rug Mills, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

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

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, H. L. Lomax, is engaged in business under the trade name and style of Lomax Rug Mills, with his place of business located at Jasper and Orleans Streets, in the city of Philadelphia, State of Pennsylvania. His business consists of the purchase of rugs and carpets from the manufacturers thereof, and the resale of said rugs and carpets to retail dealers in various States of the United States, and direct to consumers at his said place of business in the city of Philadelphia. Respondent causes the rugs and carpets sold by him to retail dealers, and to consumers when necessary, when sold, to be transported from his said place of business in the city of Philadelphia, State of Pennsylvania, into and through other States of the United States, to the purchasers thereof at their respective points of location, and in the course and conduct of his said business respondent is now and has been in competition with other individuals, partnerships, and corporations likewise engaged in the sale of rugs and carpets and the transportation of the same in interstate commerce between and among the various States of the United States.

PAR. 2. Respondent established his said business in 1920, and the trade name under which the business is conducted, Lomax Rug Mills, was registered at Harrisburg, the capital of the State of Pennsylvania, in 1922, under a State statute requiring the registration of all

fictitious business names. In the year 1928 the volume of sales of respondent aggregated approximately \$200,000, most of said sales being in the Metropolitan district of Philadelphia, including cities and towns in near-by New Jersey. Respondent employs nine persons at his place of business, and also employs several salesmen who travel throughout the United States selling his products to retail dealers. Approximately 90 per cent of the sales of rugs made by respondent consist of the resale by him of rugs purchased from the manufacturers thereof; the remaining 10 per cent being rugs which have been fabricated by respondent from standard carpet material purchased from the manufacturers thereof. More than 50 per cent of the total sales made by respondent are made direct to the consumers from his place of business in the city of Philadelphia.

PAR. 3. Respondent's father is Joseph Lomax, who operates a carpet mill under the trade name and style of Joseph Lomax Carpet Mills, and who has been in said business in the city of Philadelphia since 1893. Said Joseph Lomax Carpet Mills weaves carpets and rugs, and has machinery for that purpose. The rugs manufactured by the said Joseph Lomax Carpet Mills are of the cheaper grades, selling at retail for from \$13 to \$15. The Joseph Lomax Carpet Mills sell throughout the United States to retail dealers by means of salesmen who travel from point to point, and said salesmen are the same as those employed by respondent herein, taking orders for carpets and rugs for both respondent and his father. The accounts of respondent's business and that of his father are kept separate and distinct, and there is no connection between the two businesses other than that of buyer and seller, as set forth hereinafter.

Respondent became connected with his father's business in 1904, and has been manager of said business since 1924. Both businesses are located in a large mill building in Kensington, a suburb of Philadelphia, respondent occupying part of the first floor of said building and the Joseph Lomax Carpet Mills occupying the remainder of the first floor; the floors above the first floor are rented out to tenants. Respondent pays his father rent for the space which he occupies, and a share in the profits of his business. In January, 1929, respondent invested \$20,000 in the business of the Joseph Lomax Carpet Mills, and acquired a one-third interest in that business. Prior to that time respondent had no financial interest in his father's business.

PAR. 4. Respondent buys rugs and carpets from many of the leading rug manufacturers of the country, such as Bigelow-Hartford Carpet Co., Mohawk Carpet Mills, Whittall's Associates, and others, and resells said rugs as heretofore set forth. Said rugs and carpets

are mostly trade-marked articles, and bear the name of the manufacturer stamped on them. The carpets purchased by respondent are fabricated by him into rugs of various sizes. To fabricate a rug is to cut up carpet material into the desired sizes, sew it together, hem the ends and put a fringe on it. Respondent has two machines for this purpose, consisting of an overlocking machine, which finishes the ends of rugs, and a hemming machine, for hemming and putting fringes on rugs. These are the only machines owned and operated by respondent. Respondent also purchases rugs from the Joseph Lomax Carpet Mills, and resells them.

PAR. 5. In the course and conduct of his business as aforesaid, respondent, under the trade name and style of Lomax Rug Mills, has prepared and caused to be inserted in the daily newspapers of the city of Philadelphia, advertisements of his said business. Said newspapers have a large circulation in the adjacent cities and towns of New Jersey. Respondent also has prepared and distributed circulars, consisting of four pages, and private mailing cards addressed to the "Lady of the house", which said circulars and private mailing cards contain advertisements of respondent's rugs. Said advertising material is distributed by respondent from door to door in the Metropolitan district of Philadelphia, including the nearby cities and towns in the State of New Jersey. All of the aforesaid advertising material used by respondent bears the trade name of respondent, Lomax Rug Mills, prominently displayed, together with his address, and also contains numerous other statements, slogans, phrases, and representations to the effect that respondent is the manufacturer of the rugs and carpets which he sells. Among said statements, slogans, phrases, and representations are the following:

BUY DIRECT FROM THE MILLS AND SAVE

Eight years ago we originated the plan of direct selling from the mill to the consumer. This was just at the time the country was groaning under the burden of war-time inflation. The best brains of the land were trying to devise ways and means of reducing the high cost of living.

Our method of direct selling was just the thing. We eliminated the middleman and his profits; we eliminated several other items of overhead expense.

WE SAVED THE BUYERS OF RUGS MANY THOUSANDS OF DOLLARS

WE RAISED THE QUALITY OF OUR PRODUCT

WE BROUGHT TO MANY A HOUSE THE FINE ATMOSPHERE OF HOME

You save \$5 to \$50 on each rug that you buy from our mills.

Buy rugs from the mill.

You save buying from the mill.

This anniversary sale is the product of many months of careful planning and preparations. For the past few months our mills were kept running

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at full speed to turn out the latest patterns of rugs in order to take care of this great sale. We combed the raw material markets for price and quality. We were fortunate in obtaining many concessions; we kept down the cost of production, and we have effected tremendous savings.

JUST OFF THE LOOMS
BUY DIRECT AT MILL PRICES
FACTORY TO YOU

Lomax is the only firm which can show you the looms weaving.

We manufacture our own rugs and we also act as factory representatives for some of the leading rug mills in the country.

Motor out to our mills. Come and see the looms weaving.

LOMAX RUG MILLS MAKES AND SELLS DIRECT TO YOU!

Back in 1920 the Lomax Rug Mills originated the policy of selling its rugs direct from factory to user. This plan entirely eliminates the jobber and retailer. * * * Come, see the looms in operation, profit by this special sale.

The only firm which can show you the looms weaving.

Direct from Lomax mills.

Direct from the factory to you.

Just off the looms, an array of the new rug patterns that excels any previous presentation we have ever offered.

We make and sell rugs direct.

PAR. 6. Said various statements, slogans, phrases, and representations set forth in paragraph 5 herein, are false, deceptive, and misleading, because the fact is that respondent has no looms for the weaving of carpet or rugs, and does not manufacture any of the carpet or rugs which he sells. All of the rugs sold by him are purchased from the manufacturers thereof, and the only operation which he performs in his place of business is to cut up carpet material and fabricate it into rugs, as hereinbefore set forth. Respondent does not save purchasers the middleman's profit on rugs which he sells, and does not sell direct from the factory to the consumer, as he represents in the above advertising, but in fact acts as the middleman himself, as he buys all the finished rugs and carpets which he sells, and resells the same to the consuming public and retail dealers.

Respondent's place of business is located in a district of Philadelphia several miles from the center of the city, where rents are cheaper than downtown, and respondent's overhead expenses are lower than those of the downtown stores.

PAR. 7. The use by respondent of the trade name and style of Lomax Rug Mills for his business as set forth herein, is false and misleading and has the capacity and tendency to, and does, mislead

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and deceive the purchasing public into believing that respondent manufactures the rugs and carpets which he sells.

PAR. 8. The use by respondent of the trade name and style of Lomax Rug Mills, and the statements, slogans, phrases, and representations above set forth in his advertising literature, and other similar statements and representations, is false, deceptive and misleading, and has the capacity and tendency to, and does, mislead and deceive the purchasing public into purchasing rugs and carpets from respondent in the erroneous belief that respondent manufactures the rugs and carpets which he sells, and that by so doing they are saving the middleman's profit and thus obtaining said rugs and carpets at a lower price than if they bought them from a retail dealer in rugs and carpets.

PAR. 9. The acts and practices of respondent, as set forth hereinbefore, are all to the prejudice of the public and respondent's competitors.

CONCLUSION

The practices of respondent, H. L. Lomax, doing business under the trade name of Lomax Rug Mills, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce, and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

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

It is now ordered, That the respondent, H. L. Lomax, individually, and doing business under the trade name of Lomax Rug Mills, his agents, representatives, servants, and employees, in connection with the sale of rugs in commerce between the several States of the United States and the District of Columbia, cease and desist from:

(1) Doing business under the trade name and style of Lomax Rug Mills, or any other trade name which includes the words

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“mill” or “rug mills”, unless and until said respondent actually owns or operates a factory or mills in which he manufactures the rugs and/or carpets which he sells.

(2) Inserting or causing to be inserted advertisements in newspapers, magazines, or other periodicals, or distributing circulars, handbills, private mailing cards, or any other forms of advertising literature, which contain statements, slogans, words, phrases, sentences, or representations which indicate or create the impression that said respondent is the manufacturer of the articles which he sells unless and until such respondent does actually manufacture such articles.

And it is further ordered, That respondent shall within 60 days after the service upon him of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which this order has been complied with and conformed to.

IN THE MATTER OF
**MANCHESTER SHOE COMPANY, FORREST DUSTIN
 AND C. G. ROSE**

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

Docket 1561. Complaint, Feb. 18, 1929—Decision, July 29, 1930

Where a corporation engaged in the sale of shoes direct to the wearers; and two individuals, president and secretary, and vice president and treasurer, respectively, thereof, and the principal stockholders therein; in advertising their said product in newspapers and other periodicals and through catalogues, leaflets, and other like literature, and in soliciting the sale thereof through agents who transmitted customers' foot measurements in the order blanks sent to said corporation at its principal place of business, for filling from its ready-made stock,

- (a) Falsely represented said corporation as a manufacturer engaged in the sale of shoes direct to the wearers, through such slogans and statements as "Buy direct from manufacturer and wear a quality shoe at a reasonable price", "We sell our shoes the new way—direct to the consumer with only one small profit standing between ourselves and the man who wears the shoes. Because of this * * * we claim we give for \$6.85 a shoe that compares very favorably with any pair of \$10 shoes sold at retail", "By ordering direct * * * you are assured of the best in quality, in materials, and in workmanship and yet you pay no more than you do for ordinary shoes * * *", "We use one of —'s highest grade tan calfskins in constructing the 'Drake' * * *", the fact being that said corporation did not manufacture the shoes dealt in by it, but purchased same from shoe manufacturers; and
- (b) Falsely represented that said shoes were specially made and better than those ordinarily carried by retail stores, the facts being that they were "In stock shoes", and did not differ in the making thereof in any respect from shoes of the same general kind and nature sold by manufacturers generally to the shoe trade;

With capacity and tendency to deceive the purchasing public and to induce purchase of said corporation's shoes in and on account of the belief that aforesaid representations were true and that purchasers were dealing directly with a manufacturer, and thereby obtaining shoes at prices substantially lower than those charged by nonmanufacturing dealers:

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

Mr. Alfred M. Craven for the Commission.

Mr. John A. Nash, of Chicago, Ill., for respondents.

SYNOPSIS OF COMPLAINT

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

respondent, an Illinois corporation (and respondents Dustin and Rose, its principal stockholders and managers), engaged in selling shoes purchased from the factories direct to the wearers, in the various States, and with principal place of business in Chicago, with misrepresenting business status and product, and advertising falsely or misleadingly in regard thereto, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, in soliciting its business through advertisements in newspapers and other periodicals, and, principally, through catalogues, leaflets, and other like literature and agents, who transmit to it orders secured (together with the individual's foot measurements), for filling by respondent from its stock of ready-made shoes;

Inserted a picture of a large four-story building with respondent's name thereon, together with the words "The Manchester Building—Where we have a capacity for 1,000 pairs of quality shoes every working-day—Quality shoes built this plant"; notwithstanding the fact that said building was not, as implied by the aforesaid language, a shoe factory owned by it, but a structure in which it used only one floor;

Falsely represented in its advertisements, catalogues, etc., and orally through its officers and agents, in soliciting persons to be its agents as well as in order to secure customers, that it manufactured the shoes dealt in by it to the order and measurements of the customer, and sold the same direct to the public at a saving of jobbers' and retailers' profits;

Falsely represented that its shoes were specially made and better than those ordinarily carried by retail stores, and would give better and longer service, the fact being that they were similar to those ordinarily manufactured by shoe factories and sold at retail stores throughout the United States.

Such false and misleading representations, and each of them, as charged, had the capacity and tendency to deceive those solicited to be its agents into entering its employ believing in the truth of the aforesaid representations, and to deceive the purchasing public and induce the purchase of its merchandise by reason of a belief in the truth thereof.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission,

to define its powers and duties, and for other purposes" (38 Stat. 719), the Federal Trade Commission, on the 18th day of February, 1929, issued and served its complaint against the respondents Manchester Shoe Co., a corporation, Forrest Dustin and C. G. Rose, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Manchester Shoe Co. is now and since March, 1928, has been a corporation organized and existing under and by virtue of the laws of the State of Illinois, having its principal place of business in the city of Chicago in said State. It is and has been since its incorporation engaged in the business of selling shoes direct to the wearers thereof and in the distribution of such shoes from its principal place of business throughout the various States of the United States. It causes said merchandise when sold to be transported in interstate commerce and chiefly by mail from its place of business at Chicago, Ill., into and through States other than the State of Illinois to the vendees thereof at their respective points of location. In the course and conduct of its business respondent is in competition with other individuals, partnerships, and corporations located in the United States engaged in the sale and transportation of shoes in interstate commerce between and among the various States of the United States.

PAR. 2. Respondent Manchester Shoe Co. solicits its business by advertising in newspapers and other periodicals, but principally by the circulation of catalogues, leaflets, and other like literature, and by means of agents employed by said respondents. Said agents are furnished by respondents with catalogues purporting to show the latest styles of shoes, samples of leather, and also with order blanks, leaflets, circulars, and other advertising matter. Said agents solicit business from the users of shoes, and when an order is obtained, the agent measures the foot of the customer and inserts the measurements in an order blank, which blank, together with the

order, is thereafter transmitted by the agent to the respondent at its principal place of business. The respondent, upon receipt of the order and measurements, fills the same by selecting from the stock of ready-made shoes a pair of shoes, and sending them C. O. D., and usually by mail, to the customer.

PAR. 3. The individual respondents, Forrest Dustin and C. G. Rose were, from the inception of the Manchester Shoe Co. up to some time in March, 1929, managers of and in control of the business of said respondent, Manchester Shoe Co. Said individual respondents were at the date of the filing of the answer herein, March 22, 1929, respectively, president and secretary, and vice president and treasurer of said corporation and were at said time also the principal stockholders. Shortly after the last-mentioned date the said Dustin retired from the corporation, since which retirement the individual respondent, C. G. Rose, has been president and manager of said corporation and the principal stockholder therein.

PAR. 4. Respondent corporation under the management of said individual respondents is detailed in paragraph 3 hereof, in the course and conduct of its business and in order to secure customers has made and makes in its advertisements, catalogues and other trade literature and orally through its officers and agents certain false and misleading statements and representations among which are the following:

(a) That the business of respondent corporation is that of manufacturing, and selling direct to the wearer, shoes. Such representation is made by respondent's agents in calling and in the solicitation of business, and also occurs in numerous places in respondent's trade literature. For example:

1. Respondent's catalogue in use before and at the time of the hearing of the case, January 21, 1930, and which catalogue goes directly to the public in the solicitation of business by agents, contains on the first page thereof, the slogan as follows:

BUY DIRECT FROM MANUFACTURER
and wear a quality shoe at a reasonable price

Such slogan is followed by the statement:

We sell our shoes the new way—direct to the consumer with only one small profit standing between ourselves and the man who wears the shoes. Because of this—by eliminating expenses and profit of both jobber and retailer we claim we give for \$6.85 a shoe that compares very favorably with any pair of \$10 shoes sold at retail.

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And also by another statement as follows:

By ordering direct from Manchester you are assured of the best in quality, in material and in workmanship and yet you pay no more than you do for ordinary shoes. (Resp. Ex. No. 1.)

2. On page 30 of said catalogue, respondent in the description of the shoe depicted thereon called "The Lite-Waite", states: "We have constructed our 'Lite-Waite' for the man who is easy on shoes."

3. On page 11 of said catalogue, respondent states in its description of a shoe called "The Drake" as follows:

We use one of Pfister & Vogel's highest grade tan calfskins in constructing the "Drake" shown below; no finer leather tanned.

4. On the inside page of the back cover of said catalogue, appears the following:

We use only solid leather heel base in our shoes. Many shoe manufacturers use a fiber or composition. Our shoes have solid leather where most needed.

The said representations are false and misleading for the reason that the respondent corporation does not manufacture the shoes in which it deals, but purchases same from shoe manufacturers.

(b) That the shoes sold by the respondent corporation are specially made shoes and are better than shoes ordinarily carried by retail stores, when in truth and in fact the shoes sold by respondent are purchased by it from shoe manufacturers and are what are called in the trade "In stock shoes", meaning shoes made and carried by the manufacturer ready to ship when an order is received. The shoes dealt in by the respondent do not differ in the making thereof in any respect from shoes of the same general kind and nature sold by manufacturers generally to the shoe trade.

PAR. 5. The false and misleading representations mentioned in paragraph 4 hereof are false and deceptive and have the capacity and tendency to deceive the purchasing public and to induce the purchasing public to purchase respondent's merchandise in, and on account of the belief that such representations are true, and in the belief that they, the said purchasers, are dealing directly with a manufacturer of shoes, and because of that fact are to obtain shoes at prices substantially less than the prices charged by dealers in shoes who are not manufacturers.

CONCLUSION

The practices of said respondents, under the conditions and circumstances described in the foregoing findings, are to the injury and prejudice of the public and of respondent's competitors, and are unfair methods of competition in commerce and constitute a viola-

tion of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, the testimony and evidence introduced, and briefs and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondent Manchester Shoe Co., its officers, agents, and employes, and the individual respondents, Forrest Dustin and C. G. Rose in connection with selling and offering for sale of shoes in interstate commerce between and among the several States of the United States and in the District of Columbia, do cease and desist from:

(a) Representing in any manner either directly or indirectly that the respondent Manchester Shoe Co. is a manufacturer of shoes.

(b) Representing in any manner either directly or indirectly that the shoes sold by the respondent Manchester Shoe Co. are shoes that are specially made.

(c) Representing in any manner either directly or indirectly that the individual respondents, Forrest Dustin and C. G. Rose, or either one of them are shoe manufacturers or sell specially made shoes.

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

IN THE MATTER OF
ARTHUR MURRAY, DOING BUSINESS UNDER THE
TRADE NAME AND STYLE OF ARTHUR MURRAY
SCHOOL OF DANCING

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

Docket 1723. Complaint, Nov. 21, 1929—Decision, July 30, 1930

Where an individual engaged in operating a city studio of dancing, and in conducting a correspondence course of instruction therein, for pupils in various States; in advertising and describing the same in newspapers, magazines, periodicals, and other publications of general circulation throughout the several States, and in numerous letters, circulars, pamphlets, folders, and similar matter,

- (a) Represented that said course, in the studio, would cost \$500, the facts being that twenty lessons, at a cost of \$20 each, by said individual, would suffice for the average apt pupil, and four times as many, at \$5 per lesson, would be required in the case of one of said individual's instructors, and that the average pupil is able to learn to dance well by studying only the first ten pages of the course; with effect of inducing and persuading prospective pupils to subscribe in the belief that they were obtaining at a very low price instruction which would cost \$500 at the studio;
- (b) Represented that very large numbers, variously given as 120,000, 200,000, 250,000 and 400,000 persons, here and abroad, had learned to dance by subscribing, the fact being that up to 1923 he had sold only between 5,000 and 15,000 complete courses and since then between 150,000 and 200,000;
- (c) Represented that he was selected by the Naval Academy to train the Academy's dancing teachers and that there were included among former pupils ex-presidents, governors, senators, many members of European royal families, millionaires and leading stage and screen stars, the facts being that at the instance of said Academy's Navy Athletic Association, not officially connected therewith, he gave 2½ hours of personal instruction to one of its dancing instructors, supplied him with his courses at a cost of \$10, and arranged to and did, for a time, send him such new dance steps as thereafter came out, he had never instructed any ex-presidents or senators, but had given dancing instruction to two governors, and was able to name no stage people and only three motion picture actresses and actors as among his pupils, and no royalty, though many socially prominent people were and had been numbered among pupils of his said studio;
- (d) Represented that he could make a pupil an "even more than an excellent dancer", and a "marvelous dancer", and guaranteed so to do, the facts being that he had never seen any pupil of his correspondence course whom he would describe as a "marvelous dancer", and that advantages of age, previous experience, and natural aptitude to an exceptional degree were

necessary for a pupil to become a highly skillful dancer, so that many never became proficient and relatively few so proficient as to be deservedly termed "marvelous dancers";

- (e) Represented that the regular price of his said course was \$24, but that for a limited 10-day period he was making a special reduced offer of \$10 cash or \$12 in installments to those immediately enrolling, the facts being that since 1921 his said course had been regularly sold at \$10; and through "follow up" letters regularly offered the course as a "damaged cover" course or otherwise, at successively lower prices ranging from \$5 to \$1.98, set forth as specially reduced; and
- (f) Represented his said offers as special and limited through such statements as "Mail the blank now—before it is too late and save at least half the regular price. Remember the offer expires the middle of next month". "Free if you act quickly". "Now here is something very special. If you act at once", etc., the fact being that said various offers were neither limited nor special but good at any time;

With capacity and tendency to mislead and deceive the public and prospective pupils and to cause the purchase of said course in the erroneous belief that such statements and representations were true and that pupils were receiving same at a special price lower than the regular and usual one, if they enrolled immediately, and that they would derive and obtain all the other various advantages held out and represented as above set forth; all to the prejudice of the public and of competitors:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. G. Ed. Rowland for the Commission.

Mr. David A. Teichman, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged, under the aforesaid trade name and style, in the sale of courses of instruction by correspondence, in dancing, to pupils residing at various places in the several States, and with place of business in New York City, with advertising falsely or misleadingly as to nature and cost of product or service, success and endorsement accorded, results to be attained, and prices, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, in advertising its said course in pamphlets, letters, circulars, and other literature falsely and misleadingly represents that—

(a) Pupils learn dancing under the personal supervision of respondent, the fact being that no such supervision is given any pupil, but the pupils must learn from the printed instructions sent them;

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(b) The course of 99 lessons would cost \$500 if given in person, the fact being that pupils can secure the same course, in 20 lessons of one hour each, at a total cost of \$100, under the personal instruction of one of respondent's staff of instructors and, under the personal instruction of respondent himself, at a total cost of \$400;

(c) Over 120,000, 200,000, 250,000, and 400,000 persons, in various countries have learned to dance by subscribing to respondent's course by mail, the fact being that respondent has never sold his course to any such numbers of persons;

(d) "Respondent was selected to teach the dancing instructors of the U. S. Naval Academy, and that among his pupils are ex-presidents, governors, several senators and many members of the royal families of Europe", the fact being that respondent was not chosen to teach such instructors and has not had as pupils ex-presidents, governors, etc., as above stated;

(e) Respondent guarantees to make pupils marvelous dancers, able to do all the newest smartest steps, the fact being that not all persons can become expert dancers and many can never learn to become graceful dancers.

Respondent further, as charged, in his aforesaid advertisements, makes false and misleading representations concerning the price of his said course, as follows:

A special offer of the course, the regular price of which is represented as \$24, for \$10 cash and \$12 in installments, made for a limited period of time to pupils enrolling immediately;

A further offer likewise limited and subject to immediate acceptance if the above is not accepted, of the course in slightly damaged bindings, at a specially reduced price of \$5, thereby saving from \$5 to \$7 on the regular price of the course;

A still further offer, if that immediately above described is not accepted, in which respondent offers prospective pupils the course "for which over 120,000 persons have paid on an average of \$10 apiece, for \$3, to be paid to the postman on delivery, the pupil to keep the course of instruction thirty days and if he believes said course is worth the special price of \$5 he is to send an additional \$2 to respondent, but if such pupil decides it is not worth more than \$3, he need not send any more money".

The facts of the matter are, as alleged, that "\$24 is not the regular and usual price of said course of instruction, and that said course has not been sold by respondent at said price of \$24 for many years last past; that there is no regular price for said course of instruction, but that respondent will sell it for \$3, \$5, \$10, or \$12, depending on

which offer prospective pupils accept, and, in fact, respondent offers said course of instruction to prospective pupils at the price of \$1.98; that said various offers are not special, limited offers in point of time but are the regular and usual prices at which respondent sells said course of instruction to prospective pupils, depending on what offer such prospective pupils accept, and said offers are open at any and all times that they are accepted by prospective pupils”.

“Use by respondent, Arthur Murray, doing business under the trade name and style of Arthur Murray School of Dancing, of aforesaid false, misleading, deceptive, and fictitious statements and representations in connection with and relating to his aforesaid course of instruction (as charged) have the capacity and tendency to mislead and deceive the public and prospective pupils, and will probably mislead and deceive the public and prospective pupils, and cause them to purchase respondent’s said course of instruction in the erroneous belief that said statements and representations are true, and that pupils of said respondent will in fact receive said course of instruction at a price less than the regular and usual price of said course, if they enroll immediately, and that they will derive and obtain all the other various and sundry advantages which respondent holds out and represents that pupils will derive and obtain as hereinbefore set out”, and said “acts and practices of respondent are all to the prejudice of the public and of respondent’s competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5”.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO FACTS, AND ORDER.

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon Arthur Murray, doing business under the trade name and style of Arthur Murray School of Dancing, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

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

Thereupon this proceeding came on for final hearing on the brief of counsel for the Commission, and oral argument of counsel for the Commission and respondent, and the Commission having duly

considered the record, and being fully advised in the premises, makes this its findings as to the facts and conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent Arthur Murray, is an individual, doing business under the trade name and style of Arthur Murray School of Dancing, with his office and place of business at 7 East Forty-third Street, in the City of New York, State of New York, and is engaged in the business of operating a studio where dancing is taught, and also in offering for sale and selling a correspondence course of instruction in dancing to pupils residing in the various States of the United States. He causes books and pamphlets containing the said course of instruction, when sold, to be sent by mail from his place of business in the City of New York, State of New York, into and through various other States of the United States, to the respective purchasers thereof at their respective points of location.

In the course and conduct of his aforesaid business, respondent is in competition with other persons, firms, and corporations who are likewise engaged in the teaching of dancing, either by personal instruction, by correspondence, or by printed instruction in books.

PAR. 2. Respondent first began business in New York, N. Y., in 1913, where he gave dancing lessons in person in a studio conducted by him. In 1914 he went to Asheville, N. C., where he engaged in the same business, and shortly thereafter established a studio in Atlanta, Ga., and during the years 1914 to 1923 he carried on his business both in Atlanta, Ga., and Asheville, N. C. In 1923 he closed his studios in Atlanta and Asheville and returned to New York City and established a studio, where he has been continuously located since that time. Prior to 1921 he only gave personal instruction in dancing.

PAR. 3. In 1921 respondent prepared a course of instruction in dancing, consisting of printed lessons and diagrams illustrating the same, which he began to sell by mail. During the first two years of the correspondence course there was no definite number of lessons contained in it, the course being added to from time to time. In 1923 respondent began numbering the lessons, the course then consisting of 64 lessons, and additional lessons have been added from time to time since then until at the present time the correspondence course consists of 99 lessons, published in two paper bound books, numbered Part I and Part II. All of the numbered lessons contained in the course are not individual dances, but many of them consist of lessons on "ballroom behavior", "how to lead", "how to

follow", "etiquette", and other similar subjects. The correspondence course covers the same course of instruction as is given in respondent's studio in New York, where all instruction is given to the pupil by respondent himself or one of his instructors. At the present time from 3 to 5 per cent of respondent's business is derived from the proceeds of the sale of his correspondence course in dancing, the remainder coming from the studio. Formerly a much larger percentage of income was derived from the correspondence course.

PAR. 4. The studio operated by respondent in New York City is the largest dancing studio in the United States, and in the winter he employs 100 instructors, both men and women, and in the summer about 50. Among his pupils at the studio are many people of prominence in the social and business worlds. A lesson at the studio consists of a one-hour period of instruction, either by respondent or one of his instructors. Respondent gives individual instruction in the studio when necessary, but devotes most of his time to the details of the business at the present time. For personal instruction given by himself respondent usually charges \$20 per hour, but his charges vary depending upon the earning power of the individual. For instruction by his teachers respondent charges from \$4 to \$7 per lesson, the average being \$5. Respondent teaches groups and classes at public charitable institutions at nominal charges, or entirely without charge in some instances.

PAR. 5. In the course and conduct of his business, and for the purpose of inducing prospective pupils to subscribe for his correspondence course and enroll as pupils therein, and to purchase and pay for said course of instruction, respondent has prepared and caused to be prepared numerous advertisements of said correspondence course of instruction in dancing, which advertisements respondent has caused to be inserted in newspapers, magazines, periodicals, and other publications having a general circulation among the public throughout the several States of the United States. Respondent has also prepared, and caused to be prepared, and distributed to prospective pupils throughout the several States of the United States numerous letters, circulars, pamphlets, folders, and other forms of printed, written, and mimeographed matter relating to and descriptive of his said correspondence course in dancing. Included in said advertisements, pamphlets, letters, circulars, and other advertising literature, are various false, deceptive, misleading, and fictitious statements and representations concerning said correspondence course in dancing.

PAR. 6. Respondent represents in his aforesaid advertising literature that pupils who enroll for his correspondence course learn danc-

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ing under his personal supervision. The fact is that respondent personally prepared all the lessons in the course, and he personally answers any inquiries received from pupils regarding the lessons in the course, which average one letter a week.

PAR. 7. Respondent represents in his aforesaid advertising literature that the same course of instruction as is included in his correspondence course, if given in his studio, would cost the pupil \$500. The fact is that respondent personally can teach the average, apt pupil all the lessons included in the correspondence in 20 lessons, at a cost of \$20 each. It would require about four times as many lessons by one of his instructors, at an average cost of \$5 per lesson. The charges in respondent's studio are not fixed, but vary depending on the earning ability of the pupil. In some instances the charge for instruction by respondent's teachers is \$4 per hour, and sometimes as high as \$7 per hour. For personal instruction by himself respondent at time charges less than \$20 per hour. It is not necessary for a pupil to learn all the lessons in the correspondence course in order to be a proficient dancer, the average person being able to learn to dance well by only studying the first 10 pages of the course. While some of the pupils who receive instruction at respondent's studio take more than 100 hours, a few even taking as many as 200 hours, the majority of his pupils at the studio take considerably less than 100 hours instruction. Respondent has a course of instruction at his studio consisting of 20 lessons of one hour each, for which he charges \$100, and the majority of his pupils take that course.

The aforesaid representation and statement of respondent regarding the cost of the same instruction as included in the correspondence course if given in his studio is false, deceptive and misleading, and has the effect of inducing and persuading prospective pupils to subscribe for respondent's correspondence course in dancing in the belief that by so doing they are obtaining at a very low price the same instruction that would cost them \$500 if taken at respondent's studio.

PAR. 8. Respondent represents in his aforesaid advertising literature that many persons, located in the United States and various foreign countries, have learned to dance by subscribing to his aforesaid correspondence course, claiming varying numbers such as 120,000, 200,000, 250,000, and 400,000 persons. In a circular letter used in 1925 respondent states that 250,000 people are using his correspondence course; in literature used during the past four years he states, "Over 200,000 people have learned to dance—by mail—in the same way"; in an advertising booklet entitled "The Short Cut to Popularity", now being used by respondent, he states "over 250,000 men, women, and children have taken his course"; in a magazine adver-

tisement published in February, 1926, he states "he taught over 250,000 people to dance by mail"; in a circular letter used since 1927 the claim is made that "200,000 grown-ups and children" have learned by his course; in a circular letter used about a year ago he states "I have already taught over 400,000 men and women to become accomplished, versatile dancers through my easy at-home lessons"; in a series of six circular letters which are sent to prospective pupils at intervals in an effort to induce them to enroll, the first two claim 200,000 people, and the fifth letter states "over 120,000 people have become splendid dancers through my course"; and in magazine advertisements published in 1929, the claim is made that the number is 400,000.

Aforesaid statements and representations by respondent are false, deceptive, fictitious, and misleading because the fact is that respondent has not sold as many as 250,000 complete correspondence courses. Up to 1923 respondent sold between 5,000 and 15,000 complete courses, and since that time he has sold between 150,000 and 200,000 complete correspondence courses. In his amended answer to the complaint respondent stated that he had sold 200,000 complete correspondence courses since he began selling the same. Respondent also had a short correspondence course consisting of 16 lessons, which he claimed he sold during the period from 1922 to 1926, and in said amended answer he states he sold 150,000 of said short course. No short course is now being sold by respondent. He more recently prepared and distributed a course consisting of 5 lessons which is sent to anyone answering any of his advertisements and inclosing 10 cents to cover postage and printing. All of the statements and representations made by respondent in his advertising literature refer to the complete correspondence course, consisting of 99 lessons at present, and formerly 64 lessons.

PAR. 9. Respondent in his aforesaid advertising literature makes representations and statements to the effect that he was selected by the United States Naval Academy, at Annapolis, to train the dancing teachers of said Naval Academy, and that among the pupils whom he has taught to dance are ex-presidents, governors, several senators, many members of the royal families of Europe, millionaires, and leading stage and screen stars. In Part I of respondent's correspondence course in dancing appears a picture of respondent and under it "Teacher to the instructors of the U. S. Naval Academy."

Aforesaid statements and representations by respondent are false, deceptive, fictitious, and misleading, because the fact is that respondent was not selected by the U. S. Naval Academy to teach its instructors how to dance, nor has respondent instructed any ex-presi-

dents of the United States in dancing, nor any members of any of the royal families of Europe. In 1924 the Navy Athletic Association, which is not officially connected with the U. S. Naval Academy, sent one of the dancing instructors of the Naval Academy to the studio conducted by respondent in New York City to take dancing instructions from respondent, and respondent gave said instructor 2½ hours of personal instruction, and supplied him with one of respondent's correspondence courses in dancing, for which the said instructor paid \$10. Respondent further arranged to send any new dance steps which might come out from time to time to the said instructor, and this was done for a period of two years. Respondent did not teach any other dancing instructors of the U. S. Naval Academy, and was not authorized to advertise that he was selected by the Naval Academy to teach its dancing instructors. Respondent has never instructed any ex-presidents of the United States in dancing; has not instructed any senators in dancing; has only given dancing instructions to two governors of the State of North Carolina; was unable to give the names of any stage people, and only the names of three moving picture actresses and actors as being among his pupils. Respondent was unable to name any members of any of the royal families of Europe or elsewhere whom he had taught to dance. Respondent does have now, and has had in the past, many socially prominent people among the pupils of his studio in New York City.

PAR. 10. Respondent in his aforesaid advertising literature represents that he can make a pupil a "marvelous dancer"; that he will make them "even more than a very excellent dancer"; and that he guarantees to make pupils "marvelous dancers". Said statements and representations are false, deceptive, and misleading, because the fact is that respondent has never seen any pupils who have studied his correspondence course who were what he would describe as a marvelous dancer. The ability to learn to dance depends upon the age, previous experience, and natural aptitude of the student, and in order to become a highly skillful and proficient dancer it is necessary that the pupil possess these qualities in an exceptional degree. Because of natural limitations there are many persons who can never become proficient dancers, and there are relatively few persons who become so proficient in the art of dancing as to merit the description of "marvelous dancer".

PAR. 11. Respondent in the advertisements, letters, circulars, folders, and other forms of advertising literature used by him in connection with his said correspondence course in dancing makes numerous false, deceptive, misleading, and fictitious statements and representations concerning the price of said correspondence course.

Respondent represents that the regular and usual price of his correspondence course is \$24, but that for a limited period of time he is making a special offer of the course to those who enroll immediately at a specially reduced price of \$10 cash, or \$12 in installments. The fact is that \$24 is not the regular and usual price of the said correspondence course, and said correspondence course was sold at \$24 only for a short time in 1921, when the course was first offered by respondent. In 1922 respondent began selling said correspondence course at \$10, and has sold it at that price ever since that time. Said correspondence course has always been offered by respondent as a "special limited offer of 10 days", but in fact there was no limited time within which said offer was in effect, but a pupil could secure the said course at the price of \$10 at any time since about 1922. At one time in 1927 respondent sent out 1,000 circulars advertising the correspondence course at \$32, but only sold 15 courses at that price, and discontinued said offer. In all of the advertising literature above referred to used by respondent in connection with his correspondence course the regular price of the course is continually stated as being \$24. Inclosed in the circular letters sent to prospective pupils is an enrollment blank to be used by said pupils in subscribing for the correspondence course, and in each of these enrollment blanks the price of \$24 is printed in black ink, with a red line struck through it and \$10 in red ink printed above, together with the amounts for installment payments.

In the series of circular letters heretofore referred to sent out by respondent to prospective pupils the first two letters refer to the regular price of the course as \$24. The third letter offers the course for \$5, and states that it is a "damaged cover" course. The fourth letter states the regular price of the course to be \$12, and the damaged cover course is offered at \$5. If no reply is received to these letters, respondent sends two additional letters at intervals, offering the course for a C. O. D. payment of \$3, and an additional \$2 to be sent if the pupil is satisfied with the course. The lessons included in the "damaged cover" course are identical with the regular correspondence course sold by respondent, the only difference being that the covers in which the lessons are bound have been discolored or defaced in the mail, and in some instances the paper upon which the lessons are printed is of an inferior quality. If a pupil accepts the "damaged cover" offer and sends in his money and there are no damaged cover courses available, respondent sends to said pupils one of his regular courses of instruction. In 1929 respondent began advertising in newspapers and magazines his correspondence course of instruction in dancing at a price of \$1.98. These advertisements

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state "Regular \$5 course now only \$1.98". Respondent claims that the course which he sells for \$1.98 consists of Part I of his complete correspondence course. Respondent sells his complete course for \$5 when the covers are damaged and for \$3 if a pupil does not wish to send the additional \$2, and the course which respondent sells for \$1.98 is the same as respondent's regular complete correspondence course.

In connection with his said correspondence course, respondent makes many statements to the effect that it is a special limited offer such as "Mail the blank now—before it is too late—and save at least half the regular price. Remember the offer expires the middle of next month"; "Free if you act quickly"; "Now here is something very special. If you act at once you get not only my entire \$24 course for only \$12 in small installments or \$10 cash * * *"; "Simply fill out the enrollment blank and send it with your remittance before I withdraw my special offer"; "*If you act at once* you can still receive one of these slightly damaged sets at the *specially reduced* price of \$5". Said statements and representations are false, deceptive, fictitious and misleading, because there is no limit in times when said course of instruction can be bought at the prices advertised, but in fact said offers are good at any time that the pupil decides to accept any of them.

PAR. 12. The use by respondent of the false, misleading, deceptive, and fictitious statements and representations regarding his correspondence course in dancing, as hereinabove set forth, has the capacity and tendency to mislead and deceive the public and prospective pupils and cause them to purchase respondent's said correspondence course of instruction in the erroneous belief that said statements and representations are true, and that pupils of said respondent will in fact receive said course of instruction at a special price less than the regular and usual price of said course if they enroll immediately, and that they will derive and obtain all the other various and sundry advantages which respondent holds out and represents in his afore-said advertising literature that pupils will derive and obtain.

PAR. 13. The acts and practices of respondent as described herein are to the prejudice of the public and of respondent's competitors.

CONCLUSION

The practices of the respondent Arthur Murray, doing business under the name and style of Arthur Murray School of Dancing, under the conditions and circumstances described in the foregoing findings are unfair methods of competition in commerce, and con-

stitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

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

It is now ordered, That the respondent Arthur Murray, individually, and doing business under the trade name and style of Arthur Murray School of Dancing, his agents, representatives, servants, and employees, cease and desist from making statements and representations in magazines, periodicals, newspapers, letters, circulars, pamphlets, booklets, and any other advertising literature, circulated and distributed in connection with the sale in interstate commerce of respondent's correspondence course in dancing, as follows:

(1) That the regular and usual price of said correspondence course in dancing is \$24, or any other price, when such is not the fact.

(2) That prospective pupils are being offered the said correspondence course for a limited period of time at a specially reduced price, unless said offer is actually limited in point of time for acceptance at such reduced price.

(3) That many thousands of people have subscribed to and learned to dance by said correspondence course, when said numbers of people have not in fact subscribed to said course;

(4) That said correspondence course would cost \$500 if given by personal instruction at respondent's studio, when such is not the fact.

(5) That respondent was selected by the United States Naval Academy to instruct the dancing teachers at said Academy in the art of dancing; or that the respondent has taught dancing to ex-presidents of the United States, senators, governors of the various States of the United States, members of the royal families of Europe, or any other persons or classes of persons, when such is not the fact.

And it is further ordered, That respondent shall within 60 days after the service upon him of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which this order has been complied with and conformed to.

IN THE MATTER OF
L. L. COOKE SCHOOL OF ELECTRICITY

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

Docket 1603. Complaint, Apr. 22, 1929—Decision, Oct. 22, 1930

Where a corporation engaged under the name of its president and founder, in conducting a correspondence course in practical electricity,

- (a) Represented that there was a large and continuous demand among employers for the graduates of its course, requiring only ability to read and write as prerequisite, and that such graduates could reasonably expect, upon completing the course in their spare time and in a year or less, to receive salaries ranging from \$3,500 to \$10,000 a year, or equivalent weekly remuneration, the facts being that on the average a year and a half was required for completion of the course and that only in exceptional cases and after years of service did its graduates as a rule work up from the relatively subordinate positions in which usually placed even to approach the lower rate of compensation above represented.
- (b) Prepared and distributed trade literature, letters, lessons, etc., in the first person and over the signature of its aforesaid president, and purporting in his name to assure the various individual students and prospective students of the personal, continuing and individual interest and attention of said president in the advancement and problems of each, incident to the prosecution and completion of the course and his subsequent successful placement and career, the facts being that while the person in question had prepared text books and lessons and attended their revision, he did not concern himself with cases of the individual, which were in charge of other employees or agents of the school;
- (c) Employed enrollment blanks bearing the figure \$120.50, canceled, and the figure \$97.50 as a substitute therefor, along with advice to the prospective student that he was thus offered through the reduced price tendered him, a saving of \$32.50, and represented in trade literature soliciting prospective pupils, and over the signature of the aforesaid individual, that various outfits incident to the successful prosecution of the course, including tools, materials, etc., and other advantages were included free of all extra charge, making such statements as "I want my boys to succeed—and I spare no pains to have them do so. If you get your enrollment to me at once you will secure not only these terms but all six outfits, absolutely without extra expense", etc., the facts being that the aforesaid pretended reduced price constituted its usual and regular price and that the cost of the tools, etc., above referred to was included in the price of the course; and
- (d) Featured in the first person and under the name of said person and president the particular qualifications of such individual to conduct such a school with reference to the successful training and placing of pupils and graduates, including an alleged engineering experience of 25 years in all parts of the world and with engineering concerns of the widest repute, and represented over the signature of such individual that he undertook, under

bond secured by a \$2,000,000 concern, to return to any dissatisfied graduate the full amount of his tuition, the facts being that the individual in question had an experience of only ten years between leaving the university at which he studied and launching the correspondence school enterprises subsequently engaged in by him, and that the undertaking to return tuition was not secured by any third party and the \$2,000,000 concern was a holding company for the stock of the corporation herein involved, with capital stock of said amount;

With capacity and tendency to mislead and deceive purchasers and prospective purchasers and cause many to purchase and enroll for its said course of instruction, and divert students and prospective students from competitors who do not make such false and misleading statements and representations, and with the effect of so doing:

Held, That such acts and practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Baldwin B. Bane for the Commission.

Poppenhusen, Johnston, Thompson & Cole, of Chicago, Ill., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Illinois corporation engaged in the sale of courses of instruction in practical electricity by correspondence to persons in various States, together with materials, tools, etc., related thereto, and with principal office and place of business in Chicago, with advertising falsely or misleadingly as to results, prices, pretended free products, nature of service, and money back guarantee, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged, as above set forth, in advertising his courses in newspapers, magazines, periodicals, and other publications of general circulation and in letters, booklets and other trade literature among many other false, misleading, and deceptive statements and representations concerning its school and courses makes such representations as that respondent's graduates earn from \$3,000 to \$10,000 a year; that for a limited time courses are offered at prices substantially lower than the regular prices; that pupils are given free of charge text books, outfits, tools, supplies, and appliances related to the courses; that respondent's head gives students personal and direct instruction; and that any student dissatisfied after completion of the course is guaranteed the refund of his money; the facts being that few if any graduates earn the amounts above set forth, and, if any there be, they are not representative of the average

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graduate of respondent's courses, that respondent's pretended reduced prices are its regular prices, and the price of the purported free text books, etc., is included in the price demanded and received for the courses, that respondent's head does not give any such direct and personal instruction as represented, but acts in only a supervisory capacity, and that there is in fact no such guarantee of money back to dissatisfied students.

According to the complaint "the aforesaid false, misleading and deceptive statements and representations and each of them made by respondent concerning its said courses of instruction, all as above set out, have the capacity and tendency to cause many of the public to subscribe for and purchase respondent's said courses in the belief that said statements and representations are true"; all to the prejudice of the public and of respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, L. L. Cooke School of Electricity, charging it with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

Respondent having entered its appearance, hearings were had before an examiner of the Commission theretofore duly appointed and testimony and evidence were introduced and a stipulation entered into upon the allegations of the complaint.

Whereupon this proceeding came on for decision, respondent waiving the right to file brief or present oral argument, and the Commission having considered the record and being advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, L. L. Cooke School of Electricity, was organized as a corporation under the laws of the State of Illinois on or about February 2, 1927, with its principal place of business in the city of Chicago, State of Illinois, and since the date of its organization has been engaged in the business of conducting and selling courses of instruction in practical electricity by correspondence through the United States mails, to persons located in the various States of the United States and in foreign countries. In the course and conduct of its said business respondent causes written lessons, textbooks, materials, supplies, tools, and appliances used in connection with said courses of instruction to be transported from

its principal place of business in Chicago, Ill., to students located in various States of the United States, and in foreign countries. The respondent, in the course and conduct of its said business, is in competition with other corporations, partnerships, and individuals engaged in commerce between and among the States of the United States.

PAR. 2. For the purpose of conducting and carrying on its said business, respondent occupies a plant situated at Lawrence Avenue, Leavitt Street and St. Anthony Court, Chicago, Ill., consisting of three buildings, one 50 by 125 feet, three stories high, with basement; one about 50 by 60 feet, two stories high; and one about 50 by 125 feet, one story high. The three-story building is the administration building, in which is carried on all the activities of the school that are conducted through the mails. The first floor of the two-story building is occupied by a well-equipped electrical laboratory wherein any student of the school who has finished at least twenty-five lessons may have practical instruction in the handling and operation of electrical equipment under the guidance of a competent, practical electrician. The school provides two weeks' lodging without extra charge to students who take advantage of the laboratory. The second floor of the two-story building is occupied by the statistical department and files. The school, at the present time, has about 200 employees. During the winter sessions of 1924-25 and 1925-26, as many as 525 people were employed in the school.

PAR. 3. L. L. Cooke is president of the respondent corporation and has general supervision of its courses of instruction. He has been engaged in the correspondence school business since 1920, when he incorporated under the laws of the State of Illinois "Chicago Engineering Works, Inc." Under this name the correspondence school was conducted until about February, 1927, when it was turned over to and since which time it has been conducted by respondent. Mr. Cooke owns no interest whatsoever in respondent or Chicago Engineering Works, Inc., having sold his interest on December 31, 1924, to Mr. R. D. Smith, vice president and general manager of respondent. The stock formerly owned by Mr. Cooke and sold to Mr. Smith is held by Mr. Cooke as collateral security until payments therefor are completed, which it is expected will be about the end of the present year. Mr. Cooke is under contract to remain with respondent until payment on this stock is completed, and Mr. Cooke has orally promised Mr. Smith to remain with the school as long as Mr. Smith desires that he do so. He spends about nine months of each year in Chicago and puts in about three hours of each day, from nine in the morning until twelve noon, at the school, during

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such time as he is in Chicago. He does not personally examine any of the answers sent in by the students and does not prepare or handle any of the literature or correspondence with students, although all such literature and correspondence, except that relating to collections, has his name signed to it. The courses of instruction and textbooks used in the regular course were originally prepared by Mr. Cooke and he still supervises the revision of such and the preparation of most of the new ones, and has general supervision of the instructional work. He attended Purdue University for two years where he took a course in Mechanical Engineering. He did not graduate. He had had about ten years experience after he left college and prior to going to Chicago and engaging in the correspondence school business. He has been connected with the Chicago Engineering Works, Inc., and the L. L. Cooke School of Electricity since the organization of said corporations.

PAR. 4. Respondent obtains students for its school by means of advertising, sales promotion work, and personal solicitation. The advertising consists of advertisements placed in newspapers and magazines of general circulation throughout the United States for the purpose of interesting prospective students. Sales promotion work consists of sending letters and circulars to various names for the same purpose. Inquiries from these sources are followed up with catalogues, printed literature and letters or personal solicitation. The approximate yearly enrollment of the school to-day is 20,000, although it was as high as 50,000 three or four years ago. Approximately 14 per cent of those who enroll complete the course. The school had students in every State of the United States and in Canada and in some other foreign countries.

PAR. 5. Respondent represents that graduates of its courses of instruction earn from \$3,000 to \$10,000 a year. All quotations from and references to respondent's advertisements and literature in these findings are to those used during the years 1928 and 1929. In its letters, circulars, booklets, leaflets, and catalogues sent to prospective students, and in its advertisements in newspapers and magazines of general circulation respondent makes general and widespread use of the following character and kind of statements and representations, featuring some of them by heavy type and display heads:

It's this "Cooke" service, plus this "Cooke" training that makes the "Cooke" trained man, the big pay man, everytime. Be a "Cooke" trained man yourself, and learn to earn \$3,500 to \$10,000 a year.

L. L. COOKE.

It's worth thousands of dollars to any man—to you—for thousands of "Cooke" trained men earn \$3,500 to \$10,000 a year.

I train men to be leaders in every one of these different fields. Choose the one you prefer. I will fit you for it—teach you to know your field as an expert—thoroughly and in a practical way. Then you will be an authority—always in demand—able to earn \$3,500 to \$10,000 a year easily.

Enroll to-day—for quick big pay * * * Your enrollment blank is inclosed. Fill it in and send it to me now, and I will guarantee to give you the training that produces quick big pay.

Within five days you can be studying; within a year you may be earning from \$10 to \$20 a day, from \$3,500 to \$10,000 a year.

These men didn't have to wait years and years for their success. They got quick results from their home training in electricity. They were able to make more money than ever before, in a few short months. That's proof that you too can get more money quick.

\$3,500 to \$10,000 a year. Thousands of Cooke trained men earn this big money. If you want a fat pay envelope, get into electricity * * * Cooke training will show you how and prepare you quickly for a big pay job in electricity at \$3,500 to \$10,000 a year. I will train you at home. If you aren't making \$70 a week or more, investigate. The Cooke trained man is the big pay man everywhere.

Learn to earn \$3,500 to \$5,000 a year. Electricity the big pay field needs you now. I'll train you at home—spare time only needed. The Cooke trained man is the big pay man—always.

I'll train you at home to fill a big pay job! Be an electrical expert; earn \$3,500 to \$10,000 a year * * *. As chief engineer of the Chicago Engineering Works, I know exactly the kind of training you need and I will give you that training * * *. The chance to become in a very short time an electrical expert able to make from \$70 to \$200 a week. The Cooke trained man is the big pay man.

And in a year—well, you'll be an L. L. Cooke trained electrical expert, and L. L. Cooke trained men are the big pay men in electricity—everywhere and always.

And you could be looking forward to getting \$75 to \$100 a week by this time next year—perhaps even as high as \$150 a week.

Employers WANT Cooke trained men. Electricity demands them. The big jobs are waiting for them. Don't delay. Get ready for success and big pay by becoming a Cooke trained man yourself.

What I tried to do was to show you how you could break into the big money class; how you could make—not \$5, or \$6, or \$7 a day but \$10, or \$15, or \$20 a day, and do it every day, week in and week out.

I tried to make clear to you that in electricity salaries of \$30, or \$40, or \$50 a week were just starting salaries, that trained men earn more, much more—\$70 to \$200 a week and that they don't even have to work half as hard.

The Cooke trained man is the big pay man—everywhere and always.

The enrollment blank used by respondent since January, 1929, has in big letters at the top "Here's the quick way to big pay!"

PAR. 6. Students who complete respondent's electrical courses and go into electrical work generally seek employment with persons, firms, or corporations engaged in some branch of electrical work and

do work generally coming under the classification of construction, maintenance or operation of electrical equipment. The kind and character of jobs which students of respondent get and which respondent obtains for its students are such as mechanic with concerns like the Brown-Lipe Gear Co. of Syracuse, N. Y., assistant station shift operator with concerns like the Northwestern Public Service Co. of Mitchell, S. Dak., automotive electrical work with concerns like the Wisconsin Power & Light Co. of Fond du Lac, Wis., employee in the substations with concerns like the British Columbia Electric Railway Co. of Vancouver, B. C., which employees must be members of the local union of the International Brotherhood of Electrical Workers, and electrician with concerns like the Commonwealth Edison Co. of Chicago, Ill.

The wages paid by large employers of men, including men with special training in electrical work, is illustrated by the wages paid by the Commonwealth Edison Co. of Chicago. The Commonwealth Edison Co. is the largest public utility concern in the Middle West. The company employs about 50 college trained engineers each year selecting them from the leading engineering schools of the country. Some of these men are engaged on electrical installation, maintenance, and operation work. These men are taken on at \$120 per month, and after six months are raised to \$130 a month, and after a year to \$150 per month. At the end of two years they are earning from \$175 to \$180 per month and at the end of three years from \$190 to \$220 a month with the average close to \$200 per month. After four years some of them are getting as much as \$250 per month with possibly a few at \$275 per month, and after a period of five years with the company those who have made good would be earning around \$300 to \$325 per month.

This concern also employs electricians who are not college graduates but who are engaged in electrical installation, maintenance, and operation of work, which class includes the graduates of trade schools and correspondence schools. Such a man with no practical experience would start in the construction or maintenance departments at from 50 cents to 60 cents an hour. 191 hours constitutes a month's work. If in addition to the trade school or correspondence school courses, the man had some practical experience, he might be employed at 70 cents an hour. An apprentice operator, who must be a high school graduate or the equivalent, starts at \$115 a month. A lineman is started at 51 cents an hour and is stepped up as he progresses, usually in two or three months, being examined between each grade, each grade having two or three rates. He is stepped up from 51 cents to a maximum of \$220 a month over a

period of from six to eight years. It would take a man that time to get \$220 per month unless he is very unusual.

Electricians employed by the Commonwealth Edison Co., graduates of correspondence or grade schools, after they have been with the company for a period of a year, in either outside or inside work, in maintenance, installation, or operation, would probably be getting 10 to 15 cents an hour higher than their starting rate. The exceptional man might be as much as 20 cents higher, but this would be very unusual. After they have been with the company for two years they would be getting from 20 cents to 25 cents higher than the starting rate. And after being with the company three years another 10 cents would be added to their rate. There are four grades in the class of linemen and the wages in these four grades run from 51 cents an hour, the starting rate, to \$220 a month. The maximum for inside work is \$1.10 an hour. In the substations the apprentice starts at \$115 a month. The assistant operator in the substation is paid \$140 a month, this is the first job in which a man is required to do any operating and the station operator in the smallest stations or the least important stations gets \$145 a month, while the chief operators in the largest stations get \$200 a month, which is the maximum rate for station operators. In addition the man is given \$10 a month bonus for each five years service with the company with a limit of \$50 on that bonus, and thus the maximum that a man could earn in the best stations as an operator after twenty-five years service would be \$250 a month. It would take from eight to nine years of service to become chief operator in one of these stations.

The average man employed by the company as an electrician would never get into a position where he could earn with the company as much as \$3,000 a year and it would take an unusual or exceptional man starting with the company as an electrician easily seven or eight years to get into a place where he could earn as much as \$3,000 a year with the company. The rates of wages and salaries paid by this company are approximately the same as the rates of good concerns throughout the country.

This concern has as employees 67 of respondent's graduates and former students. These men have been with the Commonwealth Edison Co. for an average length of time of 3 years and 3 months with an average wage of \$154.39 per month and a maximum wage of \$235 per month and a minimum wage of \$98.80 per month, and a maximum period of service of 6 years and 9 months and a minimum period of service of 1 year and 3 months. The average starting salary of these employees was \$108.84 per month with a maximum of \$151.67, per month and a minimum of \$40.56 per month.

Many of the students who have taken respondent's courses in practical electricity have written letters to it or its predecessor, Chicago Engineering Works, recommending the course of instruction and the benefits received therefrom. Of the letters so received only about 2,000, a small percentage, give definite information as to the amount of money the writer of the letter is making in electrical work. The amounts which such former students, graduates, or undergraduates of respondent's courses of instruction, are making, according to the statements contained in such letters, range from \$25 per week to \$5,000 per year with a few in excess of \$5,000 per year. Most of the former students or graduates of respondent's courses of instruction who are apparently making more than \$3,000 per year are engaged in some branch of the electrical business on their own account. From such letters it appears that \$3,000 per year is greatly in excess of the average earned by graduates or former students of respondent's courses of instruction.

PAR. 7. The wages paid to electrical workers in Chicago who are members of the Brotherhood of Electrical Workers is shown by the testimony of Mr. Fee, financial secretary of the Electrical Workers Union No. 9. Mr. Fee testified that operators get from \$165 a month up to possibly \$300 a month at the one station generating power which the local controls. Linemen are paid the highest wages on contract work and an apprentice lineman on such work gets \$9 a day. He must serve as an apprentice four years. When he becomes a journeyman lineman his scale is \$13 a day. The journeyman lineman on other than contract work gets \$11.68 a day. The day consists of eight hours. The operators at power stations make more money than do the journeymen linemen because the linemen do not work every day. A foreman of this union gets from \$300 to \$315 a month. Forty-four hours constitutes a week with this union. Ordinarily a man is a member of the union for a period of from five to ten years beyond the apprentice stage before he becomes a foreman. The union does not require that a foreman shall have technical education or be an expert electrician. It merely looks to his ability to handle men, get the work out of them, \$60 to \$200 per week, \$3,000 to \$10,000 per year, are not the average earnings of a trained man in the industry, but are earnings which only the very exceptional can attain and then only after years of labor. A very few, if any, of the students or graduates of respondent's courses earn between \$3,000 and \$10,000 a year. Such figures are far in excess of the earnings of the ordinary or average student or graduate of such courses.

PAR. 8. From the middle of 1928 until the latter part of January, 1929, respondent used enrollment blanks upon which it stamped in green ink the words:

**REDUCED PRICE. NOTE BIG PRICE REDUCTION
YOU SAVE \$32**

These enrollment blanks as originally printed set out the price of respondent's complete course as \$129.50. A line was drawn through this figure and the figure \$97.50 substituted in green ink. On the original printing a sentence read:

Special price for full cash in advance, only
\$104.50—You save \$25

A line was drawn through the figures \$104.50 and \$25 and above these figures was stamped in green ink \$82.75 and \$14.75, respectively. The price for respondent's full and complete course of instruction was and had been \$97.50 and it was not and had no intention of selling its course at any other price. Thus respondent represented to prospective students that they would secure a reduction of \$32 when in fact \$97.50 was the regular and full price at which the respondent was and had been selling its complete course.

PAR. 9. In its advertisements and literature respondent makes the following kind and character of representations:

With this special course I will send you six outfits of electrical material worth \$25, outfits of testing instruments, tools, or materials, the equipment you will need to start—without one cent of additional cost. This is another EXTRA-ORDINARY feature of my course. But I want my boys to succeed—and I spare no pains to have them do so. If you get your enrollment to me at once, you will secure not only these easy terms, but all six outfits, absolutely without extra expense. * * * You will note that the enrollment blank also covers special complete courses in drafting, radio and automotive work, all of which you receive without additional cost, provided you enroll AT ONCE.

I give you six big complete electrical outfits, including tools, motor and materials for experimental and spare time work—no extra charge.

Tools for spare time work free to everyone of my students. These I give absolutely FREE of all extra charge to everyone of my students.

All materials given—so you can earn as you learn.

This picture shows only a part of these six outfits—complete outfits contain nearly fifty articles—all free to students.

I show you how to do this work, how to get it and what to charge. I even give you the tools and materials * * * I want to make it just as easy as I can for you to obtain my training. That's why I offer to enroll you as a Cooke student and give you my entire course with all the extra features described in the column at the right of this page, for the small sum of only 17 cents a day * * *. I give six complete, practical working outfits absolutely free to my students. No other home study school has an electrical laboratory. I give my students free use of my great \$5,000 laboratory, with free accommodations in Chicago while they are experimenting here in the laboratory.

I give you my complete auto electricity course—no extra cost! Worth \$50—now free to student.

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That copy, however, is absolutely free—just another new and added feature to the world famous L. L. Cooke training.

Six wonderful electrical working outfits given to students. No extra charge.

The tools and other commodities and things furnished by respondents are parts of and are regularly included in the complete course covered by the tuition fee. They are not free or a gratuity from respondent.

PAR. 10. Respondent in its advertisements and literature states and represents that L. L. Cooke gives to students personal and direct instruction. All correspondence, except that relating to collection, is signed with name of L. L. Cooke and bears the initials L. L. C., indicating that it was dictated by L. L. Cooke. All of respondent's correspondence and literature is written in the first person, as if dictated or prepared by Mr. Cooke personally. Mr. Cooke is featured all through respondent's literature by name and picture. Throughout respondent's literature and advertisements are such statements as the following:

Let me—L. L. Cooke teach you **ELECTRICITY** * * *. Thousands of my boys are now making \$3,500 to \$10,000 a year.

I ask this because there are things taken up in that letter, about what I propose to do personally, to help you—that naturally wouldn't and couldn't be covered in any book. So please, as a favor to me, read the letter that I have written you before you start to read my book.

I know how progress is made in this new profession—and I will stand behind you—helping you with a world of practical experience. When problems come up, when decisions have to be made, when questions of policy and action on your part have to be answered, and answered right, I will be right there—whenever you need me to help you. I want you to be a credit to yourself—and me. I want you to **RISE**, quickly and high. So I stand right at your elbow, so to speak—to help you whenever you need help. This service, which I supply because I know better than you do at present what you need to make a big success, begins right from the start and continues after I have polished you into a Self-Confident Electrical Craftsman.

MY PERSONAL HELP AND SUPERVISION IN ALL OF YOUR STUDY AND WORK, not only while you are a student but for years afterwards—as long as you need me.

I set no limit on the time required to finish my course. I work with you constantly to see that you learn right.

I'll not only teach you electricity until you are a fully qualified electrical expert, capable of handling any kind of electrical work, but I'll stand by you and help you until you have climbed to the very top of the ladder and need my help no more.

There won't be a chance for you to fail, because I'll be working right along with you on every lesson, explaining everything that you don't understand, answering your questions, advising you, guiding you,—giving you the full benefit of my twenty years of practical experience.

So fill in and sign the enclosed enrollment blank, attach to it a money order or check for \$5, send it to me personally (using the envelope I am enclosing), and we'll get started at once. Your partner for success, **L. L. Cooke**.

My methods are simple, easy, and quick, I don't waste your time. In a few short months under my personal supervision you will learn more than you could in several years in ordinary teaching. Just half an hour or an hour a day for a short time is all you need. The busiest man can find time to put in on my lessons. And it is time well spent, for it means hundreds of dollars more each year in your pay envelope.

Your progress is carefully watched. If you go too fast for your own good, however, I'll catch you at it. I don't want a man to cram this work. I want him to know it. On the other hand, if you are doing unusually good work, you will be helped along with hearty encouragement. We are on the still hunt for geniuses. So show a flash of something unusual once in a while and you need not be surprised if some morning you get a special delivery letter from me containing good news.

I pride myself on being a maker of big pay men. My greatest pleasure comes by helping men from the small pay lot, into the wonderful new profession of electricity.

I have traveled across the length and breadth of America. I have gone into the far corners of the world—China, Australia, South Africa. And wherever I have gone, I have seen opportunities by the thousands for men who know electricity. It is so everywhere. We are at the beginning of an electrical age, so great that it surpasses the wildest dreams of twenty-five years ago, when I was a young man first starting in my career.

Why I, a practical engineer, can so well teach you practical electricity. Being a college trained engineer, with over twenty years of good, hard, practical experience, and in close touch with the electrical industry, I know just the kind of training a man needs to make him a successful electrical man. And I give you this training. Not only do I teach you the theory of electricity, but I teach you, also, how to apply this knowledge in a practical way—in actual work. This is why my students are so practical, so successful, and so easily and quickly get into the ranks of big money makers in this work. In fact, I am ready to do practically any thing that is humanly possible for an instructor to do—just to make you a really big PAY man in electricity.

Then I am going to prove that to make Big Money in Electricity a man doesn't have to have a college education; he doesn't have to be a high school graduate; it isn't even necessary that he should have finished the grades. All that he needs is a knowledge of how to read and write.

My second guarantee is that I will teach you electricity by my own special workshop method, giving you the same work sheets and job tickets that have brought success and big pay to thousands of my students.

I personally Supervise Every Step of Your Training! My third guarantee is that every part of your instruction and student service will be personally supervised by me. In this way you will receive the full benefit of my twenty-five years of practical experience in the electrical profession. This guarantee is your protection. It means that when you enroll for L. L. Cooke training, you will receive my personal supervision both in your instruction and in the many student services I offer. You will learn the short-cuts I learned in a quarter century of world-wide engineering experience, and how to apply this knowledge in a practical way.

Respondent's money-back agreement is written in the first person and signed by L. L. Cooke. Respondent's enrollment blank, which is addressed to L. L. Cooke, contains among the things to which the

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student is entitled "Your personal help and supervision in all my studies and work." The training and instruction offered by respondent is not given directly or personally by L. L. Cooke but through employees and L. L. Cooke acts only in an advisory and executive capacity.

PAR. 11. Respondent, throughout its advertisements and literature, makes the following kind and character of statements and representations:

SATISFACTION OR YOUR MONEY BACK

I agree under bond to return every penny you pay me for tuition if, when you have finished my course, you are not satisfied that it was the best investment you ever made.

My guarantees have backing. I not only promise to give you the many things described in this book—I give you, when you enroll, an Ironclad agreement, signed, sealed, and delivered to you, positively stating that if, after completing my course, you are not entirely satisfied in every way, every penny of your tuition will be promptly refunded. *And remember, a two-million dollar institution stands back of every statement and every guarantee I make.*

So sure am I that you can learn electricity—so sure am I that after studying with me you, too can get into the big-money class in electrical work, that I will guarantee under bond to return every single penny paid me in tuition, if, when you have finished my course, you are not satisfied it was the best investment you ever made.

The Chicago Engineering Works was incorporated in 1920. Its capital stock is \$2,000,000 and it owns all of the capital stock of respondent. It is merely a holding company and is not engaged in business or commerce of any kind. No outside person or third party is back of any of the promises or obligations of respondent or L. L. Cooke to students of the school, nor does L. L. Cooke or respondent put up any bond covering said promises or obligations. The so-called money-back agreement has been carried out by respondent whenever demand has been made by students therefor where such students have completed the prescribed course of instruction.

PAR. 12. Respondent, throughout its advertisements and literature, also makes the following kind and character of statements and representations:

However, knowing electricity is the easiest thing in the world if you are trained right, and Cooke training is not only right, but has been made so easy that any man can master it in a few short months * * *.

That means you learn electricity—right. And because my boys have learned electricity right, they are the big-pay men in the big-pay field.

So, my friend, if you would like to earn more money—if you would like to get into the big-pay class, and earn from \$60 to \$100 a week, don't hesitate any longer, you risk nothing, and it takes only a \$5 bill to start.

And isn't it worth it? Isn't it worth a whole basketful of \$5 bills just to know that within a year you should be earning more than \$60 a week—every week in the year?

All that you do need is enough ambition to spend half an hour a day of your spare time preparing for your future—in preparing for a job that will pay you from \$12 to \$30 a day **FOR THE BALANCE OF YOUR LIFE.**

Here is a profession brimming over with opportunities for you. There are more big electrical jobs open right now than there are trained men to fill them. Even ordinary dumb-bell electricians get good wages—\$8 to \$12 a day—but it is the trained men—trained as I will train you, who make the big money and get the big jobs.

And electricity is easy to learn. Age, lack of education or experience bar no man. All you need is training. With Cooke training behind you, you will find it easy to step out and earn \$12 to \$30 a day.

My course is **PRACTICAL.** As chief engineer of this great two-million dollar institution, and with over twenty years of actual engineering experience, I know exactly the facts a man must have to be a real electrical craftsman. I have been through the mill—handled big projects all over the world—I know how progress is made in electricity.

Electricity needs trained men. Electricity will pay the top price for men trained by me according to my methods.

Giant corporations have asked me to help. They want a certain type of man, trained by my methods. This type of man must be ambitious.

He must be willing to part with a half hour or so a day, in his spare time, for a few months, to master electricity under my simple, quick instructions.

He must be able to stand prosperity, so that salaries of \$70, \$80, \$100 a week and more, won't turn his head.

In fact, once an employer has hired Cooke trained men, he will never hire any other. He insists thereafter on a Cooke trained man.

A Cooke diploma means something. It means that the holder is master of his profession. It gives its owner opportunities that he never could get in any other way. It is recognized by employers everywhere as proof that the man whose name is on it has finished a thorough and practical training in electricity. It's worth thousands of dollars to any man—to you—for thousands of Cooke trained men earn \$3,500 to \$10,000 a year.

My course is all you need to become a big-pay man in any branch of electrical craftsman.

Every man has a big chance to make good in electricity. There are nowhere near enough men to fill the Big-Pay Jobs in this Big-Pay Field.

Chief Engineer Cooke has written a wonderful book about electricity, its opportunities for young men, and what these opportunities mean to you. It is printed in colors, has 64 pages and more than 100 pictures. It's the same book that started 10,000 other men on the road to big pay.

We are going to keep right on that path doing everything necessary and possible to help you along and into the ranks of the men who are earning \$3,500 to \$10,000 a year.

Cooke trained men earn \$12 to \$30 a day, \$70 to \$200 a week, \$3,500 to \$10,000 a year.

For twenty years after leaving college (Purdue University) Mr. Cooke was employed on the engineering staffs of the American Bridge Co., the Pressed Steel Car Co., and Milliken Bros. (the great international construction engineers), working in the United States, London, Hongkong, China, and Johannesburg, and Cape Town, South Africa. In these twenty years he gained an

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experience in electrical work—which seldom comes to the average engineer. This experience has made it possible for him to develop and perfect his wonderfully practical, up-to-date and successful course in electricity.

For the past ten years he has specialized in electrical training and has trained thousands of men—young and old—for big paying positions in electrical lines.

It takes the usual, ordinary and average student about eighteen months to finish respondent's complete course of instruction. Respondent's course of instruction consists of 70 regular lessons and about 125 special lessons.

PAR. 13. The statements, representations, and claims of respondent, as set out above, are false and misleading and have the capacity and tendency to and do mislead and deceive purchasers and prospective purchasers and cause many persons to purchase and enroll for respondent's course of instruction and divert students and prospective students away from competitors of respondent that do not make such false and misleading statements and representations.

CONCLUSION

The acts and practices of respondent set forth in the foregoing findings as to the facts constitute, under the circumstances therein stated, unfair methods of competition in commerce in violation of the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondent and testimony and agreed statement of facts filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondent has been violating section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That respondent, L. L. Cooke School of Electricity, its officers, directors, agents, representatives, servants, and employees do cease and desist, directly or indirectly, by advertisement, circular letter, or otherwise, in commerce between and among the several States of the United States, or between any State and the District of Columbia, or between any State or the District of Columbia and any foreign country, or in the District of Columbia:

1. Representing in any way whatsoever earnings of a small percentage of the students or graduates of such school so as to make it appear that such earnings represent the average earnings of students

or graduates of the school, or represent earnings of the ordinary or average student or graduate of said school.

2. Representing that upon the completion of respondent's course of instruction by correspondence the student or graduate will obtain a position paying a salary ranging from \$60 to \$200 a week, or \$3,000 to \$10,000 a year, or that students who take respondent's course of instruction are generally able to secure positions at or do earn salaries ranging from \$60 to \$200 per week or from \$3,000 to \$10,000 per year.

3. Representing that there is a great demand at high salaries for the services of persons trained by respondent or who have taken respondent's course of instruction.

4. Representing that the price at which its course of instruction is offered is a special or reduced price, or that it is lower than the ordinary and usual price received, when such is not the fact, or representing as special or extraordinary some feature of the course which is regularly and ordinarily included as a part of the course.

5. Representing that any article of merchandise or other thing or service is given or furnished free to students when the price or value of such article of merchandise or other thing or service is included in the price specified as the price of the course of instruction and paid by the student.

6. Representing that students are given personal instruction or attention by L. L. Cooke or anyone else when such instruction or service is not given directly and personally by such person but through agents.

7. Making exaggerated or false statements as to the experience and the equipment or qualifications of L. L. Cooke or other person connected with respondent.

8. Representing that its promises, agreements, or obligations are under bond unless, and until, it posts a bond, or bonds, to cover said promises, agreements, and obligations and in sufficient amount to indemnify against any default in said promises, agreements, or obligations.

9. Making exaggerated or misleading statements as to industrial conditions or the demand for men trained by respondent or through respondent's course of instruction.

10. Representing that any person, regardless of age or the amount of schooling or education and with just the ability to read and write, can and will within a few months be qualified as an expert electrician on all electrical matters by taking the correspondence course offered by respondent.

IN THE MATTER OF

FRANK W. ALTER, DOING BUSINESS UNDER THE
TRADE NAMES AND STYLES, ALTER & COMPANY, AND
EGYPTIAN GEM COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 1860. Complaint, Aug. 6, 1930—Decision, Oct. 29, 1930

Where an individual engaged in the sale of rings, and other articles, to dealers and others, for resale to retailers and the public,

- (a) Made such statements in printed coupons furnished, sold and delivered to the retail trade and said others, and depicting such rings, as, "This coupon is worth \$2.50 to you—instead of spending fabulous sums in national publications this coupon is issued for savings thus effected and we pass it on to you. Present to dealer named below and you will receive our regular \$3 Egyptian diamond ring for 50 cents. A \$3 value for 50 cents", and through statements in other coupons similarly represented the transaction as "A \$5 value for \$1", "Worth \$4 to you", or "A \$6.50 value for \$1", "Worth \$5.50 to you", as the case might be; the facts being that the regular and reasonable price of said articles ranged from approximately 15 cents to 25 cents a piece and that the regular and reasonable value thereof was in no instance as much as \$3, \$5, \$5.50, or \$6.50, and said coupons had and represented only a false or fictitious value in connection with the purchase of such articles;
- (b) Described same in said coupons as "Egyptian diamond rings. Do not compare * * * with ordinary imitations", "* * * a genuine ring which stands the test of fire and the acid bath. I give absolutely free a one-half carat diamond stick pin with each purchase", etc., the facts being that instead of diamonds or precious stones or gems, pieces of plate glass or other glass, facet cut, or mined stones of small value, or imitations thereof, were set or mounted in said rings;
- (c) Held out a "2-year guarantee certificate with each purchase", in said coupons and furnished, sold, and delivered said "certificates of guarantee" along with said rings and coupons, offering new rings for any proving defective, and returned with "35 cents for postage charges" or "25 cents for postage, packing, and shipping", the facts being that postage charges amounted to 2 cents and cost of packing and shipping to not more than 3 cents, and that 25 cents or 35 cents afforded said individual a very large profit on each transaction, over and above said charges; with the result that members of the public were deceived into making new purchases from said individual instead of obtaining the articles at a nominal expense after paying cost of original purchase and nominal charges for postage or for postage, packing and shipping; and

Where said individual, in pursuance of a conspiracy, understanding and agreement with various persons to sell, and cause others to sell, to the public aforesaid articles, through false and deceptive practices and fraudulent representations, knowingly and intentionally employed and made in connection with sale of such articles, and in advertisements thereof in newspapers, and in said coupons and certificates,

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- (d) Sold and delivered said articles to such persons at wholesale prices ranging from \$1 to \$1.10 a dozen and from \$10.50 to \$12 per gross, together with said coupons and certificates, intending said articles to be offered in connection therewith and the aforesaid false and misleading statements and representations contained therein and in the advertisements thereof, and that the public should purchase same in reliance upon such statements and representations; and

Where such persons, in pursuance of said conspiracy, understanding and agreement,

- (e) Offered, advertised, and sold said articles to the public under the aforesaid plan and representations and accepted from the purchasers thereof on account of the purchase price, said coupons, theretofore received by such persons from said individual without charge or bought along with said various articles, and as a part of the transaction gave to the purchasers aforesaid certificates of guarantee, similarly received; and

Where said individual, in pursuance of said conspiracy, etc.,

- (f) Received and continued to receive said certificates of guarantee from purchasers, together with sums of money and the rings previously sold, and to return new ones therefor, as in replacement of the old;

With intent and result that members of the public were deceived into buying said articles as diamond rings, etc., regularly worth the figures assigned them and more than 15 cents or 25 cents, as the case might be, and in the belief that postage charges for replacement constituted 25 cents or 35 cents, certificates did not involve a substantial profit to said individual, but constituted a bona fide guarantee, and coupons were worth \$2.50, \$4 or \$5.50, respectively, and into purchasing said rings, in such belief, and with capacity and tendency so to do;

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

Mr. Edward E. Reardon for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged at wholesale and retail in the sale of jewelry, including rings, stick pins, and other articles, and with place of business in Chicago, with offering deceptive inducements to purchase through fictitious coupon values and certificates of guarantee, misrepresenting nature of product and prices and advertising falsely or misleadingly in said respects, and combining or conspiring to sell products through aforesaid false, deceptive, and fraudulent practices,¹ in violation of the provisions of sec-

¹ As set forth in the complaint and findings, respondent's coconspirators, including one C. P. Morsert, are not joined due to the fact that their "true names and constantly changing places of abode or residence addresses" are unknown to the Commission.

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tion 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent's plan of operation, herein challenged, consisted, as alleged, in the sale to dealers and various other individuals, of rings, stick pins, and other articles, of relatively little value, together with (a) coupons in or upon which (1) a grossly exaggerated, fictitious value or price was assigned to the article, (2) a pretended value, in exchange for such article, was assigned to the coupon itself, and (3) such statements or representations were set forth describing said articles, with their cheap glass or stone settings or mountings, as "ring set with a Sumatra diamond * * * stands the test of fire and the acid bath * * *", "Diamond stick pin", etc., and (b) so-called certificates of guarantee purporting to replace a defective article at nominal charges to cover postage, packing and shipping of the new article, but in fact affording respondent a profit on a new transaction, said plan being employed by respondent individually, and in combination and cooperation with others to purchase, and advertise, sell, distribute and/or receive, as the case might be, the articles, coupons, and certificates, to, among, or from the purchasing public; with intent and effect of confusing, misleading, and deceiving members of the public into purchase of the aforesaid rings, stick pins, and other articles in reliance upon the misrepresentations in question as to the prices and values thereof, and the accompanying coupons and certificates, and with tendency and capacity so to do; all to the injury and prejudice of the public and respondent's competitors, in violation of the aforesaid provisions of section 5.²

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondent, Frank W. Alter, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having filed his answer herein in which he admits the various allegations made in the complaint and states that he desires to waive hearing on the charges in the complaint and does not desire to contest the proceeding.

Thereupon this proceeding came on for a final hearing on the complaint and answer and the Commission having duly considered

² Allegations of the complaint are set forth, substantially verbatim, in the findings below, respondent having admitted such allegations in his answer.

the record and being fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Frank W. Alter, is an individual, residing at 6156 Sheridan Road in the city of Chicago, Ill. The respondent has been since on or about the year 1915 and now is engaged in doing business at wholesale and retail under the trade name and style of Alter & Co., having a place of business at No. 165 West Madison Street in the city of Chicago.

PAR. 2. The respondent has also been engaged for several years, including the years 1929 and 1930, in doing business at wholesale and retail under the trade name and style, Egyptian Gem Co., at No. 165 West Madison Street in the city of Chicago.

PAR. 3. The respondent, during the times above mentioned and referred to has been engaged under the trade names and styles above referred to in the business of the sale of jewelry, including the rings, stick pins, and other articles hereinafter mentioned and referred to in paragraphs 5, 8, and 9 hereof, which the respondent has sold to various individuals, firms, and corporations, dealers therein who purchase jewelry for resale, and to others, members of the public who purchase jewelry for personal use and wear located in the District of Columbia and in the various States of the United States other than Illinois, and respondent has caused and still causes the jewelry when so sold by him to be transported in commerce from his place of business in Illinois, or from the State of origin of the shipment thereof, to, into, and through States other than Illinois or the State of origin of the shipments and into the District of Columbia to the purchasers to whom the jewelry has been sold by the respondent.

PAR. 4. During the times above mentioned and referred to, other individuals, firms, and corporations in the various States of the United States are and have been engaged in the sale and delivery of jewelry, including rings, stick pins, and other articles, to individuals, firms, and corporations, dealers therein, and to members of the public who purchase jewelry for personal use and wear located in the District of Columbia and in the various States of the United States other than the State of origin of the shipments of the jewelry.

The respondent is and has been, during the times above mentioned and referred to, in competition in commerce with said other individuals, firms, and corporations in the sale of jewelry including rings and stick pins.

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PAR. 5. Among the articles of jewelry sold by respondent, referred to in paragraph 3 hereof are finger rings and stick pins in which pieces of glass and stones and gems of slight value were set, or mounted, facet cut, in the form, shape, and size of diamonds or other gems.

During the times above mentioned and referred to, the respondent has regularly sold and still sells the rings, stick pins, and other articles of jewelry referred to herein at wholesale, at approximately \$1 to \$1.10 per dozen, \$10.50 to \$12 per gross, or at the rate, approximately, of 8 cents to 9 cents per piece or article, to the retail trade and to various individuals including one C. P. Morsert, who resold the same to retail dealers and to members of the public who purchased them for personal use and wear.

During the times referred to herein the respondent furnished, sold, and delivered to the retail trade and to the said various individuals, the purchasers of the finger rings and stick pins, certain printed coupons, more fully described and set out in paragraph 6 hereof, which carried pictorial illustrations of rings in various designs, in which stones or gems were represented to be set or mounted, and respondent also furnished, sold, and delivered therewith to the purchasers of the rings and stick pins certain "certificates of guarantee" which are more fully set forth and described in paragraph 7 hereof.

PAR. 6. Among the coupons referred to in paragraph 5 hereof, which the respondent during the above-mentioned times furnished, sold, and delivered as set forth in said paragraph 5, were coupons on which were, besides illustrations of rings, statements, and representations among others of similar purport and effect, as follows:

(1) None sold to dealers. Limited time only. Guaranteed by Mfr. for two years. This coupon is worth \$2.50 to you. This is our method of advertising.

Instead of spending fabulous sums in national publications, this coupon is issued for savings thus effected, and we pass it on to you. Present to dealer named below and you will receive our regular \$3 Egyptian diamond ring for 50 cents.

Either ladies or gentlemen. A \$3 value for 50 cents.

Do not compare Egyptian diamonds with ordinary imitations. They can not be told from genuine diamonds. When shown recently in New York City, these Egyptian diamonds created a sensation.

Limit two rings to a customer. Positively none of these rings sold at this price after sale.

(2) This coupon is worth \$4 to you. This coupon is worth \$4 to you!

This is our method of advertising. Instead of spending fabulous sums in national publications, this coupon is issued for savings thus effected, and we pass it on to you. Present to dealer named below and you will receive our regular \$5 Egyptian diamond ring for \$1.

Either ladies or gentlemen. A \$5 value for \$1.

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Do not compare Egyptian diamonds with ordinary imitations. They can not be told from genuine diamonds. When shown recently in New York City, these Egyptian diamonds created a sensation.

Limit two rings to a customer. Positively none of these rings sold at this price after sale.

When ordering by mail add 25 cents postage. None sold to dealers, and (\$)

This coupon is worth \$5.50 to you. Cut it out now. \$1.

\$1 regular \$6.50 value for \$1.

This is a ring set with a SUMATRA DIAMOND, in a guaranteed mounting. It is not the Egyptian, the Barrios or the Arkansas diamond that visits your city for three days only and sells for 49 cents, but it is a genuine ring. It stands the tests of fire and the acid bath. We give absolutely free a ½ carat DIAMOND STICK PIN and a 2-year guarantee certificate with each purchase. Don't be misled by other cheap rings, as this is a full facet cut stone. Bring this coupon with you as it is essential.

Any size or style, either ladies' or gents'.

On sale only at

PAR. 7. Among the certificates of guarantee referred to in paragraph 5 hereof, which the respondent, during the above-mentioned times furnished, sold, and delivered, as set forth in paragraph 5 hereof, were "certificates of guarantee" in which were statements and representations, among others of similar purport and effect, as follows:

(1) Certificate of guarantee. This ring is sold to you with a fully guaranteed condition of five years from date of purchase (date bought-----19--). We will exchange ring for new one if defective in any form, if stone loosens or falls out.

Send 35 cents for postage charges with your ring and you get a new ring free.

EGYPTIAN GEM Co.,
165 W. Madison St., Chicago, Ill.

(2) 2-YEAR GUARANTEE. This certifies that this ring is guaranteed to be perfect in workmanship and to give entire satisfaction to the owner.

If within 2 years this ring proves unsatisfactory either by loss of gem, brilliancy, or by tarnish, return this ring with this guarantee to our company and we will replace ring with new one.

Enclose 25 cents for postage, packing, and shipping.

EGYPTIAN GEM Co.,
165 W. Madison St., Chicago, Ill.

Date purchased-----

PAR. 8. Instead of diamonds or other precious stones or gems, pieces of plate glass or other glass, facet cut, or mined stones of small value or imitations thereof, were set or mounted in the rings, stick pins, and other articles of jewelry mentioned and referred to in paragraphs 5, 6, and 7 hereof. The said rings and stick pins were not diamond rings or diamond stick pins.

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The regular, usual and reasonable value of the said rings, stick pins and other articles of jewelry referred to above, when sold at retail to members of the public who purchase them for personal use and wear, was, during the times above mentioned, in no instance as much as \$3, \$5, \$5.50, or \$6.50 per article.

The regular, usual and reasonable price of the said rings, stick pins or other said articles of jewelry, when so sold at retail, is and has been during said times, approximately, 15 cents to 25 cents per article.

The postage charges during the above mentioned times for sending one of the said rings, stick pins or other articles of said jewelry by mail from respondent's place of business in Chicago, Ill., to any one located elsewhere in the United States is and has been 2 cents, and the cost of packing and shipping has been no more than, approximately, 3 cents, and during said times the sums of 35 cents and 25 cents mentioned, respectively, in the certificates of guarantee, described and referred to in paragraph 7 hereof, represented, in addition to the necessary charges for postage, or for postage, packing, and shipping, a very large profit to respondent in each transaction based upon one of said certificates.

The said certificates of guarantee purported to be connected with a previous sale of a ring and to be for the sole purpose of making good to the purchaser according to the terms and promises of a contract of sale, by way of replacement, for a defect in quality or condition of a ring previously sold to him, whereby the purchaser would have the terms of the original contract of sale carried out with only an additional, nominal charge to him not exceeding 5 or 6 cents for postage, or for postage, packing, and shipping.

The transactions between members of the public and respondent under the said certificates of guarantee constituted, in reality, sales of rings on the part of the respondent with large profit to the respondent, and the members of the public, who were parties to said transactions, were deceived by the statements and representations made to them in the sale of rings in which the said certificates of guarantee were given to them and by the statements and representations in said certificates into taking part in transactions that in fact included the purchase of rings from the respondent instead of obtaining them at a nominal expense and without further cost than the price paid on the original purchase of a ring, except nominal charges for postage, or for postage, packing, and shipping.

The statements set forth in paragraph 6 hereof that the coupons were worth respectively \$2.50, \$4, and \$5.50 were false representations of material facts.

The said coupons each had and represented only a feigned or fictitious value to members of the public in connection with purchases of the rings based on the fictitious and false prices and values of the rings set forth in the coupons. Otherwise the coupons were of no value to the said members of the public.

PAR. 9. During the years 1929 and 1930 the respondent and certain various individuals, including one C. P. Morsert (whose true names and constantly changing places of abode or residence addresses are unknown to the Federal Trade Commission, and who are for that reason not named as respondents herein), have knowingly, and with intent so to do, unlawfully engaged in, and continue to be engaged in, a conspiracy, common understanding, combination and agreement to sell and to cause others, including retail dealers, to sell to members of the public, who purchase jewelry for personal use and wear, rings, stick pins, and jewelry by means of false, deceptive, and fraudulent practices knowingly and with intent employed, and by means of false, deceptive, and fraudulent representations knowingly and with intent made, and caused to be made, in the sale of said rings, stick pins, and other articles of jewelry, by respondent and the aforesaid certain various individuals, including said Morsert, to retail dealers and to members of the public, the purchasers and prospective purchasers of said articles of jewelry, as hereinafter set forth, in advertisements published in newspapers throughout the said various States, and in coupons and certificates of guarantee described and referred to in paragraphs 6 and 7 hereof, with knowledge on the part of respondent and said certain various individuals that said practices and representations were, when so made and employed, false, deceptive, and fraudulent and that members of the public who purchase rings and stick pins and said other articles of jewelry for personal use and wear relied and were relying on said representations, in purchasing said rings, stick pins, and other articles of jewelry and had been and were being deceived and defrauded thereby as hereinafter set forth.

PAR. 10. In pursuance of the conspiracy, common understanding, combination and agreement above mentioned and referred to, the respondent during the years 1929 and 1930 sold and delivered to the said certain various individuals, including one C. P. Morsert, mentioned and referred to in paragraph 9 hereof, rings, stick pins, and other articles of jewelry mentioned and referred to in paragraphs 5, 6, 7, and 8 hereof, at wholesale, at the prices set forth in said paragraph 5 and furnished, or sold and delivered to said individuals and said C. P. Morsert, together with the same, the coupons mentioned and referred to in paragraph 6 hereof, and the certificates of

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guarantee mentioned and referred to in said paragraph 7, with the knowledge and intent on the part of the respondent that the said individuals and said C. P. Morsert would make it the practice to cause the said rings, stick pins, and other jewelry to be offered for sale by them and by others, retail dealers throughout the said various States, in connection with the coupons and certificates of guarantee, so furnished or sold and delivered by respondent and in connection with the statements and representations contained in said coupons and certificates, and in advertisements in newspapers published throughout the said various States, and with the knowledge that the said rings, stick pins, and other articles of jewelry were so offered for sale to the public and that members of the public, who purchase rings, stick pins, and said other articles of jewelry purchased the same relying upon the statements and representations made to them in said coupons and certificates of guarantee and in said advertisements in newspapers, among others, as hereinafter mentioned and referred to and otherwise.

PAR. 11. In pursuance of the aforesaid conspiracy, combination, and agreement with the respondent the said certain various individuals and the said C. P. Morsert, during the times above mentioned and referred to, with full knowledge of all the facts above stated, bought the aforesaid rings, stick pins, and other articles of jewelry from the respondent and received without charge or bought therewith from respondent the coupons and certificates of guarantee above mentioned and referred to, and thereafter, during the aforesaid times placed or caused advertisements to be placed by retail dealers in newspapers in the name or names of the retail dealers, offering the said rings, stick pins and other jewelry for sale to the members of the public who purchased said jewelry for personal use and wear, in connection with the coupons and certificates of guarantee and the statements and representations contained in said coupons and certificates and in said advertisements.

PAR. 12. Among the advertisements placed or caused to be placed in newspapers, mentioned and referred to in paragraph 9, 10, and 11 hereof during the times above mentioned and referred to was one, which, besides pictorial representations of rings, contained therein the following:

THIS COUPON IS WORTH \$5.50 TO YOU

CUT IT OUT NOW

\$1

\$1 REGULAR \$6.50 VALUE FOR \$1

This is a ring set with a SUMATRA DIAMOND, in a guaranteed mounting. It is not the Egyptian, the Barrios, or the Arkansas diamond that visits your city for 3 days only and sells for 49 cents, but it is a genuine ring. It stands the test of fire and the acid bath. We give absolutely free a 1/2 carat diamond stick pin and a 2-year guarantee certificate with each purchase. Don't be misled by the other cheap rings, as this is a full facet cut stone. Bring this coupon with you as it is essential.

ON SALE ONLY AT
SINGER SEWING MACHINE CO.
EAST SIDE SQUARE

PAR. 13. In further pursuance of the aforesaid conspiracy, common understanding, combination, and agreement the said certain individuals and said C. P. Morsert, during the aforesaid times with knowledge thereof on the part of respondent, by means of the aforesaid practices and representations sold the rings, stick pins, and other articles above mentioned to the public, received the said coupons from the said purchasers on account of the purchase price and, as part of the transaction in the purchase and sale of the said rings, stick pins, and other articles of jewelry, gave to the said purchasers the certificate of guarantee set forth and referred to in paragraphs 7, 9, 10, 11, and 12 hereof.

PAR. 14. In further pursuance of the aforesaid conspiracy, common understanding, combination, and agreement, the respondent with full knowledge of all the facts above mentioned has, during the times above mentioned, received and continues to receive said certificates of guarantee by United States mail and otherwise from the above mentioned purchasers, members of the public who bought the said rings, stick pins, and other said articles of jewelry for personal use and wear as above described, together with the sum or sums in money and the ring or rings, previously sold, mentioned in said certificates and in exchange therefor has sent rings to the said purchasers mentioned and described in said certificates as being in replacement of the rings previously sold to them.

PAR. 15. In consequence of the said conspiracy, common understanding, combination, and agreement between the respondent and the said certain individuals and said C. P. Morsert and the acts and practices done by them, as above set forth, during the times above mentioned and referred to, members of the public, who bought said

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rings for personal use and wear, were deceived into buying and bought the same in the belief:

(1) That the pieces of plate glass or other glass set or mounted in the rings were diamonds;

(2) That the regular, usual and reasonable value of the said rings, stick pins, and other articles of jewelry was during the said times and now is \$3, \$5, \$5.50, or \$6.50 per article, respectively;

(3) That the regular, usual, and reasonable price of the said rings, stick pins, and other articles of jewelry during said times, was more than 15 cents for said stick pins and more than 25 cents for said rings and the said price for said rings was \$3, \$5, \$5.50, and \$6.50;

(4) That the postage charges and the charges for postage, packing, and shipping of one of the said rings by respondent to a purchaser, located elsewhere than in said city of Chicago, in replacement of a ring previously bought by said purchaser as above set forth, was 25 cents and 35 cents during the said times;

(5) That the said certificates of guarantee were no more than bona fide guarantees of the condition of the ring in connection with the sale of which they were given; and that the transaction under said certificates of guarantee did not involve a substantial profit to respondent;

(6) That the coupons above mentioned and referred to in paragraph 6 hereof were worth the sums of \$2.50, \$4, and \$5.50, respectively, in the purchase of one of said rings as a credit of equal amount on the regular, usual and reasonable price of said ring.

PAR. 16. The representations made, during the above-mentioned times, by respondent and the said certain individuals and C. P. Morser to members of the public in the sale of rings, stick pins, and said other articles of jewelry, as aforesaid, in the coupons, certificates of guarantee and in newspapers and otherwise; that said rings and stick pins, were diamond rings and stick pins; and that the values and prices of the said rings, stick pins, and other articles of jewelry set forth in said coupons, certificates, and newspaper advertisements and otherwise were and are the regular, usual, and reasonable values and prices of the same, when sold to members of the public who purchase the same for personal use and wear; that the said charges for postage or for postage, packing, and shipping were 25 cents and 35 cents, respectively; that the said certificates of guarantee represented that rings would be sent in replacement of other rings previously sold at a nominal charge for postage or for postage, packing, and shipping, only, for the ring so sent in replacement; and that the said coupons were worth to a purchaser of one of said rings, \$2.50, \$4 and \$5.50 or any other sum, were each and all false in fact and

were material representations made in the sale of said rings, stick pins, and other articles of jewelry by respondent and by the said certain individuals and C. P. Morsert to the members of the public with knowledge that they were false when made and made with the intent that the members of the public would rely on said representations in the purchase and sale of the said jewelry, and the said representations had the tendency and capacity to confuse, mislead, and deceive members of the public into buying said rings, stick pins, and said other articles of jewelry as set forth above.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission and upon the answer of the respondent, filed herein, in which the respondent admitted the allegations made in the complaint and admitted that he did do the practices alleged in the complaint, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties and for other purposes",

It is now ordered, That the respondent above named, Frank W. Alter, his agents, representatives, and employees, do hereafter cease and desist:

1. From using and from conspiring, or combining or having any understanding or agreement with others, to use the word "diamond", and the words "stands the tests of fire and the acid bath", or words having substantially the same meaning, in the advertising, branding, labeling, or designation of stones or imitations thereof, either unset, or set or mounted in rings or other pieces of jewelry, which are not diamonds;

2. From representing the regular, usual, and reasonable value or prices of rings, stick pins, or other articles of jewelry to be a sum or

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sums of money larger in amount than the regular, usual, and reasonable value or prices of the same actually are; and

3. From representing that the postage charges or the charges for postage, packing, and shipping of rings or other articles of jewelry or merchandise sold or offered for sale by respondent are a sum or sums of money more than the said charges actually are at the time, in the sale of jewelry in interstate commerce.

It is further ordered, That the said respondent within 30 days from and after the date of the service upon him of this order, shall file with the Commission a report or reports in writing, setting forth in detail the manner and form in which he is complying and has complied with the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF

L. A. CRANCER AND G. B. FLEISCHMAN, TRADING
UNDER THE FIRM NAMES AND STYLES OF ALLE-
GHENY TUBE & STEEL COMPANY, ETC.

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

Docket 1848. Complaint, June 19, 1930—Decision, Oct. 31, 1930

Where certain large corporations had long engaged as Allegheny Steel Co., Erie Iron & Steel Co., Illinois Steel Co., Westinghouse Electric Co., Pittsburgh Valve & Fittings Co., and National Plumbing Supply Co., in the manufacture and sale of pipe, castings, etc., as the case might be, and had come to be widely and favorably known for the quality of their output and character of their organizations; and thereafter a firm dealing in pipe, nipples, couplings, plugs, and other products comparable to or associated by the public with those offered and sold by said corporations, in pursuance of a method of conducting its business under various trade names simulating names of such corporations and purporting to represent distinct, independent business organizations, uncontrolled by it and competing with one another and all others similarly engaged,

- (a) Adopted trade name Allegheny Tube & Steel Co. and employed same in catalogues and price lists and represented such company as operator of a large and extensive plant making pipe and pipe fittings sold by it under such name, affording purchasers opportunity to secure products directly from the manufacturer without paying profits of jobbers or middlemen, and employed in advertising matter and other literature the words "From mill to you", "Tubular Division", and "Plant No. 3"; the facts being that it owned no manufacturing plant of any kind until recent incorporation under said name and acquisition of machinery and equipment for limited nipple manufacture;
- (b) Adopted and employed trade name Coupling Manufacturing Co. and represented said company as having made large purchases of pipe, at low prices, for manufacture into nipples of characteristic Coupling quality, affording opportunity for saving through purchase directly from the manufacturer, and over fictitious signatures wrote prospective purchasers of the alleged advantages thus to be derived; fact being that said nipples, couplings, and other products, excepting a small quantity made by said Allegheny Co., were manufactured in plants or mills with which it was neither directly nor indirectly connected and purchase of said products from it or said fictitious Coupling Co. saved purchasers no profits of jobbers or middlemen;
- (c) Adopted trade name Erie Iron & Tube Co., and employed same in price lists, quotations, etc., with words "University city", and displayed legend "Pipe fabricating department", and name "Walter King, division manager", on business stationery; fact being it had no such department at said place or elsewhere and said name was one of the fictitious names employed by it in conducting business as said Erie Iron & Tube Co.;

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- (d) Falsely represented said company as manufacturing new and unused nipples, couplings, etc., under such exceptionally favorable conditions that prices offered saved buyers profit or expense ordinarily sustained through purchase from jobbers or other distributors, fact being that said company's business was sale of used couplings as new, and sale of nipples made by aforesaid Allegheny Co. from old pipe as made from new pipe, and offered couplings and nipples under said name at reduced prices to prospective customers theretofore unsuccessfully solicited in the name of said Coupling Co. or said Allegheny, etc., Co.;
- (e) Adopted trade name "Illinois Steel Products Co." and employed same in stationery, price lists, etc., and gave fictitious names and addresses for said company's places of business, and the fictitious name "George Bancroft" as its purchasing agent, and falsely represented said company as maker of steel pipe fittings offered and sold by it, affording purchasers opportunity to obtain products at manufacturer's prices, without paying distributor's profit;
- (f) Adopted trade name "Westinghouse Union Co." and distributed price lists and other advertising matter and literature thereunder, notwithstanding it had no connection with Westinghouse Electric & Manufacturing Co. or subsidiaries thereof or related companies, and products thus offered had not been made by any of such companies, but were purchased from manufacturers and offered as made by said Westinghouse Union Co., and at prices enabling buyer to save distributor's profit;
- (g) Adopted trade name Pittsburgh Malleable Fittings Co. in offering and selling fittings such as elbows, etc., in competition with aforesaid Pittsburgh Valve & Fittings Co., with effect of enabling it so to confuse purchasing public as to be able to sell such products as and for those of said last named company; and
- (h) Employed trade name "Plumbers' National Supply Co." for offer and sale of pipes and pipe fittings in competition with aforesaid National Plumbing Supply Co., with result that confusion was created in minds of purchasers and prospective purchasers of said last-named company and its products were purchased as and for those of said company;
- With intent and effect of creating and maintaining appearance of keen and active competition between independent manufacturers, offering products dealt in by it at competitive prices, and with capacity and tendency to mislead and deceive the public into purchase of aforesaid products as and for those of the aforesaid widely and favorably known Allegheny Steel Co., Erie Iron & Steel Co., and other aforesaid corporations, bought at such competitive prices and directly from the manufacturer with a saving of the usual profits of middlemen or jobbers;
- Held*, That such practices, under the circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. James M. Brinson for the Commission.

Mr. Harvey D. Jacobs, of Washington, D. C., *Fordyce, Holliday & White* and *Mr. Louis Mayer*, of St. Louis, Mo., for respondents.

SYNOPSIS OF COMPLAINT

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

respondents L. A. Crancer and G. B. Fleischman, engaged at St. Louis in the sale and transportation to purchasers in various States of pipe, nipples, couplings, plugs, unions, and various other articles known as pipe fittings, and doing business under the trade name Allegheny Tube & Steel Co., and various other trade names, with assuming and using misleading trade names, misrepresenting business status, advantages and connections, simulating trade or corporate names of competitors and/or well-known concerns, operating and holding out business as ostensibly independent and competing enterprises, misrepresenting used products as new, and advertising falsely or misleadingly in said respects, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged as above set forth, made use of such trade names in catalogues, letters, and in the conduct, generally, of apparently independent businesses as Allegheny Tube & Steel Co., simulating the name of the well and widely known Allegheny Steel Co., Coupling Manufacturing Co. (purportedly representing a well-known manufacturing organization), Erie Iron & Tube Co. simulating the name of the well and widely known Erie Iron & Steel Co., etc., as hereinafter more fully set forth, and made claim of direct dealing from factory to consumer, used fictitious names, titles, and pretended divisions, plant numbers, etc., on letters, and offered ostensibly lower competitive prices under one of such trade names to customers theretofore unsuccessfully solicited under another, and represented used products or products made from used raw material, as new.¹

Respondents' practice, as alleged, of using such trade names as Allegheny Steel & Tube Co., Coupling Manufacturing Co., Erie Iron & Tube Co., Illinois Steel Products Co., Westinghouse Union Co., Pittsburgh Malleable Fittings Co., and Plumbers National Supply Co., in simulation of the names of the Allegheny Steel Co., Illinois Steel Co., Erie Iron & Steel Co., Westinghouse Electric & Manufacturing Co., Pittsburgh Valve & Fittings Co., and National Plumbing Supply Co., without disclosing their connection therewith, or that the designations used were trade names only, enabled them, through catalogues, letters with fictitious names as officials, plant divisions, etc., and general conduct of apparently independent

¹The practices charged in the allegations of the complaint are set forth, substantially verbatim, in the findings, respondents having failed to avail themselves of the opportunity to be heard on the complaint or to make answer to the charges therein, within the time provided and in response to notice, pursuant to Commission rules of practice that failure to file answer within such time should "be deemed an admission of the allegations of the complaint and authorize Commission to find them to be true and to waive hearing on the charges" therein set forth. See pages 250 et seq.

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businesses under such names, "to create and maintain in the trade and among the public, the appearance of competition, between ostensible manufacturers" of the products concerned and had the capacity and tendency "to mislead and deceive the public into the belief that the prices offered them for such products by respondents, through such apparently separate, distinct, and independent corporate agencies, have been and are the effect of active competition between them and to induce the purchase of products so offered by respondents in reliance on such erroneous belief", and also the further capacity and tendency to mislead and deceive the public into purchase of the products in question as and for those of the Allegheny Steel Co., Illinois Steel Co., and other well-known organizations, whose names were thus simulated as above set forth.

Respondents' false representations, furthermore, as alleged in catalogues, letters, and otherwise, to the effect that the Allegheny Tube & Steel Co., Coupling Manufacturing Co., and other trade names employed by respondents, as hereinabove set forth, "have been or are manufacturers of the products offered for sale by, or under such trade names, and that purchase of such products so offered for sale under such names would be, or is, directly from mill or factory, have had and have, and each of the several representations in respect to each of said so-called companies has had and has the capacity and tendency to mislead and deceive the public into the belief that there would be, and is, saved to purchasers from said so-called companies, or any or either of them, the usual profit of the middlemen or jobbers, and into the purchase of such products in reliance on such erroneous belief"; all to the prejudice of the public and respondents' competitors.

Upon the foregoing complaint the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission on the 19th day of June, A. D. 1930, issued its complaint against L. A. Crancer and G. B. Fleischman, respondents above named trading under the firm names and styles of the several companies above mentioned, and on June 24, 1930, caused the same to be served upon each of the said respondents as required by law, in which complaint it is charged that respondents have been and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act. By notice contained in said complaint respondents were notified and required

to file with the Commission an answer to said complaint on or before July 25, 1930; and in said notice respondents were further notified of the provisions of the Commission's Rules of Practice with respect to answer and failure to answer, said provisions being set forth in haec verba in said notice and providing in part as follows (Rule III, subdivision 3):

(3) Failure of the respondents to appear or file answer within the time as above provided for shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

Respondents thereafter appeared by their attorneys and made application for an extension of time from July 25 to October 15, 1930, for filing answer; whereupon the Commission by order dated August 5, 1930, extended the time for filing answer until September 15, 1930, and served copy of such order on the attorneys for the respondents on August 8, 1930. No answer having been filed by respondents or either of them, the Commission issued on September 18 and served on the attorneys for the respondents on September 23 and 24 a notice which (omitting the formal parts) read as follows:

Please take notice that the respondents in this case are hereby required to file answer to the complaint of the Commission, filed in this case on June 24, 1930, within five days after receipt of this notice. Failure of the respondents to file answer within said time shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

Respondents have not within the time provided for answer as extended, or within the five days provided for in the said notice, or at any time, made or filed any answer to said complaint; and have wholly failed to avail themselves of the opportunity to be heard on, or to make answer to, the charges set forth in said complaint, or with respect to the aforesaid notice as to answer and failure to answer.

Thereupon this proceeding came on for decision; and the Federal Trade Commission, acting pursuant to said act of Congress and its aforesaid Rules of Practice, having duly considered the record and being fully advised in the premises, makes this its report in writing, stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents L. A. Crancer and G. B. Fleischman are now and for several years last past have been engaged in the business, in St. Louis, Mo., of offering for sale and selling in commerce among and between the various States of the United States,

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and of transporting when sold to purchasers in the various States of the United States, pipe, nipples, couplings, plugs, unions, and various other articles or commodities known as pipe fittings.

In the course and conduct of their said business they have been and are in competition with individuals, partnerships, and corporations similarly engaged in like commerce.

Respondents have adopted, and for several years last past have used, and now use, as their method of business, or one of them, the fabrication and employment of numerous trade names, each and all of them closely resembling the names of large corporations engaged for a long period of time prior to the adoption or use of said names by respondent, in the manufacture and sale in commerce among and between the various States of the United States of products adapted to the same purpose and use as those offered for sale and sold by respondents, or engaged in the kind of manufacture or business naturally associated by the public with the manufacture and sale of products similar to those offered for sale or sold by respondents.

It has been, and is the practice of respondents to offer their said products for sale under, by, or through such various trade names as hereinafter set forth in succeeding paragraphs, without disclosing that they have been and are trade names only, or that there has been, or is, any relationship between the business represented, or purporting to be represented by said trade names, or between those controlling or conducting the business represented, or purporting to be represented by said trade names. They have represented the various businesses described by said trade names to be separate, distinct, independent organizations unrelated to, or controlled by, respondents, and that they have been and are in competition with each other and all others engaged in the manufacture and sale of similar commodities in commerce among or between the various States of the United States. Respondents have distributed or caused to be distributed among purchasers and prospective purchasers in the various States of the United States, catalogues, price lists, illustrations, pamphlets, price quotations, letters circular and otherwise, purporting to be issued, published and distributed by the various organizations which they have represented to the purchasing public as competitors of each other, and from time to time in soliciting business from purchasers and prospective purchasers in the various States of the United States, they have caused competitive prices of the products offered for sale and sold by them to be quoted by two or more of the fictitious organizations employed by them to create and maintain such appearance of competition. Respondents, in pursuance of such method of business have sub-

scribed or caused to be subscribed, and now subscribe, or cause to be subscribed, false and fictitious names to letters, bearing their said trade names, purporting to be managers, purchasing agents, sales agents, or other officials or executives of the various organizations designated by such trade names, all for the purpose, and with the effect of misleading purchasers and prospective purchasers into the belief that the various products offered for sale or sold by respondents have been, were and are offered for sale and sold by independent competitors at prices resulting from keen and active competition.

PAR. 2. Respondents for several years prior to 1929, used as the trade name, by and through which they offered for sale and sold their pipe and pipe fittings, Allegheny Tube & Steel Co. There has been for a long period of time prior to the adoption and use of such trade name by respondents, a corporation known as Allegheny Steel Co. Its executive offices have been and are located at Breckenridge, Pa., but it maintained offices or warehouses in the cities of New York and Buffalo, N. Y., Chicago, Ill., Detroit, Mich., Milwaukee, Wis., Cincinnati, Ohio, Boston, Mass., Newark, N. J., and Los Angeles, Calif. It had been manufacturing and selling in interstate commerce for many years before respondents adopted their trade name, various kinds of pipe, steel castings, boiler tops, electric sheets, steel sheets, mechanical furniture, etc. It had established, maintained, and at the time respondents adopted the trade name Allegheny Tube & Steel Co., the Allegheny Steel Co. had, and ever since has had, a wide and extensive reputation and good will among the purchasing public for the excellence and general utility of its product. It was, and is, widely and favorably known as a company conducted by an efficient and reliable executive organization.

After their adoption of the name Allegheny Tube & Steel Co. for the business conducted by them respondents offered for sale and sold pipes and pipe fittings such as nipples, couplings and other commodities usually known as pipe fittings, under and by the representation made to the purchasing public through catalogues, price lists, circulars and other letters, advertisements and traveling solicitors, that Allegheny Tube & Steel Co. had and operated a large and extensive plant wherein were manufactured such products; and that by purchasing such products or any of them from said Allegheny Tube & Steel Co. the purchasers would be securing such products directly from the manufacturer and would thereby save any and all profit that otherwise would accrue to jobbers or middlemen. They used on stationery, advertising matter, and other literature distributed among purchasers and prospective purchasers in the various States of the United States such words as "From mill to you", "Tu-

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bular division", and "Plant No. 3", thereby representing that such respondents operated a large and extensive plant enabling it to manufacture and sell its products at a price satisfactory to the ordinary purchaser without the service of, or profit to, intermediaries of any kind.

In truth and in fact neither respondents L. A. Crancer nor G. B. Fleischman at any time, or the Allegheny Tube & Steel Co. until 1929, owned, operated, or conducted any mill or other plant of any kind, and its products generally, so offered for sale and sold, had been and were manufactured by or at mills with which neither of said respondents had any connection whatever. All of the products offered for sale and sold by respondents as Allegheny Tube & Steel Co. were purchased by them for such purpose from other manufacturers.

Some time in 1929 respondents L. A. Crancer and G. B. Fleischman caused to be incorporated under the laws of the State of Missouri the Allegheny Tube & Steel Co., the trade name theretofore used by them in the conduct of their said business. They thereafter continued to sell their products, or some of them, under and by the name Allegheny Tube & Steel Co. They were the officers of, and controlled, conducted, and dominated the corporation, using it as a corporate medium for the conduct of the business theretofore conducted under the trade name Allegheny Tube & Steel Co. Some time in 1929 they caused such company to acquire machinery and other equipment for manufacture of nipples to a very limited extent, and thereafter a small proportion of the nipples sold by respondents was, in fact, manufactured by them, but they have at no time manufactured, as Allegheny Tube & Steel Co., or otherwise, any of the other commodities sold by them.

PAR. 8. Respondents L. A. Crancer and G. B. Fleischman for more than a year last past have also conducted business under the name of Coupling Manufacturing Co. They have caused to be distributed among purchasers and prospective purchasers, advertising matter and other literature including catalogues, price lists, and letter quotations bearing the name Coupling Manufacturing Co., manufacturers of pipe coupling, and as inducement to the purchase of couplings and nipples said respondents, under the name of Coupling Manufacturing Co., have represented to purchasers and prospective purchasers that Coupling Manufacturing Co. had purchased large stocks of pipe at low prices which it had manufactured into nipples of characteristic Coupling quality, and that by reason of such success in securing such stock of pipe, purchasers could save money by procuring nipples direct from respondent Coupling Manufacturing Co. Respondents have transmitted to, and distributed among pur-

chasers and prospective purchasers in support of their representation that the Coupling Manufacturing Co. was, and is, the manufacturer of nipples, letters setting forth in detail the alleged advantages to be derived from the purchase of nipples manufactured by the Coupling Manufacturing Co., and in order to conceal and withhold from prospective purchasers the fact that respondents were controlling the Coupling Manufacturing Co., and that it and the Allegheny Tube & Steel Co. are operated by respondents, they caused fictitious names to be subscribed to such letters transmitted by them to purchasers.

In truth and in fact the nipples, couplings, and other products offered for sale by Coupling Manufacturing Co., ostensibly, but in fact by respondents L. A. Crancer and G. B. Fleischman, were not manufactured by them or either of them, but were fabricated, except a small quantity of nipples by Allegheny Tube & Steel Co., in plants or mills with which neither of them was, or is, directly or indirectly connected, and in which neither of them had any interest whatever, and the purchase of such products from respondents, or the fictitious Coupling Manufacturing Co. did not and does not enable purchasers to save the jobbers' or middlemen's profit. Respondents L. A. Crancer and G. B. Fleischman were and are themselves jobbers and middlemen, and not manufacturers.

PAR. 4. There is now and for several years last past has been, a corporation known as Erie Iron & Steel Co., which has engaged, and now engages in the general steel manufacturing business at Erie, Pa., with branch offices over the Central West or that portion of the United States in which respondents offer for sale and sell their various products. The Erie Iron & Steel Co. manufactures and sells a pipe, among other things, and this company now is, and for many years has been, widely and favorably known for the quality of its products, the reasonableness of its prices and the character of its organization.

Respondents L. A. Crancer and G. B. Fleischman are now using, and for more than a year last past, have used as one of their trade names, Erie Iron & Tube Co., a name which clearly resembles and simulates, and suggests to the purchasing public the Erie Iron & Steel Co. They have used and distributed among purchasers and prospective purchasers in the various States of the United States price lists and price quotations, stationery, and other literature in which they have referred, and refer to name of Erie Iron & Tube Co., at University City, Mo. Such price lists, stationery, and other literature carry the legend, appearing in connection therewith "Pipe fabricating department", and with the name "Walter King, division manager", appearing therein. In fact neither respondents,

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nor the so-called Erie Iron & Tube Co. has had, or has any mill or plant, or any pipe fabricating department, at University City or elsewhere, and the name Walter King has been, and is, one of the fictitious names employed by respondents in conducting the business as the so-called Erie Iron & Tube Co. Any and all mail or matter addressed to Erie Iron & Tube Co. at University City, has been and is forwarded at the instance of respondents to them at their regular place of business in the city of St. Louis, Mo.

Respondents have represented and represent to the purchasing public that Erie Iron & Tube Co. has been and is manufacturing nipples and couplings under such conditions exceptionally favorable that it has offered and offers them for sale at prices which save to the purchasers any profit or expense that would be sustained from purchase of such products from or through jobbers or other distributors.

They have represented and represent that the nipples and couplings so offered and sold, have been and are new and unused nipples and couplings. In truth and in fact the business of respondents conducted under the name of Erie Iron & Tube Co. has been and is the sale of used couplings purchased for the purpose as and for new couplings, and of nipples manufactured from old pipe by Allegheny Tube & Steel Co. as and for nipples manufactured from new pipe. It has been, and is the practice of respondents, whenever unable to sell couplings to prospective customers among whom they have distributed circulars and price quotations, purporting to be from the Coupling Manufacturing Co., to circularize or distribute circulars among such prospective customers purporting to be from Erie Iron & Tube Co., offering couplings at lower prices than the couplings offered for sale by the so-called Coupling Manufacturing Co., which respondents cause falsely to appear as a separate and distinct entity.

When respondents have been or are unable to sell nipples offered for sale by Allegheny Tube & Steel Co. or Coupling Manufacturing Co., it circularizes or distributes circulars among the customers or prospective customers previously circularized by them under the name of Allegheny Tube & Steel Co. or Coupling Manufacturing Co., or both, purported to come from Erie Iron & Tube Co., offering nipples for sale at reduced prices, or prices lower than designated by Allegheny Tube & Steel Co. or Coupling Manufacturing Co., and when orders are thereupon, or thereafter, received by Erie Iron & Tube Co. for nipples so offered in its name respondents transport, or cause to be transported, and delivered to purchasers, nipples which they have caused to be made from old pipe on the machines of the Allegheny Tube & Steel Co.

PAR. 5. The Illinois Steel Co. is a subsidiary of the United States Steel Corporation. It had, long prior to the adoption of the name, hereinafter mentioned, by respondent as a trade name, and now has a wide reputation, and its steel products, had been, and are favorably and extensively known in the United States. For more than a year last past respondents L. A. Crancer and G. B. Fleischman have used and now use as one of the trade names for their business, Illinois Steel Products Co. They have employed, in conducting such business, stationery and price lists and advertising literature containing fictitious names and addresses such as Granite City, Ill., as the place of business of said company, and George Bancroft as its purchasing agent, when in fact, Granite City is a short distance from St. Louis, although located in Illinois, and mail addressed to such place is forwarded to respondents at St. Louis, Mo., and the name George Bancroft is another false and fictitious name employed by respondents or one of them in conducting the business of, or purporting to conduct the business of, the so-called Illinois Steel Products Co.

Respondents, for more than a year last past have represented and now represent that the Illinois Steel Products Co. has manufactured and manufactures steel pipe fittings, and it has offered such products for sale and now offers for sale and sells them as products manufactured by Illinois Steel Products Co. As inducement for their purchase respondents have represented and represent that by direct purchase from Illinois Steel Products Co. purchasers have been, and are enabled to obtain its products at the manufacturer's prices, thereby avoiding jobbers' profits, or that of any other distributor.

In truth and in fact neither the Illinois Steel Products Co. nor respondents, or either of them, at any time have manufactured any of the products offered for sale or sold by them under the name of Illinois Steel Products Co. and purchasers from them as Illinois Steel Products Co., or otherwise, have not saved, and do not and can not thereby save the middleman or jobber profit.

PAR. 6. There is now and for many years last past has been a corporation known as the Westinghouse Electric & Manufacturing Co. engaged in the manufacture of electrical devices and equipment. This company has maintained and now maintains plants located in various parts of the United States, with branch offices in the principal cities of the United States and foreign countries. It is one of the largest corporations in the United States and bears a world wide reputation. Its generally known products are of a different character from those offered for sale and sold by respondents, but its business generally has been and is of such comprehensive character that it is associated by the purchasing public with the manufacture and sale of

a wide and extensive variety of products favorably known to the public. Respondents, for more than a year last past have used, and now use, as a trade name Westinghouse Union Co., and have distributed and now distribute among purchasers and prospective purchasers of the products offered for sale by them, price lists, advertising matter and other literature including stationery bearing the name Westinghouse Union Co., as inducements for the purchase of its products.

In truth and in fact neither of the respondents has or at any time heretofore has had, any connection or relationship to the Westinghouse Electric & Manufacturing Co. or any of its subsidiaries or allied companies, and none of the products offered for sale or sold by respondents under and by the name Westinghouse Union Co. has been manufactured by said so-called company, or by either of them, but have been purchased from the manufacturers thereof and have been and are offered for sale thereupon as if manufactured by Westinghouse Union Co. and at prices enabling the purchaser to avoid or save profits of jobbers or other distributors.

PAR. 7. There is now and for many years last past has been a company known as the Pittsburgh Valve & Fittings Co. It has offered for sale and sold in commerce, among and between the various States of the United States, malleable fittings, cast fittings, brass and iron valves. Its products are well and favorably known in the various States of the United States in which respondents offer for sale and sell their products.

Respondents L. A. Crancer and G. B. Fleischman are now engaged, and for more than a year last past have been engaged, under and by the name Pittsburgh Malleable Fittings Co., in offering for sale and selling in various States of the United States fittings such as elbows, tees, reducers, nipples, and plugs, in competition with the said Pittsburgh Valve & Fittings Co. Employment of such trade name has enabled and still and now enables respondent to so confuse the purchasing public that they have been and are enabled to sell such products as or for products of the Pittsburgh Valve & Fittings Co.

PAR. 8. There has been for several years last past and now is an organization at St. Louis, Mo., known as the National Plumbing Supply Co. It offers for sale and sells in the various States of the United States, plumbing and heating materials such as pipe-valves and fittings. It has always borne and now bears an excellent reputation and enjoys the good will of the purchasing public. Respondents are now using, and for more than a year last past, have used as one of its trade names, Plumbers National Supply Co., a name which clearly simulates that of the National Plumbing Supply

Co., and has been and usually is understood to mean National Plumbing Supply Co. It has offered for sale and sold and offers for sale and sells, pipes and pipe fittings in competition with the said National Plumbing Supply Co. in commerce in the various States of the United States, and by reason of the close resemblance there has been confusion among purchasers and prospective purchasers of said National Plumbing Supply Co., resulting in the purchase of products of respondents in the belief that they have been, or were, products of the National Plumbing Supply Co.

PAR. 9. The practice of respondents, as described in paragraph 1 hereof, in offering for sale and selling their products in the name of Allegheny Tube & Steel Co., Coupling Manufacturing Co., Erie Iron & Tube Co., Illinois Steel Products Co., Westinghouse Union Co., Pittsburgh Malleable Fittings Co. and Plumbing National Supply Co., without disclosing their connection therewith, or that such designations represented and represent no corporations, or separate entities, but have been and are trade names only, by means of which respondents have been and are enabled to create, and maintain, in the trade, and among the public, the appearance of competition, between ostensible manufacturers of such products, has had and has the capacity and tendency to mislead and deceive the public into the belief that the prices offered them for such products by respondents, through such apparently separate, distinct and independent corporate agencies, have been and are the effect of active competition between them and to induce the purchase of products so offered by respondents in reliance on such erroneous belief.

The practice of respondents in offering for sale and selling their products in the name of, and through Allegheny Tube & Steel Co. has had and has the capacity and tendency to mislead and deceive the public into the purchase of such products in the belief that they have been, were, or are the products of the Allegheny Steel Co.

The practice of respondents in offering for sale and selling their products in the name of and through Illinois Steel Products Co., has had and has the capacity and tendency to mislead and deceive the public into the purchase of such products in the belief that they have been, were, or are the products of the Illinois Steel Co.

The practice of respondents in offering for sale and selling their products in the name of and through Erie Iron & Tube Co. has had and has the capacity and tendency to mislead and deceive the public into the purchase of such products in the belief that they have been, were, or are the products of the Erie Iron & Steel Co.

The practice of respondents in offering for sale and selling their products in the name of, and through Westinghouse Union Co. has

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had and has the capacity and tendency to mislead and deceive the public into the purchase of such products in the belief that they have been, were, or are the products of the Westinghouse Electric & Manufacturing Co., or of some subsidiary company of the Westinghouse Electric & Manufacturing Co., or of some company allied therewith.

The practice of respondents in offering for sale and selling their products in the name of, and through Pittsburgh Malleable Fittings Co. has had and has the capacity and tendency of misleading and deceiving the public into the purchase of such products in the belief that they have been, were, or are products of the Pittsburgh Valve & Fittings Co.

The practice of respondents in offering for sale and selling their products in the name of, and through, the Plumbers National Supply Co. has had the capacity and tendency to mislead and deceive the public into the purchase of such products in the belief that they have been, were, or are products of the National Plumbing Supply Co.

The false representations of respondents to the effect that the Allegheny Tube & Steel Co., the Coupling Manufacturing Co., the Erie Iron & Tube Co., the Illinois Steel Products Co., or respondents L. A. Crancer or G. B. Fleischman, have been or are manufacturers of the products offered for sale by, or under such trade names, and that purchase of such products so offered for sale under such names would be, or is, directly from mill or factory, have had and have, and each of the several representations in respect to each of said so-called companies has had and has the capacity and tendency to mislead and deceive the public into the belief that there would be, and is, saved to purchasers from said so-called companies, or any or either of them, the usual profit of the middlemen or jobbers, and into the purchase of such products in reliance on such erroneous belief.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the record, and the Commission having made its report in which it stated its findings as to the facts and conclusion that

respondents, L. A. Crancer and G. B. Fleischman, trading under the firm names and styles of the companies above mentioned, have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That respondents, L. A. Crancer and G. B. Fleischman, and each of them, their agents, representatives, servants, and employees, cease and desist in the course or conduct of the sale of pipes, nipples, couplings, plugs, unions, elbows, tees, reducers, and/or other articles or commodities known as pipe fittings, in interstate commerce:

(1) From employing any trade name or company name which simulates the name of the Allegheny Steel Co., the Erie Iron & Steel Co., the Illinois Steel Co., the Westinghouse Electric & Manufacturing Co., the Pittsburgh Valve & Fittings Co., the National Plumbing Supply Co., or any of them, or of any other company with which respondents may now or at any time be engaged in competition in the sale of such articles or commodities; and particularly from employing in connection with such sales any of the following names:

Allegheny Tube & Steel Co., Erie Iron & Tube Co., Illinois Steel Products Co., Westinghouse Union Co., Pittsburgh Malleable Fittings Co., Plumbers National Supply Co.

(2) From representing through catalogues, price lists, circulars, letters, advertisements, traveling solicitors, or in any manner whatsoever, that the respondents, or any company the name of which may be employed by respondents, manufacture such articles or commodities, or own or operate mills or factories for the manufacture of such articles or commodities, when such is not the fact; and from using the word "manufacturing", or any word of similar import, as a part of any trade name or company name employed by respondents (and particularly from using the name Coupling Manufacturing Co.) unless and until the respondents and/or such company manufacture the articles or commodities so sold.

(3) From representing that by purchasing such articles or commodities from the respondents or from any company in the name of which respondents do business a purchaser will obtain the advantage of prices which will enable him to save the jobbers' or middlemen's profit, when such is not the fact.

(4) From representing that any of the several companies in the names of which respondents do business is a separate entity, distinct and apart from any other such company, or distinct and apart from the respondents, or that any such company is engaged in competition with any other such company or with the respondents;

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and from doing acts which simulate competition between two or more of such companies or between the respondents and any such company.

(5) From representing by means of stationery, price lists, advertising matter, false signatures, or in any manner whatsoever, that any person, real or fictitious, is an officer, agent, representative, or employee of the respondents or of any company in the name of which the respondents may be doing business, when such is not the fact; or that the office, place of business, or address of the respondents or of any such company is at any place where it is not in fact.

(6) From offering for sale or selling old or used nipples, couplings, or other articles or commodities, as and for new; and from offering for sale or selling nipples manufactured from old or used pipe as and for nipples manufactured from new pipe.

It is further ordered, That respondents, L. A. Crancer and G. B. Fleischman, shall within 30 days after service upon them of a copy of this order file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF
**PENICK & FORD, LTD., AND PENICK & FORD SALES
 COMPANY, INC.**

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
 VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914,
 AND SEC. 3 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914

Docket 1580. Complaint, Mar. 14, 1929. Decision, Nov. 17, 1930

Where a corporation engaged in sale of canned sirups and molasses to wholesale and retail grocers, largest packer-seller of canned cane sirups and one of the two largest packer-sellers of canned sirups in Mississippi, Louisiana, Arkansas, and Texas, and only "packer-seller" of a complete line of canned cane, corn, and blended sirups and molasses in Southern States; in pursuance of a "100 per cent sales policy" of limiting salesmen, in soliciting retailers for account of their wholesalers, to customers handling its sirups and molasses exclusively and giving it "their whole-hearted cooperation and support",

- (a) Made known adoption of said sales policy to wholesale grocer customers in its southern sales territory and repeatedly stated the same thereto, through letters, circulars, and salesmen;
- (b) Limited its said retail sales assistance to such wholesale grocer customers as sold its canned cane sirups and molasses and did not sell competitive products, and purchased a competitive sirup from a wholesale grocer customer, to secure said grocer's business exclusively; and
- (c) Refused or discontinued such assistance to wholesale grocer customers selling competitive products;

With the result that wholesale grocer customers sold its products and discontinued or failed to undertake sale of those of its competitors, an important competitive advantage in the sale of its merchandise was secured by wholesale grocers dealing exclusively therein, numerous wholesale grocers in several Southern States were caused to comply with said 100 per cent policy, public was deprived of a substantial proportion of previously existing competition between it and its competitors in numerous southern markets through the closing of the outlets for the class of merchandise concerned against its competitors, so large a proportion of the class A wholesale grocer outlets in certain southern jobbing centers was closed as to result in a direct tendency toward monopoly in the aforesaid products, and competition therein in several jobbing centers in the territory involved was lessened, and there was a capacity and tendency for competition to be substantially lessened in other localities:

Held, That such acts and practices under the circumstances set forth, substantially and dangerously lessened and hindered competition in certain localities and sections in the sale and distribution of canned sirups and molasses, to the injury and prejudice of the public, and constituted a violation of section 3 of the Clayton Act, and of section 5 of the Federal Trade Commission Act.

Mr. Eugene W. Burr for the Commission.

Mr. Charles Wesley Dunn, of New York City, for respondents.

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SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act and also acting in pursuance of the Clayton Act, the Commission charged respondent Penick & Ford, Ltd., engaged in the manufacture of cane sirup, corn sirup, blended sirups and molasses, and other products, and respondent Penick & Ford Sales Co., Inc., its sales subsidiary and agency, Delaware corporations with principal executive offices in New Orleans and with branch offices in New York City, Memphis, Cedar Rapids, Iowa, and Montgomery, Ala., with contracting or entering into exclusive and tying arrangements in violation of the provisions of sections 5 and 3 of the aforesaid acts, respectively, intimidating or coercing in respect thereof, and with maintaining resale prices, in violation of the provisions of section 5 of the first named act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged, as above set forth, and occupying a dominant position in the manufacture and sale of sirup in certain portions of the country and particularly in certain southern portions thereof, in or about September, 1924, adopted and subsequently pursued their so-called "100 per cent policy of becoming, so far as possible, the exclusive purveyors of the lines of products" dealt in by them to as many wholesale dealers as possible; with intent and effect of securing understandings with numerous customer wholesale dealers obligating such dealers to sell no make or brand in the lines in question other than respondents.

Respondent Sales Co., as alleged, in pursuance of said policy, represented orally and by circulars to wholesale dealers that it would not supply its sales cooperation with and assistance¹ to the retail trade, to those wholesale dealers who declined to and/or failed to adopt respondents' aforesaid policy, discontinued and/or refused such sales assistance to customers or proposed customers, declining or failing to adopt the policy in question, and on certain occasions directed

¹ The complaint, setting forth that respondent Sales Co. sends traveling salesmen from its New Orleans office and its various branches from one State to another in soliciting purchase of its products, sets forth the sales cooperation and assistance referred to, as follows:

"Among the methods of promoting and effecting sales of the said described products adopted by the said Sales Co. is that of affording to wholesale dealers, who are customers of respondents, cooperation by making available to such dealers the services of salesmen, employees of said Sales Co., who call upon the retail dealers, customers of said wholesale dealers, in company with the said wholesalers. This cooperation has been effective to increase the sales of respondents and the profits from respondents' products to said wholesale dealers and is highly valued by the customers of said respondents and in numerous instances deemed essential by them."

their aforesaid sales cooperation and assistance particularly in favor of wholesale dealers who adopted the policy and particularly against wholesale dealers, competitors of those immediately before named, but who did not adopt the policy, and canvassed the retail trade through respondent Sales Co.'s salesmen in an effort to reduce the trade in respondents' products enjoyed by respondents' wholesale customers who did not adopt the policy in question but sold, in addition to respondents' products, competing products of other manufacturers, in an effort to break down the trade of customers failing to adopt its policy, and at times warned such wholesalers that the course above described would be followed by respondents.

Respondents further, on occasion, purchased products of competing concerns and resold same below cost, and gave special consideration in other respects to those concerns who adhered to the policy involved, not extended to other customers and used other means and methods of securing the adoption of and the adherence to their said policy.

As a result of the aforesaid methods, as alleged, many wholesalers who formerly bought the products of one or more of respondents' competitors "have ceased to carry any products competing with the respondents' said lines of products, on the ground and/or for the reason that they have become exclusively 100 per cent customers of respondents, and thereby many outlets for products competing with the said products of respondents have been closed, to the consequent serious injury of said competitors' trade between and among the States. Moreover, as a result of the said described methods of respondents in the sale of the said named products, retail dealers have been and are deprived of the benefit of free and unobstructed competition among manufacturers and wholesale dealers in the said named lines of products, and of the opportunity freely to buy brands of products which they had previously bought, and have been restricted to respondents' brands in the said named lines of products. Furthermore, the public has been and is deprived of the benefit of free and unobstructed competition in said named products, competition having been dangerously and substantially hindered and lessened; and in some localities a monopoly has been secured for respondents' said products, while in other localities the tendency of respondents' described methods has been and is to secure a monopoly therein."

Respondents, further as charged, in or about September, 1924, "adopted and have since maintained a policy of fixing and maintaining certain specified uniform resale prices at which their aforesaid products shall be sold by dealers handling the same, and respondents

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have enlisted the support and cooperation of certain dealers handling the said products and of respondents' officers, agents, and employees in enforcing their methods of maintenance of their resale prices.

"In order to carry into effect their policy in such regard, the respondents have employed the following means for the purpose and with the result of preventing dealers from handling respondents' products at less than the resale prices therefor established by respondents from time to time":

(a) Establishing uniform minimum wholesale and retail resale prices to be observed by dealers handling their products and informing dealers in regard thereto;

(b) Making it generally known to the trade by circulars, letters, salesmen's interviews and otherwise that respondents expect and require dealers to maintain and enforce said minimum prices;

(c) Soliciting and securing, through representatives, assurances from dealers both wholesale and retail that they will maintain such prices;

(d) Using their aforesaid policy of affording sales cooperation and assistance to secure agreements or understandings with wholesale dealers obligating them to observe respondents' minimum prices; respondents representing both in writing and orally that they will not afford such cooperation and assistance to those declining or failing to maintain their prices and at times discontinuing the same with those failing so to maintain their prices;

(e) Directing salesmen and employees of respondent Sales Co. to ascertain and secure information as to price cutting, and report such information to respondent Sales Co.

(f) Securing cooperation of wholesale and retail dealers through reports therefrom containing information as to price cutting dealers;

(g) Declining on occasion to sell their products to wholesale price cutting dealers; and

(h) Using other means and methods for the promotion and enforcement of their aforesaid resale price maintenance system.

As alleged by the complaint the direct effect of respondents' methods, as above set forth, "has been and now is to lessen competition among dealers, in the distribution and sale of respondents' aforesaid products, to constrain said dealers to sell said products at the prices fixed by respondents as aforesaid, and to prevent them from selling said products at such lesser prices as they may, or otherwise might, desire in the exercise of their free and untrammelled judgment, and to deprive the ultimate purchasers of said products of those advantages in price and otherwise which they would obtain

from natural, free and unobstructed competition in commerce in said products," and the acts and practices hereinabove described are all to the prejudice of the public and constitute unfair methods of competition within the intent of section 5 and in violation of section 3 of the Clayton Act.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", and pursuant further to section 3 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", the Federal Trade Commission on March 14, 1929, issued its complaint against Penick & Ford, Ltd., and Penick & Ford Sales Co., Inc.; respondents above named, and caused the same to be served upon respondents in manner provided by law, in which complaint it is charged that respondents had been and were using unfair methods of competition in interstate commerce in violation of the above described statutes.

Respondents having entered their appearance and filed their joint answer to the said complaint, negotiations were entered into for a settlement of the facts and a stipulation resulted, signed by counsel for the Federal Trade Commission and by counsel for respondents, the same being approved and filed by order of the Federal Trade Commission.

Counsel for both parties having waived oral argument and counsel for respondents having moved dismissal, this proceeding came on for determination and, the Commission being fully advised in the premises and upon consideration thereof makes this its report, stating its findings as to the facts and its conclusion, in manner following, to wit:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Penick & Ford, Ltd., is a corporation organized under the laws of the State of Delaware in 1920, as successor to another corporation of the same name. Penick & Ford Sales Co. is a corporation organized under the laws of the State of Delaware in 1922. Its stock is owned or controlled by Penick & Ford, Ltd. Certain of its officers and directors are also officers and directors of Penick & Ford, Ltd.

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PAR. 2. Penick & Ford, Ltd., is engaged in the business of packing and selling cane sirup, corn sirup, blended sirups and molasses; also of producing and selling corn products other than sirups. It maintains packing plants in the States of Alabama, Louisiana, Iowa, and Vermont. It sells the entire output of each plant to Penick & Ford Sales Co. It has its principal office in the city of New York, State of New York, and a branch office at each plant.

PAR. 3. Penick & Ford Sales Co. is engaged in the business of selling the sirups, molasses, and other products of Penick & Ford, Ltd., which it purchases at the plant, in each instance, and ships to purchasers from it in the same and other States. It has its principal office in the city of New York, State of New York, and branch offices in the city of Montgomery, State of Alabama, city of New Orleans, State of Louisiana, city of Memphis, State of Tennessee, and city of Cedar Rapids, State of Iowa, conducted by branch managers who supervised its grocery business hereinafter described, in their respective territories, during the times hereinafter defined.

PAR. 4. Penick & Ford Sales Co. sells its canned sirups and molasses to wholesale grocers and also to retail grocers with whom it maintains a direct account. It sells its canned cane sirups almost exclusively in Southern States and principally to wholesale grocers therein. It is and, during the times hereinafter defined, was the largest "packer-seller" of canned cane sirups and one of the two largest packer-sellers of canned sirups in Mississippi, Louisiana, Arkansas, and Texas, severally. It is and, during said times, was the only packer-seller of a complete line of canned cane, corn and blended sirups and molasses in Southern States. It employs salesmen to solicit and take orders for its canned sirups and molasses from the wholesale and retail grocers to whom it sells; also to solicit and take orders for its said products from retail grocers to whom it does not sell, for the account of wholesale grocers named by them (the retail grocers, respectively) and from whom they (the retail grocers, respectively) buy their supplies. In the latter solicitation its salesman is at times accompanied and aided by a salesman of a local wholesale grocer. Such retail sales assistance to wholesale grocers is and has been an important sales method, both to the company and to said wholesale grocers. Without it, said wholesale grocers are put to greater effort and expense in securing an equivalent sale of the company's products. In cases where the volume of business was sufficient its salesman has given such assistance to one wholesale grocer, exclusively. The company conducts, and, during the times hereinafter defined, has conducted its said grocery

business in direct and constant competition with several others engaged in a similar business and both the company and its said competitors (excepting local competitors) pursue and, during said times pursued an interstate commerce business, principally.

PAR. 5. On September 29, 1924, Penick & Ford Sales Co. issued the following circular letter to its wholesale grocer customers in its southern sales territory (comprising the States of Alabama, Georgia, Florida, North Carolina, South Carolina, Louisiana, Texas, Oklahoma, Mississippi, Tennessee, Kentucky, and southern Indiana), namely:

TO OUR CUSTOMERS

DEAR SIR: For the last two years we have been greatly concerned about the lack of profit in our grocery department which handles canned sirups and molasses, and have known for some time that the trouble lay in the cost to sell our goods.

This excessive cost having been brought about by some of our customers for whom we do retail work, handling lines of competitive brands of cane sirups in direct competition with ours—thereby reducing the volume of business our salesmen can secure for them, which causes a much higher selling cost on our goods.

We are driven to the point where we must in self-defense take some action that will tend to reduce our heavy selling cost. As much as we regret the necessity of changing our sales policy, it is imperative that we do so, and on and after November 1st we will give sales assistance and retail work only to those customers who handle our line of cane sirups and molasses exclusively and give us their whole-hearted cooperation and support.

We find from experience that when a customer handles another line of cane sirups in competition with ours his sales effort is divided; his sales are not increased; and what might result in profit to us is turned into no profit or an absolute loss—and neither manufacturer can make any profit out of the account. In other words, the jobber who divides his cane sirup business and at the same time requires retail sales work is taking all of the cream off of the milk for us; because cane sirup is the only grade which pays sufficient profit to justify the expense of retail work.

We will, of course, gladly furnish all customers with our goods, but retail sales work will be given only to those whose whole support we have on our cane line.

From the inception of this company—for 25 years—it has distributed its products through the medium of the jobber and has never failed to cooperate with them in every possible way. We recognize the right of every jobber to buy his goods from whom he pleases, but on the other hand he will realize that we can not extend sales support which is very expensive where it is not profitable. Therefore we are sure our action in this matter will appeal to every fair-minded man as equitable and just.

The sales policy announced by the aforesaid circular letter was designated by the company and known in the trade as its 100 per cent sales policy. The terms “retail work”, “retail sales work”, “sales assistance”, and “sales support”, used in said letter, are

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synonymous and were intended by the company and construed by the trade to mean the company's employment of its salesmen after November 1, 1924, to solicit orders for its canned cane sirups and molasses from retail grocers only for the account of wholesale grocers who sold its canned cane sirups and molasses and did not sell competitive products.

On November 3, 1927, when the Federal Trade Commission was considering the data secured by it in its investigation preliminary to the issuance of this complaint and upon which it is based, the company issued the following circular letter to its wholesale grocer customers in its said southern sales territory, announcing its withdrawal of said policy, namely:

TO OUR CUSTOMERS

DEAR SIR: We have decided from this day to withdraw our so-called 100 per cent sales policy.

We will continue retail work where justified by valuable business. Retail work will no longer be dependent on whether or not competitive brands are being handled.

PAR. 6. Penick & Ford Sales Co. did not pursue its said 100 per cent sales policy or any similar policy prior to November 1, 1924; it has not pursued said policy or any similar policy since November 3, 1927. It pursued said policy only from November 1, 1924, to November 3, 1927, in its said southern sales territory, with respect to its sale of its canned cane sirups and molasses to its wholesale grocer customers in said territory and principally with respect to its sale of its canned cane sirups to them, as and with the results hereinafter defined. In the pursuit of said policy during the period and in the territory above defined the company took the following action: It repeatedly stated the policy to its wholesale grocer customers, by letter (individual and circular) and through its salesmen; it did retail work for wholesale grocer customers who sold its canned cane sirups and molasses and did not sell competitive products; upon occasion it refused to do or discontinued retail work for some wholesale grocer customers who sold competitive products; during the first half of said period as a rule it refused to do or discontinued retail work for wholesale grocer customers who sold competitive products; and, in order to secure his sale of its canned sirups exclusively, it purchased from a wholesale grocer one lot of 2,500 cases of a competitive sirup which it disposed of as follows: It repacked the sirup contained in 1,920 cases and sold said sirup under the Penick & Ford label; it sold 5 cases to one wholesale grocer, 25 cases to another, and 550 cases to a third, under the origi-

nal label; it purchased said 2,500 cases of a competitive sirup at 23 cents per case below its list price for its similar canned sirup, weight equalized, and sold said 580 cases thereof at 33 cents per case below its said list price. The company's records disclose that during said period it did retail work for approximately 85 per cent of its wholesale grocer customers in said territory, which percentage included its larger wholesale grocer customers in said territory (some of whom maintained branch establishments) who purchased the bulk of the canned sirup and molasses sold by it in said territory during said period; that—

As to Texas: In 1924 the company sold to 125 wholesale grocers and did retail work for 50; in 1925 it sold to 114 and did such work for 50; in 1926 it sold to 122 and did such work for 50; in 1927 it sold to 118 and did such work for 88; 5 out of 6 class A wholesale grocers in Dallas and all class A wholesale grocers in San Antonio were among those receiving such assistance.

As to Arkansas: In 1924 the company sold to 77 wholesale grocers and did retail work for 37; in 1925 it sold to 73 and did such work for 24; in 1926 it sold to 81 and did such work for 24; in 1927 it sold to 83 and did such work for 61; 3 out of 5 class A wholesale grocers in Little Rock were among those receiving such assistance.

As to Louisiana: In 1924 the company sold to 107 wholesale grocers and did retail work for 28; in 1925 it sold to 97 and did such work for 19; in 1926 it sold to 92 and did such work for 19; in 1927 it sold to 80 and did such work for 66.

As to Mississippi: In 1924 the company sold to 77 wholesale grocers and did retail work for 27; in 1925 it sold to 72 and did such work for 31; in 1926 it sold to 66 and did such work for 31; in 1927 it sold to 70 and did such work for 56.

[In construing the 1927 figures it is to be borne in mind that the policy was withdrawn on November 3 and thereafter the company did retail work for its wholesale grocer customers, more generally and regardless of whether or not they sold competitive products; that, as hereinafter stated, the policy had then broken down and was not adhered to by the company.]

As a result of said policy a number of the company's wholesale grocer customers in said territory sold its canned cane sirups and molasses and did not sell competitive products, during said period in part, some of whom had previously sold a competitive product or competitive products. But said policy was not a merchandising success, from the company's standpoint. It resulted in the loss of some wholesale grocer customers; it antagonized others. It progressively broke down, in application, during the second half of said period, and, during the second half of said period, the company increasingly

departed from it and disregarded it to a large extent. The company's sales to wholesale grocers in said territory declined 26 per cent in 1926 and 35 per cent in 1927, as compared with 1925, as a result of said policy and market conditions, generally. Because of its want of success and in view of the Federal Trade Commission's investigation of it, the company withdrew said policy, as stated. Throughout the entire period when said policy was operative the company did not refuse to sell to any wholesale grocer in said territory because he sold competitive products; the company sold to all wholesale grocers in said territory who desired to buy and were acceptable customers, whether or not they sold competitive products.

PAR. 7. The understanding that wholesale grocer customers of respondent would deal in the canned sirups and molasses of respondent to the exclusion of the merchandise of respondent's competitors was the consideration given for the understanding that respondent's sales assistance or cooperation would be given in aid of the resale (by such customers) of the goods purchased. The 100 per cent policy, under which the said understandings were mutually given, to the extent and during the time that it was carried out, has had certain effects and certain tendencies, as follows:

(a) A lower cost of distribution of respondent's merchandise, other things being equal, has been experienced by wholesale grocers complying with the 100 per cent policy, as contrasted with the costs of those who have dealt also in merchandise competing with that of respondent.

(b) A greater profit in respondent's merchandise, other things being equal, has been attained by wholesale grocers dealing exclusively and thus receiving respondent's sales assistance.

(c) An important competitive advantage in the sale of respondent's merchandise has been offered to and secured by wholesale grocers who have dealt exclusively in respondent's merchandise.

(d) The inducement offered in favor of dealing in respondent's merchandise exclusively has caused numerous wholesale grocers in several southern States to comply with respondent's 100 per cent policy.

(e) Respondent's competitors have lost certain wholesale grocers as customers to whom they had previously sold merchandise and would, but for respondent's 100 per cent policy, have continued to deal with as customers, and thereby have lost certain outlets for trade in various southern States.

(f) The public has been deprived of a substantial proportion of the competition previously existing between respondent and its com-

petitors in numerous southern markets by virtue of the closing of outlets for this class of merchandise against competitors of respondent.

(g) In certain jobbing centers in certain of the southern States so large a proportion of the class A wholesale grocer outlets have been closed to the merchandise of respondent's competitors through respondent's 100 per cent policy, as to result in a direct tendency toward monopoly in canned sirup and molasses lines.

(h) The said policy has substantially lessened competition in said merchandise in several jobbing centers in the said southern territory and had the capacity and tendency to substantially lessen in other localities.

CONCLUSION

Respondent, Penick & Ford, Ltd., is not, and during the period mentioned herein has not been, engaged in interstate commerce and does not and during said times has not sustained the relation of principal toward the respondent, Penick & Ford Sales Co., Inc., as its agent.

The acts and things done by respondent, Penick & Ford Sales Co., Inc., in pursuance of its so-called 100 per cent policy, under the circumstances described in the foregoing findings, have substantially and dangerously lessened and hindered competition in certain localities and sections in the sale and distribution of canned sirups and molasses. They are to the injury and prejudice of the public and are unfair methods of competition in interstate commerce. Said acts and things constitute violations of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", and also of section 3 of the act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", known as the Clayton Act.

ORDER TO CEASE AND DESIST

This matter having been considered by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, a stipulation as to the facts duly approved and filed, certain motions of respondents to dismiss and a memorandum by counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that respondent Penick & Ford Sales Co., Inc., has violated section 5 of the provision of an

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

It is now ordered, That the respondent, Penick & Ford Sales Co., Inc., shall cease and desist from its so-called 100 per cent policy, being the policy of omitting or refusing to afford to customers or prospective customers of said respondent its sales assistance and/or its cooperation in the sale by said customer of said respondent's canned sirups and molasses, in cases where said customers or prospective customers have dealt in products competing with one or more of respondent's said products or in cases where said customers or prospective customers have refused, declined or neglected to assure said respondent that they have not dealt in or that they would not deal in any product competing with any of the aforesaid products sold by respondent, and

It is further ordered, That respondent, Penick & Ford Sales Co., Inc., shall cease and desist from the following methods heretofore employed in pursuance of said so-called 100 per cent policy, to wit:

(a) From declaring its said 100 per cent policy by circulars, correspondence and/or oral communications to and with customers or prospective customers and from stating thereby, or in any other manner, that sales assistance and/or cooperation will not be given to such customers as do not comply with said respondent's said 100 per cent policy and/or to such customers as deal in any product or products of competitors of said respondent; and

(b) From actually in practice making respondent's said sales assistance and/or its sales cooperation with any or all of its customers conditional upon the compliance by said respondent's customer or customers with its said 100 per cent policy; and from actually declining or refusing to afford or extend said sales assistance and/or cooperation to any actual or prospective customer upon the ground or for the reason that such customer has refused, neglected or failed to comply with said 100 per cent policy and/or upon the ground or for the reason that such customer has refused, neglected or failed to deal in the canned sirups or molasses of respondent to the exclusion of products competing with the said products sold by respondent.

It is further ordered, That the respondent, Penick & Ford Sales Co., Inc., shall within 30 days after the service upon it of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinabove set forth.

ORDER DISMISSING PENICK & FORD, LTD., AND RESALE PRICE
MAINTENANCE CHARGES

This matter coming on for final determination upon the pleadings, stipulation between the parties approved by this Commission and motions to dismiss on behalf of respondents, and the Commission being further informed by memorandum of counsel for the Commission and being fully advised in the premises,

It is hereby ordered, That Penick & Ford, Ltd., a manufacturing corporation, not engaged in interstate commerce, be and the same is hereby dismissed.

It is further ordered, That the charges of unlawful resale price maintenance alleged in the complaint be and the same are hereby dismissed.

Complaint

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IN THE MATTER OF
M. J. GROPPER & SONS, INC.

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

Docket 1722. Complaint, Mar. 17, 1930—Decision, Nov. 17, 1930

Where a corporation engaged in the sale of glass marbles so manufactured as to simulate onyx, to toy jobbers, chain stores, and mail-order houses, designated said marbles as "National Onyx Agates" and "National Onyx Marbles" in circulars, advertisements, price lists and other printed matter, and on the containers thereof described said articles as "Onyx", with the result of furnishing customers with a means of representing said product to ultimate purchasers as composed of onyx, and with capacity to mislead customers, and ultimate purchasers from such customers, as to composition of said products:

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

Mr. PGad B. Morehouse for the Commission.

Brill, Bergenfled & Brill, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation engaged in the sale of marbles to toy jobbers, chain stores and mail-order houses throughout the various States, from its principal place of business in New York City or from the factory of the company for which it was sole distributor, at Ottawa, Ill., with advertising falsely or misleadingly, and misbranding or mislabeling, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, describes and represents its said marbles as "National Onyx Agates" and "National Onyx Marbles" in its circulars, advertisements, price lists, and other printed matter, the fact being that the products in question are not made of onyx, but of glass so made as to simulate the same, and further describes and designates said articles on the containers thereof as "Onyx" marbles, thereby furnishing its said customers with the means whereby the product may be and is falsely represented to the purchaser as composed of onyx.

Such representations and practices, as alleged, "have the tendency and capacity to mislead and deceive its customers and the ultimate purchasers from such customers throughout the various States of the United States into the belief that said customers and purchasers, when buying the respondent's product so advertised and sold, are purchasing a product made of onyx"; all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition within the intent and meaning of section 5.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served a complaint upon the respondent, M. J. Gropper & Sons, Inc., a corporation, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondent having entered its appearance herein and filed its answer to said complaint, a stipulation as to the facts (filed of record) was agreed upon by and between respondent and counsel for the Commission, wherein it was stipulated and agreed that the facts therein stated may be taken as the facts in the proceeding before the Federal Trade Commission, and in lieu of testimony before the Commission in support of the charges stated in the complaint or in opposition thereto, and that the Commission may proceed further upon said statement to make its report in said proceeding, stating its findings as to the facts and conclusion, and entering its order disposing of the proceeding.

Thereupon, this proceeding came on for decision, and the Commission, having received said stipulation and duly considered the record, and now being fully advised in the premises, makes this its report, stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO FACTS

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of New York, having its principal place of business at 200 Fifth Avenue, New York City, State of New York. It is now and for more than one year last past has been engaged in the business of selling and distributing marbles in commerce between and

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among the various States of the United States, causing said products, when sold, to be shipped from its place of business in the State of New York, or from the factory at Ottawa, Ill., of the Peltier Glass Co., an Illinois corporation of which the aforesaid respondent is sole distributor, to the purchasers thereof located throughout the various States of the United States. In the course and conduct of its aforesaid business the respondent is in competition with other corporations, individuals, and partnerships engaged in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business the respondent offers for sale, sells, and distributes its aforesaid product to toy jobbers, chain stores, and mail-order houses throughout the various States of the United States, and in its circulars, advertisements, price lists, and other printed matter used in connection with such sale and distribution, respondent describes and represents and has heretofore described and represented its said marbles as "National Onyx Agates" and "National Onyx Marbles", thereby representing to such purchasers and prospective purchasers that its marbles are made of onyx, whereas in truth and in fact such marbles are not made of onyx, but are made of glass so manufactured as to simulate onyx. And respondent likewise on its boxes or containers wherein its said marbles are packed for resale to the ultimate purchaser, has described and designated said marbles as "Onyx" marbles, thereby furnishing its customers, to wit, the toy jobbers, chain stores, and mail-order houses throughout the various States of the United States with the means whereby the said product may be and is represented to the ultimate purchaser as being composed of onyx, when in truth and in fact it is composed of glass so manufactured as to simulate onyx.

PAR. 3. The foregoing representations and practices of respondent have had and do have the capacity to mislead its customers and the ultimate purchasers from such customers throughout the various States of the United States into the erroneous belief that they are purchasing a product made of onyx.

CONCLUSION

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and of respondent's competitors, are unfair methods of competition in commerce and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act

to create a Federal Trade Commission, to define its powers and duties, and for other purposes”.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent and agreed statement of facts, filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled “An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes”,

It is now ordered, That the respondent, M. J. Gropper & Sons, Inc., a corporation, its agents and employees do cease and desist from the use of the word “onyx” in connection with the advertisement, sale or distribution by it in interstate commerce, of marbles made of glass so manufactured as to simulate onyx, without plainly qualifying said word in a manner that will clearly indicate that such marbles are not made of onyx.

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

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14 F. T. C.

IN THE MATTER OF
ROYAL BAKING POWDER COMPANY

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

Docket 1499. Complaint, Mar. 7, 1928—Order, Dec. 2, 1930

Order requiring respondent corporation to cease and desist from—

- (a) Publishing directly or indirectly adverse, disparaging, or derogatory interviews, expressions, etc., relative to competitive baking powders and concealing or withholding its connection with or interest in such publications and causing such expressions, etc., to appear as anonymous and disinterested or the voluntary interviews, etc., of disinterested and technically qualified authorities or persons acting only in the public interest or to be merely usual news items published only as matters of public interest and not at its inspiration or for its use and benefit; and
- (b) Representing directly or indirectly that the Commission has approved or adopted the report of its examiner in the proceeding in docket 540 against it or has through such method or means or by findings, orders, or otherwise decided whether or not an ingredient or ingredients of any baking powder are injurious to the health of the users of the powder or has in anywise or way approved any method or methods or sales policy of it.

Mr. Martin A. Morrison for the Commission.

Moore, Hall, Swan & Cunningham, of New York City, and *Covington, Burling & Rublee* and *Mr. John Marshall*, of Washington, D. C., for respondent.

COMPLAINT

Acting in the public interest, pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission charges that the Royal Baking Powder Co., hereinafter referred to as the respondent, has been and is using unfair methods of competition in commerce in violation of the provisions of section 5 of the said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Royal Baking Powder Co., is a corporation organized under the laws of the State of New Jersey, with its principal office and place of business in the city of New York, State of New York. It is engaged in the manufacture of baking powder and the sale thereof to purchasers located at various points in States other than the State of New York. It causes its said

product, when so sold, to be transported from its said place of business in the city and State of New York, into and through other States of the United States to the said purchasers at their various points of location. In the regular course and conduct of its said business, respondent is in competition with other corporations, partnerships, and individuals who are also engaged in the sale and transportation of baking powder in commerce between the various States of the United States.

PAR. 2. On the 18th day of May, 1923, the Federal Trade Commission in certain proceedings then pending before it in which said Royal Baking Powder Co. was party respondent and which proceedings were by said Commission denominated the Commission's Docket No. 540,¹ issued a supplemental and amended complaint against the Royal Baking Powder Co., respondent herein, charging it with the use of unfair methods of competition in commerce, and setting up various specific statements alleged to have been used by respondent in a campaign against competing products containing sodium aluminum sulphate. Respondent having entered its appearance and filed its answer to the said complaint, hearings were had before Edward M. Averill, a trial examiner duly appointed theretofore by the Commission, testimony was taken and other evidence adduced in support of the complaint and in opposition thereto, the record comprising 4,711 pages of typewritten testimony and 632 exhibits. The taking of testimony was closed by said trial examiner on the 2nd day of May, 1925.

On the 12th day of November, 1925, the said trial examiner, Edward M. Averill, made in writing his report upon the facts, and served copies upon counsel for the respondent and counsel for the Commission. Such a report is not binding upon the Commission, which Commission alone has the power and authority to find facts in proceedings before it. No action was taken by the Commission adopting or approving said report, so far as the same relates to the question of the wholesomeness or deleteriousness of alum in baking powder. Counsel for the Commission in due course filed exceptions to the trial examiner's report in its entirety, stating his reasons.

Thereafter, on March 3, 1926, the Commission heard oral argument in said matter, and on March 23, 1926, without making any findings as to facts, issued its order dismissing the complaint, and, concurrently with the issuance of such order of dismissal, granted the motion of counsel for the Commission for a reargument, set the time and place therefor, and served notice thereof upon the respondent.

¹ See *infra*, p. 287.

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Further oral argument was heard by the Commission on April 5, 1926, and May 6, 1926, and thereafter on July 7, 1926, the Commission issued its order vacating the said order of dismissal of the proceedings and directed the reopening of the record for the taking of further testimony on certain specified issues.

PAR. 3. On or about the 5th day of April, 1926, at a hearing before the Federal Trade Commission in this cause at its office in Washington, at which there were present and sitting Commissioners Hunt, Van Fleet, Humphrey, and Nugent, and at which hearing the respondent was present by its counsel, Archibald Cox, Esq., Mathew H. O'Brien, Esq., Dale D. Drain, Esq., Paul Reighard, Esq., and Marvin Farrington, Esq., Commissioner Van Fleet speaking from the bench stated:

The Commission, in passing on this case, did not render any decision whether alum baking powder was harmful or not. That point was not argued. All those things we have had to go over again together were not argued. Seemingly they were not thought of enough importance to bring to the attention of the Commission the last time. Consequently we went ahead and decided the case on the one question; whether the Commission could forbid you from saying on your cans that it did not contain alum. It was the opinion of a majority of the Commission that you could not be prohibited from doing that any more than a man making an all wool blanket could be restrained from saying that it contained no shoddy. That is all that was decided.

And at the said hearing further stated from the bench:

There has been no evidence presented here, as I understand it, that you are continuing them down to date, and the burden is on the Commission to sustain that allegation in the motion. I wanted also to get it clear that the action of the majority of the Commission in dismissing the case was not a decision to the effect that in view of the state of affairs, the dispute about whether alum is deleterious or not, it was not a decision that it is deleterious, and not a decision that you have a right to make all the statements that have been alleged against you simply because we passed upon the one point.

And that thereupon, and in reply to the above quoted statement, Archibald Cox, Esq., chief counsel for the respondent, stated:

I assume that the Commission did not decide anything with regard to alum in one way or the other.

And that Commissioner Van Fleet thereupon replied:

We did not.

PAR. 4. That at said hearing on April 5, 1926, in the presence and hearing of the above named Commissioners and counsel for the respondent, the following discussion between the chairman of the

Commission and Commissioner Humphrey and Archibald Cox, chief counsel for the respondent, took place:

CHAIRMAN. Is there anything in this record proving that the unfair practices complained of here have continued since 1922?

Mr. Cox. No. The last of these canvasser things is November, 1922. I think I am right in stating that most of them were back in 1906 and 1910.

Commissioner HUMPHREY. Is there any evidence the other way, that they have been discontinued or is the record silent on that?

Mr. Cox. I think it is silent. The way it was done, we turned over what they wanted and we stipulated that was our advertising and that fairly shows that up to 1914 on several things and that after that substantially all with the exception of "no alum, no bitter taste," I think it is silent on that.

Commissioner HUMPHREY. And what the Commission would have to do on that point is that they would have to take the evidence and draw their own conclusions as to whether or not it had been discontinued or whether there is a probability of no discontinuance. There is no positive evidence on that question one way or the other.

PAR. 5. The Federal Trade Commission has never at any time either in said proceeding, Docket 540, or in any other proceeding, decided or found that sodium aluminum sulphate as used in baking powder is deleterious or injurious to health.

PAR. 6. On or about the 27th day of August, 1926, while said proceeding Docket 540 was pending, respondent with the intention and purpose of injuring its competitors and unlawfully to restrain their trade and prejudice the public against and to induce the public to cease buying and using the baking powders of its said competitors, and instead to buy and use the baking powders of respondent, and for the purpose of prejudicing physicians, biologists, physiologists, chemists, dieticians, teachers, industrial executives, bakers, grocers, home economic experts, and leaders of women's organizations, whose opinions and advice are likely to be followed by others, and to prompt them to advise against the purchase and use of baking powders manufactured by said competitors of the respondent, and to encourage and advise the purchase and use of baking powder manufactured by the respondent, published or caused to be published and widely circulated and distributed, a pamphlet containing copies of the said trial examiner's report upon the facts, and a "foreword" compiled by respondent in which "foreword" it is stated among other things:

An order of dismissal was issued by the Commission on March 23, 1926, after consideration of this report.

and also that

It is proper to conclude, therefore, that the Commission considers the evidence on this subject (the deleteriousness of alum baking powder) final and

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its order may be deemed a refusal to aid in the suppression of the facts as to the use of alum in baking powders.

(Matter in parenthesis not quoted.)

In connection with the publication and distribution of said pamphlet containing said trial examiner's report upon the facts, and respondent's said "foreword", the respondent circulated to newspapers and others a "release" in words and figures as follows, to wit:

To the Editor. Because of the widespread interest of the public in the baking powder case your readers may be interested in the accompanying item.

ROYAL BAKING POWDER COMPANY.

NEW YORK —

The facts in the report following which the Federal Trade Commission rendered its decision in the recent baking powder case will be made available to the public for the first time tomorrow. The full text of the report of Trial Examiner Edward M. Averill to the Federal Trade Commission will be published by the Royal Baking Powder Co., which has for many years insisted that it was justified in informing the public that its products do not contain alum. The decision of the Federal Trade Commission upheld the Royal Baking Powder Co. in this and other respects.

It is understood that health officials in this country and abroad, scientists and women's organizations, are eager to obtain a statement of the facts in the case, which has been followed closely by all interests in pure food and labeling regulations. Some of the greatest scientific authorities in the country were among the 158 witnesses, who included physicians, biologists, physiologists, chemists, dieticians, teachers, home economics experts, industrial executives, bakers, grocers, and women's club leaders, who testified before Trial Examiner Averill.

The scientific testimony is carefully summarized and reviewed in the report. Considerable evidence centered on the question as to whether manufacturers using alum in their baking powders were endeavoring to conceal from the public the presence of alum by using its scientific name on labels. The examiner declared in his findings that alum as it is commonly known, is being used in these baking powders. He also found that the evidence does not prove that the use of baking powders containing alum is harmless and that it "does prove that there are substantial grounds upon which to predicate an honest opinion that they are harmful." After this report the proceedings against the Royal Baking Powder Co. were dismissed and the decision with respect to alum later confirmed. The Commission has, however, voted to reopen other aspects of the case.

PAR. 7. That said pamphlets containing said examiner's report and said respondent's "foreword", both with and without said "release", were widely circulated and distributed by respondent among the public; that the same have the tendency and capacity, and were so intended and purposed by respondent, to mislead and deceive read-

ers thereof and the public and to cause such readers and the public to believe:

(a) That said examiner's report represents the official finding and conclusions of, and is a decision by the Federal Trade Commission.

(b) That the Federal Trade Commission had officially and as a body approved the methods of competition charged in said supplemental and amended complaint known as Docket No. 540 to have been used by respondent in its attacks upon competing baking powders.

(c) That said order of dismissal of Docket No. 540 entered March 23, 1926, had been based upon the approval by the Federal Trade Commission, officially and as a body, of the methods of competition charged in said supplemental and amended complaint known as Docket No. 540 to have been used by respondent in its attacks upon competing baking powders, and that such order of dismissal of itself constituted an official approval by said Commission of said methods.

(d) That the Federal Trade Commission had officially, and as a body, adopted and approved said trial examiner's report filed in said Docket No. 540.

PAR. 8. That, in fact, as respondent at all times well knew:

(a) That the Federal Trade Commission had never taken any action, officially or as a body, adopting or approving the report of said trial examiner as the official findings or conclusions of, or as a decision by the Federal Trade Commission.

(b) That the Federal Trade Commission had not officially and as a body approved the methods of competition charged in said supplemental and amended complaint, known as Docket No. 540, to have been used by respondent in its attacks upon competing baking powders.

(c) That the order of the dismissal of March 23, 1926, was not based upon the approval by the Federal Trade Commission officially and as a body, of the methods of competition charged in said supplemental and amended complaint known as Docket No. 540 to have been used by the respondent in its attacks upon competing baking powders, and that said order of dismissal did not of itself constitute an official approval of said methods by the Federal Trade Commission.

(d) That the Federal Trade Commission had never officially, or as a body, taken any action adopting or approving the report of the trial examiner filed in Docket No. 540.

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PAR. 9. That the aforesaid acts of the respondent in circulating and distributing said pamphlets containing said "foreword", both with and without said "release", tend to cause the public to be prejudiced against and to refrain from the purchase and use of the baking powders of respondent's competitors, thereby also tend to greatly injure said competitors and also tend to unlawfully restrain and restrict their trade and competition, and constitute an unfair method of competition in commerce within the meaning and intent of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

PAR. 10. That in the month of April, 1926, and thereafter, the respondent employed Thomas R. Shipp, Inc., a corporation having its principal office in the city of Washington, D. C., and engaged in the business of acting for pecuniary reward and consideration as the press agent for its various clients; that such Shipp agency acting under and in pursuance of its said employment by the respondent and the instructions of respondent in that behalf, and with the knowledge and consent of the respondent, did send and furnish to various newspapers throughout the United States articles prepared by said Shipp agency, consisting of and containing comments on baking powders and the ingredients used in baking powders, and alleged interviews with and opinions of various scientists and public officials concerning baking powders and the ingredients thereof, the effect of which articles was derogatory and disparaging to the baking powders manufactured and sold by respondent's competitors and to such competitors themselves. Respondent wholly concealed its connection with and interest in the various methods, devices and agencies through which this practice was carried into effect and caused the expressions, opinions, and comments to seem to be the voluntary contributions of disinterested and technically qualified authorities or persons acting in the public interest.

PAR. 11. That said Shipp agency further, in pursuance of its said employment and with the knowledge and consent of the respondent and under its instructions, caused and induced said newspapers to accept the articles so prepared by said Shipp agency and publish the same as items of news, ostensibly received or gathered by such newspapers in the regular course of newspaper work, and without mention of the fact that said articles were prepared by and originated with said Shipp agency, or were in any manner inspired by respondent.

PAR. 12. That the said articles so prepared, distributed, and caused to be published by the said Shipp agency, as aforesaid, the respond-

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ent's interest in and connection therewith being concealed, as aforesaid, were calculated and intended to mislead the public into the belief that said articles contained the disinterested, unbiased and voluntary expressions and statements of qualified experts and officials acting in the public interest and have the capacity and tendency to prejudice the purchasing public against the purchase and use of baking powders manufactured by respondent's competitors, and thus to injure the business of said competitors.

PAR. 13. That said publication and distributing by respondent of said articles so prepared by said Shipp agency, containing said derogatory and disparaging expressions, comments, and alleged interviews, published and distributed by means of said newspapers on an extensive scale and over a wide area of population in the guise of disinterested news items, the respondent's connection therewith, and the interest of the respondent therein being wholly concealed and undisclosed, is to the prejudice and injury of the public and respondent's competitors and constitute an unfair method of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

The above case coming on for consideration before the Commission on the certain written pleading filed herein by respondent, Royal Baking Powder Co., wherein respondent expressly elected to refrain from making a defense to the complaint herein and consented that the Commission might make, enter, issue, and serve upon respondent an order to cease and desist from the methods of competition charged in such complaint, without issue, trial, evidence, or finding herein; and the Commission having accepted and considered such pleading and being fully advised in the premises,

It is ordered, That respondent, Royal Baking Powder Co., its officers, agents, representatives, employees, and all persons under the control or employment of respondent, do cease and desist from doing directly or indirectly any and all the acts hereinafter designated and set forth in offering for sale or selling its baking powder in commerce as defined by section 5 of an act of the Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914, as follows:

PARAGRAPH 1. From publishing or causing to be published, directly or indirectly, adverse, disparaging or derogatory interviews, expres-

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sions, opinions, statements, or comments regarding the nature, ingredients, composition or effect of its competitors' baking powders, concealing or withholding respondent's connection with or interest in such publication thereof, and causing such expressions, opinions, statements, or comments to seem to be either anonymous and therefore disinterested, or the voluntary interviews or contributions of disinterested and technically qualified authorities or persons acting only in the public interest, or to be mere news items or the ordinary and usual record of current events published only as matters of public interest, not inspired by nor published for the use and benefit of, or by procurement of, respondent.

PAR. 2. From representing, directly or indirectly, expressly or by implication, that the Federal Trade Commission made, or has approved, confirmed or adopted, the report of the examiner in Docket No. 540, Federal Trade Commission v. Royal Baking Powder Co., or has by that method or means, or by or through such report of such examiner, or by a finding or findings, and order or orders, or in any other way or ways, found, ordered, or otherwise decided whether or not an ingredient or ingredients of any baking powder is or are, or any baking powder is, deleterious or injurious to the health of the users of such powders; or that the Federal Trade Commission has by any such means or methods, or otherwise, approved any method or methods or sales policy of respondent.

PAR. 3. *It is further ordered*, That respondent, within 60 days from and after the date of the service upon it of this order, shall file with the Commission a report or reports in writing setting forth in detail the manner and form in which it is complying and has complied with the order to cease and desist hereinabove set forth.

Complaint

IN THE MATTER OF

ROYAL BAKING POWDER COMPANY

COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 540. Complaint, Apr. 18, 1923—Order, Dec. 3, 1930*

Complaint charging respondent company with disparaging and misrepresenting products of competitors directly and through ostensibly disinterested and informed sources; dismissed for reasons in order set forth.

Mr. Robert O. Brownell and *Mr. Martin A. Morrison* for the Commission.

Mr. Archibald Cox, Hall, Cunningham, Jackson & Haywood and *Moore, Hall, Swan & Cunningham*, of New York City, *Fitzgerald, Abbott & Beardsley*, of Oakland, Calif., and *Mr. Dale D. Drain, O'Brien & O'Brien, Mr. Frank W. Mondell* and *Covington, Burling & Rublee*, of Washington, D. C., for respondent.

Mr. C. C. McChord, of Washington, D. C., general counsel (*Mr. H. B. Jones* of *Bronson, Robinson & Jones*, of Seattle, Wash., *Mr. Harry D. Nims* of *Nims & Verdi*, of New York City, and *Mr. John Walsh* and *Mr. Daniel R. Forbes*, of Washington, D. C., associate counsel) for intervenors *R. B. Davis Co.*, *Seagull Specialty Co.*, *Kenton Baking Powder Co.*, *Crescent Manufacturing Co.*, *Calumet Baking Powder Co.*, *Southern Manufacturing Co.*, and *Rich Maid Manufacturing Co., Inc.*, and *Mr. Marvin Farrington*, of Washington, D. C., for intervenor *A. Schilling & Co.*

COMPLAINT

Acting in the public interest pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission charges that the Royal Baking Powder Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. That the respondent, Royal Baking Powder Co., is a corporation chartered and organized under the laws of New Jersey, by which was effected a consolidation of four previously organized corporations, one by the same name, the Cleveland Baking Powder Co., Price Baking Powder Co., and the Tartar Chemical Co., having its principal office and place of business at 135 Williams Street, New

¹ Supplemental and amended.

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York City, State of New York, and for a number of years last past has been engaged in the manufacture and sale, in interstate commerce, of baking powder, in and among the several States of the United States, Territories thereof, and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That in compounding such baking powders one of the necessary ingredients is an acid. The respondent derives its acid from cream of tartar—tartaric acid. Many of its competitors derive theirs from aluminum salts—sodium aluminum sulphate (SAS).

PAR. 3. That the respondent, in its own name, and in the names of its subsidiaries or constituent bodies—the Cleveland Baking Powder Co. and the Price Baking Powder Co.—has used and now uses the following unfair and unlawful methods of competition for the purpose and with the intent of injuring its competitors and unlawfully restraining their trade, to wit:

Specification I. The respondent has by the use and circulation of pamphlets, cook books, circulars, and by advertisements in newspapers, magazines, and other periodicals, and by oral statements of its salesmen and house-to-house sales persons, demonstrators and canvassers, and by radio broadcasting, and otherwise, by direct written and oral statements and innuendo and inference, pursuant to a general plan and system of defamation, and disparagement of competitors' products, and misinformation of the public, falsely represented, charged, alleged and asserted that several of its competitors manufacture and sell baking powders containing alum which the general public understands to be the astringent commonly sold in drug stores and chemically known as potassium aluminum sulphate (PAS).

Specification II. Respondent, by all the several means alleged in specification I, and in pursuance of a like plan and system as therein set forth, has falsely represented, charged, alleged and asserted that the acid ingredient of the baking powder products of several of its competitors, to wit, sodium aluminum sulphate (SAS), is one of the same substance as alum, to wit, potassium aluminum sulphate (PAS), which the general public understands to be the astringent commonly sold in drug stores and chemically known as potassium aluminum sulphate (PAS), and that, by reason of said falsely claimed alum (PAS) ingredient, such competitors' powders are harmful, unhealthy, poisonous, deleterious, and dangerous to users and consumers of baked stuffs made therefrom.

Specification III. Respondent by means of oral statements of its salesmen and house-to-house sales persons, demonstrators, and

canvassers, and radio broadcasting, and otherwise, by direct written and oral statements, pursuant to said general plan and system of defamation and disparagement of competitors' products and misinformation of the public, has falsely represented, charged, alleged and asserted, substantially as follows:

- (a) That competitors' powders are poisonous;
- (b) That competitors' powders are made from ground-up aluminum cooking utensils;
- (c) That competitors' powders do not come within the pure food laws;
- (d) That competitors' powders pucker up the stomach in the same manner that lump alum puckers the mouth;
- (e) That competitors' powders are made of the same substance which is used for styptic purposes after shaving.

PAR. 4. That respondent, in order to protect the use and sale of its baking powders against the competition of its competitors' baking powders adopted the practice of publishing and causing to be published adverse, disparaging, and derogatory opinions, statements, and comments, as aforesaid, regarding the nature, composition, and effect of its said competitors' baking powders, which practice it put into operation on an extensive scale and carried into effect vigorously throughout a wide area of population. Respondent carefully concealed its connection with and interest in the various methods, devices, and agencies through which this practice was carried into effect and caused the expressions, opinions, and comments to seem to be either anonymous, and therefore disinterested, or the voluntary contributions of disinterested and technically qualified authorities or persons acting in the public interest. Respondent has used this practice for several years and still continues to use it. The practice as carried into effect by respondent tends to create a state of mind in the purchasing public which is detrimental to the purchase and use of competitors' baking powders and consequently tends to the injury of the business conducted by the manufacturers thereof.

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

ORDER DISMISSING COMPLAINT

The above case coming on for consideration before the Commission on a motion filed herein by the respondent to vacate the Commission's

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order dated July 7, 1926, herein, and to reinstate the Commission's order dismissing the complaint herein dated March 23, 1926, and the Commission having duly considered the same,

It is ordered, That said motion be, and hereby is, overruled.

And now, It appearing to the Commission that respondent has definitely abandoned the use of the methods and practices charged by the Commission in its amended and supplemental complaint issued in this case, and has not used them or any of them since the 7th day of July, 1926; and it further appearing that more than one year ago the title to the capital stock and share capital of the respondent corporation was transferred to, and is now held by, persons who had no connection with or interest in the respondent prior to the month of September, 1929, and no connection with or responsibility for the use of the methods and practices charged in said amended and supplemental complaint to be unfair and unlawful; and it further appearing to the Commission that respondent in the hands of its present owners and officers has definitely adopted and continuously maintained a sales policy that includes none of the acts or methods so charged to be unfair and unlawful; and it further appearing to the Commission that there is no probability of a renewal thereof by the respondent;

It is ordered, By the Commission on its own motion that the amended and supplemental complaint issued by the Commission herein be, and the same hereby is, dismissed, without any prejudice to the rights of the Federal Trade Commission or of the respondent, Royal Baking Powder Co.

Complaint

IN THE MATTER OF
ARNOLD STONE COMPANY, INC.COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1732. Complaint, Dec. 11, 1929—Decision, Dec. 8, 1930*

Where a corporation engaged in the manufacture and sale of products composed of cement, crushed stone, and other ingredients, designated the same as "stone", "cast stone", "cut cast stone", "pink marble", "Kre-tex stone", "Kre-tex cast stone" or "Kre-tex cut cast stone", notwithstanding the fact that aforesaid products were neither stone nor marble in either the geologic or architectural sense nor cast stone; with capacity and tendency to mislead, deceive or confuse the purchasing public and particularly such secondary purchasers as buyers or lessees of completed buildings or parts thereof containing aforesaid products thus designated, described and referred to, into believing same to be the product quarried from the ground or otherwise obtained in its natural state and generally known as stone:

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

Mr. Robert H. Winn for the Commission.

Mr. F. C. Hillyer, of Jacksonville, Fla., and *Curtis, Fosdick & Belknap*, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Florida corporation, engaged in the manufacture of artificial products for use as substitutes for natural stone in architectural work, and in the sale and distribution thereof among various States, and with principal place of business in Jacksonville, with using misleading corporate name, misrepresenting product as to composition, and advertising falsely or misleadingly in regard thereto, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, designated its product, not quarried from the ground or otherwise obtained in the natural state and understood by the purchasing public as being stone, but "manufactured and/or fabricated and composed of a product or

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products fused or otherwise held together by chemical and/or mechanical action" as "stone", "cast stone", "trimming stone", "pink marble", "pink granite", "bluish-gray granite", "Kre-Tex stone" and/or "Kre-tex cast stone", in its advertisements, letterheads, billheads, contracts and specifications circulated in interstate commerce, and features its aforesaid corporate name on its letterheads and advertising matter distributed among the various States.

The use by respondent, as alleged, "of the words 'stone', 'marble' and/or 'granite', either independently or in connection or in conjunction with the words, or any of them, used to describe said products", as above set forth, "or in its corporate name, to represent, designate and describe its products in the manner hereinbefore set out, has the capacity and tendency to mislead and deceive, and to confuse, and in some instances has misled and deceived, the purchasing public into the belief that its said products so represented, designated, described, and referred to are stone, that product quarried from the ground or otherwise obtained in its natural state, and so understood by the purchasing public to be and is stone", and said acts and things done by respondent, as alleged, are, as charged, "to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5".

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served a complaint upon the respondent, Arnold Stone Co., Inc., a corporation, charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act.

Respondent having entered its appearance and filed its written return in answer to the complaint herein, hearings were had before a trial examiner theretofore duly appointed and testimony was heard and evidence received in support of the charges stated in the complaint and in opposition thereto. Thereafter this matter came on regularly for final hearing on the briefs of counsel and oral argument, and the Commission having duly considered the record and being now fully advised in the premises makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized and existing and doing business under and by virtue of the laws of the State of Florida, with its principal place of business located in the city of Jacksonville in the State of Florida. It has a branch office and factory located in the city of Greensboro in the State of North Carolina. It is now and for more than one year last past has been engaged in the manufacture of products composed of cement, crushed stone, and other ingredients for use as substitutes for natural stone in architectural work and in the sale and distribution thereof in commerce between and among various States of the United States. It causes the said products when sold, to be shipped or transported from its place of business in the State of Florida, or from its place of business in the State of North Carolina, to purchasers thereof located in various States of the United States other than, respectively, the State of Florida or the State of North Carolina.

PAR. 2. In the course and conduct of its business respondent was at all times herein referred to in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of artificial products, for use as substitutes for natural stone in architectural work and with other corporations, individuals, and partnerships engaged in the sale and distribution in interstate commerce of natural block stone.

PAR. 3. The products manufactured by respondent are composed of an aggregate of crushed stone, usually marble, granite, limestone or sandstone, and Portland cement. The proportion is approximately 75 per cent crushed stone and 25 per cent Portland cement. In some instances mineral color is added to the mix. When the greatest dimensions of any block manufactured by the respondent exceed two times the sum of the other two dimensions, the block is reinforced with steel rods. All lintels and sills with a span of less than 4 feet, all bearing blocks and all other blocks subject to cross bending are reinforced with deformed steel rods, placed 2 inches from the tension surface. Columns and lintels having a span of more than 4 feet have special reinforcement.

PAR. 4. In the course and conduct of its business as described in paragraph 1 hereof respondent in soliciting the sale of and selling its products in interstate commerce caused them to be represented, designated, described and referred to in its advertisements, letter-heads, contracts, specifications, and on samples of its products circulated in interstate commerce as "stone", "cast stone", "cut cast

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stone", "pink marble", "Kre-tex stone", "Kre-tex cast stone", or "Kre-Tex cut cast stone".

PAR. 5. The products of respondent by it so represented, designated, described, referred to and sold in interstate commerce under trade names or designations containing the words "stone" or "marble" are not stone or marble in either the geologic or architectural sense.

PAR. 6. The words or phrases used by respondent to modify and accompany the words "stone" and "marble" when used by it as aforesaid, do not indicate that respondent's product is not stone or marble. The phrase "Kre-Tex" is a meaningless coined phrase taken from the two words "concrete texture". The word "cut" is a word used by natural stone quarrymen and finishers to describe the finishing process which is used in connection with preparing natural stone for structural uses. The word "cast" is descriptive of a process and as used (i. e., cast stone) denotes stone obtained by means of casting. Respondent's products are not cast stone.

PAR. 7. Respondent's products are similar to concrete blocks or cement blocks in that both are largely composed of stony matter, both are molded and both are used structurally. Concrete blocks or cement blocks are usually made with gravel and sand and Portland cement. Respondent's products are made with crushed stone and Portland cement. This is the principal difference between respondent's products and cement blocks or concrete blocks.

PAR. 8. There is no evidence of actual deception in the record. The products of respondent are usually purchased by architects, contractors and builders. Possibility of deception in such instances is remote because such purchasers are familiar with the composition of products manufactured by respondent. The evidence of such contractors, architects and builders who testified on that point was that they were not deceived.

PAR. 9. The use by respondent of the words "stone" or "marble" either independently or in connection and in conjunction with the words or any of them used to describe its product as set out in paragraph 4 hereof, to represent, designate, describe, and refer to its products in the manner hereinbefore set out has the capacity and tendency to mislead, deceive or confuse the purchasing public, and particularly such secondary purchasers as purchasers of completed buildings or lessees of completed buildings or parts thereof, in which buildings respondent's products have been used, into the belief that its said products so represented, designated, described and referred to are stone, that product quarried from the ground or otherwise obtained in its natural state and known generally as "stone".

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is now ordered, That the respondent, Arnold Stone Co., Inc., a corporation, its officers, agents, and employees, do cease and desist from the use of the phrases "cast stone", "cut cast stone", "pink marble", "Kre-tex cast stone", and "Kre-tex cut cast stone", or any of them, in the designation of or in the advertising of the products manufactured by it and composed principally of cement and crushed stone and sold and distributed by it in interstate commerce, unless or until the phrases "cast stone", "cut cast stone", "pink marble", "Kre-tex cast stone", and "Kre-tex cut cast stone", or any of them, are qualified by the use of the words "imitation" or "artificial" or some other word or words equally explanatory and equally as conspicuous in type and position as the phrases "cast stone", "cut cast stone", "pink marble", "Kre-tex cast stone", or "Kre-tex cut cast stone".

It is further ordered, That the respondent, Arnold Stone Co., Inc., a corporation, its officers, agents, and employees do cease and desist from the use of the words "stone" or "marble" in the designation or in the advertising of the products manufactured by it and composed principally of cement and crushed stone and sold and distributed by it in interstate commerce unless or until the words "stone" or "marble" are qualified by the use of the words "imitation" or "artificial" or some other word or words equally explanatory and equally as conspicuous in type and position as the words "stone" or "marble".

Dissent

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

Dissent by Commissioner Humphrey

I find myself unable to agree with the majority of the Commission in issuing an order in this case.

CAST STONE

The main complaint is that the respondent is guilty of falsely describing its products by the use of the words "cast stone". In paragraph 3 of the findings, it is stated, "The products manufactured by respondent are composed of an aggregate of crushed stone, usually marble, granite, limestone or sandstone and Portland cement. The proportion is approximately 75 per cent crushed stone and 25 per cent Portland cement". And in paragraph 7 of the findings it is stated, "Respondent's products are similar to concrete blocks or cement blocks in that both are largely composed of stony matter, both are molded and both are used structurally. * * * Respondent's products are made with crushed stone and Portland cement".

According to such findings and according to the evidence, the words "cast stone" are a correct and accurate description of respondent's product. To require the respondent to call its product "artificial cast stone", or "imitation cast stone", is to require it to use a misnomer. The product is genuine cast stone. To add the words "artificial" or "imitation" nullifies the true meaning of the words "cast stone" and carries a meaning at variance with the truth.

DECEPTION

"The products of respondent are usually purchased by architects, contractors, and builders", says the 8th paragraph of the findings of fact. These products are not sold to the public. They are made to order. Those purchasing them specify the size and shape, and the ingredients of each unit. They are intended for a particular building and can be used in no other building. To deceive the purchaser or the public under the facts as set forth is impossible, and the findings so state in these words in paragraph 8: "There is no evidence of actual deception in the record. The products of respondent are usually purchased by architects, contractors, and builders. Possibility

of deception in such instances is remote because such purchasers are familiar with the composition of products manufactured by respondent. The evidence of such contractors, architects, and builders who testified on that point was that they were not deceived."

The burden of proving deception or the probability of deception is upon the Commission and it must make a finding to that effect. In this case we not only fail to find deception but on the contrary find affirmatively that deception is only a possibility, and we further find that not only is it only a possibility but a remote possibility. How can it be contended that an order based upon deception can be sustained in the face of such findings? It has been held many times that a finding of the "possibility of deception" is not sufficient, and if a finding of the possibility of deception is not sufficient, how about a finding that there is "only a remote possibility of deception"? A finding of remote possibility makes the finding somewhat more than completely fatal. Such an express finding that there is only a remote possibility of deception, makes the assurance of fatal error more than doubly sure.

This finding of "remote possibility of deception", reminds me of the old lawyer who said of a certain instrument, "If your honor please, it is unparalleled in the history of courts for being void". So I think this finding of "remote possibility of deception" is unparalleled in the history of the Commission for being insufficient to sustain a finding of deception. Nor is this finding in any way cured by the finding in paragraph 9, which says that respondent's product "has the capacity and tendency to mislead or deceive, or confuse the purchasing public, and particularly such secondary purchasers as purchasers of completed buildings or lessees of completed buildings or parts thereof."

The first part of such finding as quoted, as to the purchasing public, is completely destroyed by the findings in paragraph 8, already quoted, and such finding in paragraph 9, is not only unsupported by the evidence, but the evidence shows affirmatively that it is not true. As to that part of the findings in paragraph 9, in regard to secondary purchasers or lessees of buildings, there is no evidence to sustain it, and if there were, it would be too remote to constitute the probability of deception, and no court would sustain such a finding, based on evidence of secondary deception.

There is no relation whatever between the purchaser or lessee of completed buildings, and the respondent, and no possible theory upon which an order could be based against respondent for the acts of such a purchaser or lessee. But if the evidence on secondary deception were full and complete—which it could not be by any possi-

Dissent

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bility—it would not sustain an order in this case, for the all sufficient reason that nothing of the kind is alleged in the complaint. This part of the order is entirely outside the issue in the case and is improvident, and will be set aside by the courts. (*Federal Trade Commission v. Gratz*, 253 U. S. 421.)

Legally there is no finding of deception made by the Commission, for the findings in paragraph 8 completely nullify the findings in paragraph 9.

There are other objections to the order but they need not be mentioned.

Complaint

IN THE MATTER OF

C. N. COX DOING BUSINESS UNDER THE TRADE NAME
AND STYLE THE NORTON INSTITUTECOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1581. Complaint, Mar. 14, 1929—Decision, Dec. 9, 1930*

Where an individual engaged in conducting correspondence courses for the competitive examinations of the United States Civil Service Commission,

- (a) Adopted and employed the trade name The Norton Institute and represented one C. H. Norton as president thereof, the fact being that said individual's place of business consisted of a portion of two office rooms, the business was conducted by himself with one clerical assistant, with no structural organization, and the name of the supposed president was entirely fictitious and represented no one connected in any way with the business in question;
- (b) Falsely represented the prices at which his courses were offered as "special" prices and lower than those usually received by him;
- (c) Published and distributed letters of recommendation falsely represented as having been received from persons who had taken his courses, the fact being that such letters, if genuine, had no application to said courses;
- (d) Represented in advertising circulars and circular letters that his courses had been prepared by men of experience in the matters concerned and were sufficient to enable applicants quickly and effectively to prepare for and pass aforesaid competitive examinations and qualify for appointment to such positions as Forest Ranger, United States Mail Service, etc., the fact being that he failed to show necessary age limits or other prerequisites, gave misinformation as to number of questions, failed to state that a mental test and practical experience were necessary in certain positions, and in other respects gave many erroneous answers, and failed adequately to cover subjects of examination as prepared by said Commission; and
- (e) Made such statements in newspaper advertising and "help wanted" columns as "Men, get Forest Ranger job, \$125-\$200 month and home furnished; hunt, fish, trap. For details, write Norton Institute", etc., thereby strongly implying himself to be an employer of labor or an employment agency;

With capacity and tendency to deceive the public and induce persons to enroll and pay for his said courses in reliance upon the truth and accuracy of the aforesaid representations, and to divert patronage from his competitors:

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

Mr. Alfred M. Craven for the Commission.

SYNOPSIS OF COMPLAINT

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

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respondent individual, engaged in furnishing courses of instruction by correspondence purporting to qualify applicants or subscribers to apply for and succeed in competitive examinations for positions in various departments of the Government service so as to become appointed thereto, and with residence in Denver, with misrepresenting product or service, business status or advantages, and prices, and advertising falsely or misleadingly in regard thereto, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged, as above set forth, represents his said courses in advertisements, printed circulars, letters, and otherwise as adequate and sufficient to qualify applicants and subscribers to apply for and succeed in examinations, so as to be eligible for appointment in the various government services, that the courses are given by the Norton Institute, of which one C. H. Norton is president, advertises the same in newspapers under the classification "help wanted"; publishes fictitious and false letters of recommendation represented as received from persons who had applied or subscribed for and received respondent's courses, and represents prices or fees as fictitious sums or amounts, in some instances approximately 50 per cent greater than the price customarily asked and received;¹ the facts being that the courses in question are not reasonably adequate or sufficient for the purposes for which offered and sold, contain materially erroneous statements, are offered to the public generally without the essential information that certain positions are limited as to the age of those who will be appointed and in other respects, the business is an individual business, the name C. H. Norton is fictitious, no one so named being connected with the business, and respondent "in advertising his said courses in newspapers under the 'help wanted' classification appeals to prospective applicants or subscribers as a prospective or possible employer when such is not the fact".

"The aforesaid acts and things done by respondent", as alleged by the complaint, "during the times above mentioned have the tendency and capacity to mislead and deceive the public, applicants or subscribers aforesaid, into the belief that respondent's courses of instruction are furnished by an institution or organization having officers, such as a president, usually associated with important functions, responsibilities, and control of the subject matter or business of an organization; into the belief that the said courses of instruc-

¹ According to the complaint, "among others, the respondent represents and has represented the price or fee for the Forest Ranger Service at from \$8.75 to \$10 whereas the regular and customary price charged and received by him for the said courses has never been greater than from \$6 to \$8."

tion are adequate and sufficient for the purposes for which they are offered and sold by respondent, are free from material and erroneous statements and are applicable to the members of the public regardless of age and other restrictions; into the belief that the respondent's said letters and recommendations represent the true estimate and value of respondent's courses of instruction by subscribers who have used them, and that the prices asked and received by respondent are 'low' or 'special' prices for the same. The advertising of respondent in newspapers under the classification, 'help wanted', has the tendency and capacity to mislead and deceive the public into an exaggerated or unreasonable belief of successful results from subscribing to the said courses of instruction by purporting to be from an employer or one who controls, more or less, the employment of others; and said acts and things done by respondent have the further tendency and capacity to cause members of the public to apply for and subscribe for respondent's said courses of instruction in preference to the courses of instruction offered by respondent's competitors"; all to the injury and prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 719), the Federal Trade Commission, on the 14th day of March, 1929, issued and thereafter served its complaint against the respondent C. N. Cox, charging him with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondent having entered his appearance and filed an answer to the said complaint, a hearing was had before a trial examiner therefore duly appointed, and testimony was heard and evidence received in support of the charges stated in the complaint, the respondent not appearing at this hearing although duly notified pursuant to the rules of the Commission. Thereafter this proceeding came on regularly for decision and the Commission having duly considered the record and being now fully advised in the premises, makes this its report stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent C. N. Cox is now and has been for a number of years engaged in the city of Denver in the State of Colo-

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rado in the business of conducting a correspondence school and in furnishing by correspondence courses of instruction purporting to qualify persons taking said courses to apply for and to succeed in competitive examinations conducted by the United States Civil Service Commission, so as to be entitled to be appointed to positions in various departments of the Government service of the United States. Respondent offers his said courses of instruction to the public and to the applicants and subscribers therefor, in advertisements, newspapers, printed circulars, circular letters, and otherwise, and sends, in interstate commerce, the lessons comprising said courses of instruction to the subscribers of said courses, who are called students, located in various States of the United States and the District of Columbia. Respondent is now and has been during the time aforesaid, in competition with many other persons and corporations in the United States, engaged in the furnishing of instruction upon the subjects of the instruction furnished by respondent and similar subjects, and in sending and transporting lessons and other printed matter into and through the various States of the United States in interstate commerce.

PAR. 2. Respondent in the course and conduct of his business, does advertise his business under the name of "The Norton Institute" and represents one "C. H. Norton" to be president of said institute; when in truth and in fact respondent's place of business consists of a portion of two office rooms, and is conducted by himself with one clerical assistant. The business has no structural organization such as is usually contemplated by the word "Institute". The name "C. H. Norton", represented to be the president of the said "The Norton Institute", is entirely fictitious, there being no one of that name in anywise connected with respondent's said business.

PAR. 3. Respondent in the course and conduct of his said business, offers his courses of instruction at certain specified prices, which are represented to be "special" prices and lower than the prices usually received by him, when in truth and in fact the said prices represented to be "special" are the usual going prices received by the respondent for the courses of instruction, respectively.

PAR. 4. Respondent in the course and conduct of his business, publishes in circular letters and for the purpose of inducing persons to subscribe for the said courses, letters of recommendation, which are represented as having been received by respondent from persons who have taken said courses; when in truth and in fact the letters so published were not received by respondent, and if genuine, had no application to respondent's courses of instruction.

PAR. 5. Respondent in the course and conduct of his business states and represents in his advertising circulars and circular letters that the lessons of instruction are prepared by men of experience, and that the courses of instruction are sufficient to enable applicants for competitive examinations held by the United States Civil Service Commission to pass such examinations and thereby qualify for appointment to such positions as Forest Ranger, United States Mail Service, General Clerical Positions, Laborers, and Postal Service. For example, in a certain circular circulated by respondent (Com. Ex.¹), respondent says in part:

The basis of our courses is prepared by men who have behind them many years of ACTUAL EXPERIENCE as civil service employees. They know just what you need to know to get in, and what you are expected to do after you get in. They are based on ACTUAL EXPERIENCE in Government service and will enable you to prepare for the examination in the shortest possible time. They give you just the information and help you need and we are so sure of their worth that we send them under an absolute MONEY BACK AGREEMENT. Read the enclosed order blank; it protects you.

Again on page 14 of Commission's Exhibit 1, being a circular letter sent to prospective students, respondent says:

With the right kind of instruction preparation for these examinations is not hard and takes but a short time. That is what I am offering you—COURSES THAT GIVE YOU THE RIGHT KIND OF INFORMATION. These courses are prepared by men who have had years of ACTUAL EXPERIENCE in Government work. THEY ARE NOT CORRESPONDENCE COURSES. They are sent complete at one time. The experience and understanding of the Government service that is the basis of these courses places the instruction for you in a way that is simple, easy to understand, short and complete. One old Civil Service man says "Your courses are so simple a child could pass the examination if it could follow your instructions".

The principal course of instruction sold by respondent during the time he has been in business is a course of instruction consisting of 37 mimeographed pages received in evidence as Commission's Exhibit No. 6(a) in Forestry, purporting to qualify the student taking the course, and enable him to pass the United States Civil Service examination for a position of Forest Ranger, a position under the Forest Service of the United States Department of Agriculture. The said course of instruction in Forestry is inadequate for the purposes represented, for the following reasons:

(a) It does not show the necessary ages for qualification. This omission might cause a great many people below 21 or above 35 years of age, and not having military experience, to take the course and pay money to the respondent when they could not benefit materially therefrom. An omission of such a vital prerequisite to

¹ Exhibits not published.

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securing the prizes held out by respondent is a serious objection to the sufficiency of the course.

(b) The course gives misinformation regarding the number of questions in the examination, and fails to state that a mental test is a prerequisite to the practical examination. This latter omission might lead many ineligible to pay for the course.

(c) The course contains many erroneous answers and does not cover adequately subjects of the examination as prepared by the Civil Service Commission.

(d) There is no mention made as to the necessary experience applicants must have had in order to pass these examinations, when, as a matter of fact, the only people who pass them and secure appointments are those with actual field and forest experience, successful applicants often having had forestry school experience of from 6 months to 2 years. In examinations held by the United States Civil Service Commission, out of 80 competitors who stated they had taken the Norton Institute course, but four passed the examination, and the examination papers of these four showed them all to have had considerable practical experience.

PAR. 6. Respondent in his newspaper advertising and in the "help wanted" columns thereof, advertises as follows:

Men, get Forest Ranger job, \$125-\$200 month and home furnished; hunt, fish, trap. For details, write Norton Institute, 1541 Temple Court, Denver, Colo.

Such advertisement is false and misleading and by strong implication represents that the advertiser, the respondent, is an employer of labor or an employment agency, when such is not the fact.

PAR. 7. The false and misleading representations set forth in paragraphs 2, 3, 4, 5 and 6 hereof, each has the capacity and tendency to deceive the public and to induce persons to enroll as students and pay for respondent's courses of instruction in reliance upon the truth and accuracy of such representation, and to divert patronage from respondent's competitors.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is now ordered, That the respondent, C. N. Cox, his agents and employees, in connection with selling or offering for sale courses of instruction in interstate commerce between and among the several States of the United States and in the District of Columbia, do cease and desist from:

(a) Representing in any manner that "C. H. Norton" is the president of the so-called Norton Institute or has any connection whatever with respondent's business.

(b) Representing in any manner that the prices of the courses of instruction sold by the respondent are other than the prices at which said courses are actually sold.

(c) Publishing letters of recommendation represented to have been received by respondent unless such letters be genuine and actually received by respondent.

(d) Representing in newspaper advertising, "help wanted" columns or otherwise, that the respondent does or can furnish the job or position of Forest Ranger.

(e) Representing that his course of instruction in forestry is sufficient to adequately prepare persons to take the United States Civil Service examinations for the position of Forest Ranger, unless and until such course of instruction be modified so as to afford information on every subject included in such examination.

It is further ordered, That the said respondent shall, within 30 days after the service upon him of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set forth.

IN THE MATTER OF
CLICQUOT CLUB COMPANY

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

Docket 1819. Complaint, May 3, 1930—Decision, Dec. 9, 1930

Where a corporation engaged in the manufacture and sale of ginger ale represented that its said product had been aged six months, and, later, "Aged six months in the making", in newspapers, magazines, and other publications, on counter displays and fountain hangers, and on labels or stickers attached to the product or the containers thereof, and through radio broadcasting, and similarly represented ginger ale not so aged as unripe, undesirable, and injurious, fact being that said product was not so aged but only the flavoring mixture used therein, constituting one-fifth of 1 per cent by weight; with capacity and tendency to mislead and deceive the public and to divert trade to it from competitors and with effect of furnishing to wholesale and retail dealers means enabling them to mislead and deceive their customers and prospective customers into believing said product to be six months old when offered for sale and sold by it and into purchasing same in reliance on such erroneous belief:

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

Mr. James M. Brinson for the Commission.

Mr. Ralph M. Greenlaw, of Providence, R. I., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Rhode Island corporation, engaged in the manufacture and sale of ginger ale, with principal place of business in Millis, Mass., and with factories and warehouses in various States, with advertising falsely or misleadingly, and misbranding or mislabeling as to qualities of product, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, states in newspapers, catalogues, counter displays, fountain hangers, and other advertising and on the labels or stickers attached to its product or the containers thereof, and through the radio that ginger ale not aged six months is unripe, undesirable, and injurious and that its own product through such aging, has "derived a fullness of flavor and mellowness of tone", fact being its said product had not been so aged; with capacity and tendency to mislead and deceive the public, and with effect of furnishing wholesale and retail dealers with the means of enabling them to mislead their own customers

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and prospective customers in respect of the aging of respondent's product, as above set forth, and into purchasing said product in reliance upon such erroneous belief; all to the prejudice of the public and in violation of section 5.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Acting in the public interest, pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served its complaint upon the respondent, Clicquot Club Co., charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

Respondent having entered its appearance and filed answer, hearings were duly held before an examiner of the Commission theretofore appointed for such purpose. Thereafter it having been stipulated and agreed by and between the attorney for the Commission and Ralph M. Greenlaw, attorney for the respondent, thereunto having first been duly authorized, that the privilege or right of submitting briefs and oral arguments would be and was waived and that the Federal Trade Commission might forthwith proceed to file its report stating its findings as to the facts and conclusion drawn therefrom and dispose of the matter by an appropriate order to cease and desist from the practices described in the complaint and reflected by the evidence, and this proceeding having come on for final decision and the Commission being fully advised in the premises, files this its report in writing, stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Clicquot Club Co. is now and for several years last past has been a corporation organized and existing under and by virtue of the laws of the State of Rhode Island, with its principal place of business in the city of Millis, State of Massachusetts. It has been for several years last past, and now is engaged in the manufacture of ginger ale and in its sale in commerce among and between the various States of the United States, principally to wholesale dealers. It has caused during said period of time and now causes its product, when sold, to be transported from its factory and warehouse to purchasers in the several States of the United States other than the State of Massachusetts or the State or States from which such product or products have been or are transported or shipped to them. In the course and conduct of such business respondent has been at all times hereinafter mentioned and is now

in competition with individuals, partnerships, and corporations engaged in the sale of such or similar products in interstate commerce.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent Clicquot Club Co., until on or about April 18, 1929, offered for sale and sold its ginger ale by means of and through statements and representations in newspapers, magazines, and other publications circulated in the various States of the United States, in or on counter displays and fountain hangers, distributed by it among purchasers or prospective purchasers, and on labels or stickers attached to its product or the containers thereof, and also through the agency of radio broadcasting among or between the various States of the United States, that ginger ale is unripe, undesirable, and injurious unless it has been aged six months and that the ginger ale offered for sale or sold by respondent in commerce among or between the various States of the United States had been aged six months, and that such ginger ale has derived a fullness of flavor and mellowness of tone from or as a result of such aging process. On or about April 18, 1929, respondent discontinued its practice of representing that its ginger ale had been and was aged six months and adopted as a substitute therefor the phrase "Aged six months in the making", and has represented and now represents in, through, or by the aforesaid advertising agencies or media, that its ginger ale has been and is "Aged six months in the making".

PAR. 3. The ginger ale offered for sale and sold by respondent Cliquot Club Co., that is to say, the finished product or beverage, has not been and is not aged either six months or six months in the making. It requires six months to make the beverage or finished product of respondent, because a flavoring mixture used by respondent in the manufacture of its product which it calls the concentrate, has been and actually is aged six months in storage tanks, provided for such purpose at the plant of respondent. After such flavoring mixture or concentrate has been so aged it is thereupon mixed or combined with the other ingredients of the product. The flavoring mixture or concentrate so aged and used in manufacture of the ginger ale is in weight one-five hundred and twelfth of the product or about one-fifth of 1 per cent. The finished product, the ginger ale, therefore, while requiring six months for its production, is neither aged six months, nor six months in its making, nor is any other part of it than the so-called concentrate or flavoring mixture aged six months, or for any known, definite or regular period of time.

PAR. 4. The representation by respondent that the ginger ale offered for sale or sold by it has been aged six months or has been

aged six months in the making, has had and has the capacity and tendency to mislead and deceive the public and to divert trade to respondent from its competitors, and has furnished, and is furnishing to wholesale and retail dealers the means by which they have been and are respectively enabled to mislead and deceive their own customers and prospective customers into the belief that such ginger ale is six months old when so offered for sale and sold by it, and into its purchase in reliance on such erroneous belief.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of respondent, testimony and evidence, and briefs and oral argument having been waived, and it having been stipulated and agreed by and between the attorneys for the Commission and the respondent that the Commission may forthwith file its report stating its findings as to the facts and its conclusion drawn therefrom and dispose of this proceeding by an appropriate order to cease and desist, and the Commission having filed its report stating its findings as to the facts and its conclusion drawn therefrom that respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties and for other purposes",

It is ordered, That respondent Clicquot Club Co., its officers, agents, and employees, cease and desist directly or indirectly from representing by advertisement or otherwise in connection with offering for sale or selling its ginger ale in interstate commerce that it has been or is aged six months or aged six months in the making, unless or until the ginger ale has been or is in fact, aged six months before its sale and distribution by respondent.

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

Complaint

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IN THE MATTER OF
FLYNN & EMRICH COMPANY

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

Docket 1584. Complaint, Mar. 20, 1929—Decision, Dec. 20, 1930

Where a corporation engaged in the manufacture and sale of stokers, grates, and coal-feeding mechanisms including a mechanically operated stoker covered by letters patent, advised customers of a competitor over a period of years that it contemplated bringing suit for infringement of its patent against manufacturers and users of the infringing articles and that they were rendering themselves liable for damages and exposing themselves to possibilities of embarrassment and trouble through use of the competitive alleged infringing article, and suggested insertion in their contracts with said competitor of indemnifying clauses; not in good faith and with definite decision to bring any such suits, but in bad faith to prevent, hinder, and obstruct said competitor in the sale of its products:

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

Mr. Henry C. Lanke for the Commission.

Stewart & Pearre, of Baltimore, Md., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Maryland corporation engaged in the manufacture and sale of stokers, grates, and coal-feeding mechanisms to the purchasing public throughout the United States, and with principal place of business in Baltimore, with threatening patent infringement and damage suits not in good faith, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, during the years 1926 and 1927, threatened a competitor, the Perfection Grate & Stoker Co. of Springfield, Mass., with infringement suits, and said competitor's customers with damage suits for using the alleged infringing article, for the purpose of preventing and hindering said competitor from selling its products, forcing cancellation of sales already executed, and the removal of equipment sold by said competitor to customers.

As charged by the complaint, "such threats and statements were caused to be made by the respondent company in bad faith, for that, they were made with the purpose of hindering, embarrassing, obstructing or otherwise eliminating competition of the said Perfection Grate & Stoker Co. in the sale of said products in the channels of interstate trade and said respondent company did not cause such suits for infringement or damages to be brought, and/or did not propose to bring such suits at the time such threats or statements were caused to be made"; all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 719), the Federal Trade Commission issued and served a complaint upon the respondent, Flynn & Emrich Co., charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

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

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Flynn & Emrich Co., is a corporation organized under the laws of the State of Maryland with its principal office and place of business in the city of Baltimore, State of Maryland. It is engaged in the manufacture of stokers, grates, and coal-feeding mechanisms, and in the sale thereof to the purchasing public throughout the United States. It causes the said products when sold to be shipped or transported from its principal place of business in the State of Maryland to purchasers thereof in States of the United States other than the State of Maryland. In so carrying on said business respondent is and has been engaged in interstate commerce and in direct active competition with other corporations, firms, and partnerships likewise engaged in the manufacture of similar products and in the sale and distribution of the same in interstate commerce.

PAR. 2. Among the competitors of the respondent company is the Perfection Grate & Stoker Co., also known as the Perfection Grate & Supply Co., with its principal place of business in Springfield, Mass. The Perfection Grate & Stoker Co. was and is engaged in the manufacture and sale in interstate commerce of stokers, grates, and coal-feeding mechanisms, and in addition to hand stokers, it sold and distributed mechanically operated stokers which were known and described as automatic stokers or semiautomatic stokers.

PAR. 3. The respondent company manufactured and sold a mechanically operated stoker which was known and described as Huber

semimechanical stoker. This stoker was being sold by the respondent during the years 1926 and 1927 and during the same period of time by its competitor, the Perfection Grate & Stoker Co. During the same period of time several other competitors were manufacturing and distributing stokers similar in design and operation to the semimechanical stoker of respondent and the semiautomatic stoker of the Perfection Grate & Stoker Co. The respondent's stoker was covered by letters patent, the first being patented July 10, 1917, reissued June 14, 1921, and certain new features patented July 1, 1924.

PAR. 4. In the State of New York and in the New England States, the respondent company employed salesmen on a commission basis to solicit and sell the Huber semimechanical stoker and other products, and these salesmen in soliciting sales in the above territory came into competition with the mechanically operated stoker of the Perfection Grate & Stoker Co.

The respondent in December, 1925, or January, 1926, consulted their patent attorneys in Baltimore, Md., and these patent attorneys informed the respondent that they considered the respondent had a thoroughly substantial case and that respondent's patents would be upheld by the courts. Thereafter from time to time as their representatives were in competition with those competitors using their alleged patent features in the manufacture of stokers, they furnished their representatives copies of their patent papers giving such representatives permission to show these patent papers to prospective customers, to point out to such prospective customers that there were certain features embodied in their stoker that were patented, and if any other manufacturer embodied the same features in his stoker, that he was infringing these patents, and respondent also gave permission to its representatives to point out that a user of an infringed article could be made a party to a suit just the same as the manufacturer.

PAR. 5. Thereafter a salesman of the respondent called upon a company in Connecticut which was then installing a Perfection Grate & Stoker Co.'s stoker, and after examining the stoker, stated to the purchaser "that the Perfection people had made infringements, or at least had copied their patent, and that they were anticipating suing the Perfection people and also any other company that had installations made by the Perfection people".

In the spring or summer of 1926 a salesman of the respondent called on the president of a corporation in New Haven, Conn., which had installed a Perfection semiautomatic stoker, and after inspecting the stoker stated "our people contemplate bringing a suit for

infringement. Of course you or anybody else using it would be liable. They may never bring a suit but I just want to tell you that if they bring a suit that all users of that (meaning the Perfection Stoker) would be liable for damages”.

In May, 1926, a salesman of the respondent called upon the chief engineer of an organization in Waterbury, Conn., who had installed or started to install a Perfection semiautomatic stoker. The salesman inspected this stoker and stated that the coking table was the respondent's patent and that respondent was going to sue the Perfection Grate & Stoker Co. and that the purchaser would be required to take this stoker out.

In the spring of 1927 a salesman of the respondent called upon a firm in New London, Conn., who had purchased a Perfection stoker and stated “We are the only people that can install the alternating bar” (referring to the type of mechanical operation of a product of the Perfection Grate & Stoker Co.). “We hold the full rights to the patents. It is a positive fact that we control the patent on the alternating bar movement. I am afraid you will get into trouble if you put it in.”

On or about March, 1927, a salesman of the respondent called on the production manager and chief engineer of a corporation in New York City who was purchasing a stoker from the Perfection Grate & Stoker Co., and stated that “the Perfection Grate & Supply Co. were infringing the patents of Flynn & Emrich and that it was the intention of Flynn & Emrich Co. to prosecute the Perfection Grate & Supply Co. for these infringements”, and suggested that the purchaser have the Perfection Grate & Supply Co. insert a clause in its contract so as to protect and save the purchaser harmless from any or all claims or suits relating to inventions and patents.

PAR. 6. In January, 1927, the respondent consulted a firm of patent attorneys in New York, and on March 24, 1927, this firm of patent attorneys advised the respondent that in their opinion the respondent had a good cause of action for infringement against the Perfection Grate & Supply Co., that such action could be proceeded with with the evidence then in hand. At this time respondent inquired as to the cost of such an action and was advised that they might look forward to an expense of perhaps \$25,000.

During the period between December, 1925, and March, 1927, while the salesmen of the respondent were making the statements above recited, the respondent had not determined to bring any suit. In May or June, 1927, the respondent determined not to bring suit immediately. At the time this Commission issued the complaint in this case, March 20, 1929, the respondent had brought no suit.

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PAR. 7. The statement made by the salesmen of the respondent as recited in paragraph 5 above, were made in accordance with the permission or instructions as given to such salesmen by the respondent and referred to in paragraph 4 above.

PAR. 8. The permission or instructions as referred to in paragraph 4 above were not given in good faith and the respondent at the time of giving the permission or issuing such instructions had not determined to bring any suit for infringement or suit for damages, and such permission or instructions were given for the purpose of preventing and hindering and obstructing a competitor from making sales of its products.

PAR. 9. The statements made by the salesmen of the respondent to purchasers of semimechanical stokers were, in view of the permission and instructions of the respondent, directly chargeable to the act or acts of the respondent, and the respondent caused such statements to be made in bad faith and without definite determination to bring any such suit for infringement or suit for damages, and were caused to be made for the purpose of preventing and hindering and obstructing a competitor from making sales of its products.

CONCLUSION

The aforesaid acts and practices of the respondent, Flynn & Emrich Co., are all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its power and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

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

It is now ordered, That the respondent, Flynn & Emrich Co., its officers, agents, representatives, and employees, in connection with the sale of its stokers in interstate commerce, cease and desist from directly or indirectly threatening any person, firm, or corporation with patent infringement, damage or other suit or suits in bad faith for the purpose of diverting the trade of any competitor or competitors to it and without intention to sue.

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

Syllabus

IN THE MATTER OF
PERFECT VOICE INSTITUTE AND T. G. COOKE

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

Docket 1503. Complaint, Mar. 13, 1928—Decision, Dec. 23, 1930

Where a corporation engaged in the sale of a method of voice development, and an individual, its president, manager, and controller thereof, in advertising and describing its so-called course of "Physical Voice Culture" in newspapers, magazines, and other publications of general circulation, and in pamphlets, letters, circulars and other forms of printed, written or mimeographed matter,

- (a) Represented the method as new and based on the alleged fundamental relation of the hyo-glossus muscle to the effective development of the speaking and singing voice, by isolation and development of such muscle, through devices and instruction provided, and the grooving of the tongue as therein set forth, and that the system in question had been proved by every law of physics, anatomy, mechanics, and mathematics, and had proven infallible in the case of thousands of students all over the world, the facts being that the muscle referred to could not be isolated and separately developed, served no possible function in voice tone production, and said claims and representations were false and misleading;
- (b) Falsely represented that every student could have a beautiful speaking or singing voice through development of said hyo-glossus muscle by physical exercise and performance of a few simple, silent exercises, requiring only a few minutes a day, in the privacy of his own home, that such exercises would result, in a few months, in a powerful, beautiful, and vibrant voice, and in progress from day to day, and that the development and control of such muscle, or lack thereof, was the primary cause of a strong and perfect, or weak and imperfect voice;
- (c) Represented and stated that a post mortem on the throat of Caruso showed wonderful development of said muscle and proved the amazing truth of the "Feuchtinger" discovery of the true functions of such muscle, instinctive control of which after many years led to Caruso's becoming the century's greatest singer, and that the main difference between normal vocal organs of the student and those of Caruso and other world famed singers lay in the control, strength, and development of the muscle in question, the facts being that no such post mortem was ever performed, there was no evidence that Caruso ever made any effort to control said muscle or attributed his voice thereto, or to any other muscle, and implications of the aforesaid representations were wholly unwarranted, incredible and deceptive;
- (d) Offered its said course to prospective pupils enrolling within a limited time at the temporarily reduced and special price of \$89.50 instead of the regular and full price of \$120, the fact being that the former figure constituted its regular, permanent, and full price for the entire treatise, books, course of instruction, and articles and accessories making up its aforesaid course; and

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(e) Represented that it offered to prospective pupils freely and without compensation to it, a complete outfit for practical work, consisting of "mirror, electric torch, tongue depressor, tryhedron, tongue support, breath measure, and special harmonic resonator", the facts being that the aforesaid articles were included in the course in question and the regular and full price charged therefor and none were given the pupils without full payment;

With capacity and tendency to deceive the public and to induce persons to enroll as students in reliance upon the truth and accuracy of such representations, and to divert trade to it from competitors:

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

Mr. Alfred M. Craven and Mr. LeRoy A. Palmer for the Commission.

McKercher & Link, of New York City, for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Perfect Voice Institute, an Illinois corporation engaged in the sale of a course denominated Physical Voice Culture¹ and with office and principal place of business in Chicago, and respondent individual, its president and manager, with advertising falsely or misleadingly as to prices and free product, and nature of product or service, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, in advertising its said course in newspapers, magazines, periodicals, and other publications of general circulation, and in catalogues, pamphlets, letters, circulars, etc., makes numerous false and misleading statements in the following respects, namely, that the course has been reduced for a limited time from \$150 to \$89.50 (its regular price), that certain apparatus, above referred to, and included in the price charged for the course as a whole, is offered to prospective pupils without compensation to it, and that its course rests upon its own unique system of developing and controlling the hyo-glossus muscle through silent exercises developing the singer's ability to groove the tongue, and making it possible for every student to have a beautiful speaking or singing voice, that said system was worked out by the

¹ Including a so-called set of "scientific apparatus consisting of a tongue support, tape measure, flashlight and mirror, depressions, tryhedron, and one harmonic resonator."

Feuchtinger family,² that through instinctive mastery of said muscle, after many years, Caruso finally became the century's greatest singer (a fact attested, by the great development of such muscle disclosed by a post mortem on the singer's body), that many continental opera stars have benefited by the system, and that anyone through a few simple scientific exercises in his own home and in a few months may obtain a powerful and beautiful voice, and that the system in question has been proved by every law of physics, anatomy, mechanics, and mathematics, and has proven infallible in practice by tests of thousands of students all over the world.

"In truth and in fact", as charged "none of said statements or representations is true in letter or in substance; nor has the hyo-glossus muscle any connection with voice quality or production"; and

"The statements and representations so made by respondent in the manner above alleged have the tendency and capacity to mislead and deceive the public and prospective pupils, and will probably mislead and deceive the public and prospective pupils, into the erroneous belief:

"That said respondent's said course of instruction, together with said complete outfit for practical work, are the result of long, successful scientific research and experimentation by generations of men unusually gifted in music and musical research and knowledge;

"That said course of instructions and articles incidental and accessory thereto constitute the one and only sure, unfailing, scientific method of voice culture and the development of one's voice or singing tone;

"That all said statements and representations are true;

"That, therefore, it is advisable to enroll as a pupil with said respondent and pay the tuition charged by him; and that it is inadvisable to become a pupil of any other person, teacher or school, or to purchase treatises, books of instruction, courses of instruction,

²Allegations of the complaint in respect to the supposed part played by such family in this matter follow:

(1) That three generations of Feuchtingers spent their lives working out the system of silent voice exercises, which has finally been perfected by Eugene Feuchtinger.

(2) That Eugene Feuchtinger finally perfected this system by his discovery of the functions of the hyo-glossus muscle.

(3) That Caspar Feuchtinger, grandfather of Eugene Feuchtinger, was court musician to the Duke of Waldeck, and one of the greatest artists of the 19th century.

(4) That the father of Eugene Feuchtinger inherited the family talent, was a real genius and was decorated with the Order of Arts and Sciences by the King of Wurtemberg.

(5) Eugene Feuchtinger had a thorough musical education and was a student of vocal anatomy and physiology, and that he worked out the methods of his father and grandfather.

(6) That Eugene Feuchtinger added from time to time, as a result of his own researches, much original matter.

(7) That his method of training (the voice) benefited many continental opera stars.

(8) That Eugene Feuchtinger's name was well known and respected by the elite of the European musical world.

or any articles or things incidental or accessory thereto of any of said respondent's competitors"; all to the prejudice of the public and of respondents' competitors in violation of section 5.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 719), the Federal Trade Commission, on the 13th day of March, 1928, issued and thereafter served its complaint against the respondents Perfect Voice Institute and T. G. Cooke, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Perfect Voice Institute, is a corporation organized and existing under and by virtue of the laws of the State of Illinois and maintains its office and principal place of business at 1920 Sunnyside Avenue, in the city of Chicago, in the State of Illinois.

Respondent, T. G. Cooke, is president of respondent, Perfect Voice Institute, and as such is actively engaged in the management and control of the business and gainful activities of respondent, Perfect Voice Institute, hereinafter alleged or set forth.

Respondent, Perfect Voice Institute, at such place, is engaged in the business of offering for sale and selling to persons hereinafter referred to as pupils, such pupils residing and being and remaining at various places in the several States of the United States, a certain method or system of voice or singing tone development, which it denominates "Physical Voice Culture". Such method or system is set forth in thirty lessons which are embodied in a two-volume printed treatise or book, said treatise being published under the name of "A Manual of the Study of the Human Voice". Along with such

books and course of instruction, and as a part of the same transaction, said respondent offers to sell and furnish and sells and furnishes to such pupils a certain so-called set of "scientific apparatus consisting of a tongue support, tape measure, flashlight and mirror, depressors, tryhedron, and one harmonic resonator," such scientific apparatus being incidental and accessory to the said method or system of voice or singing tone development and to the study and practice thereof and the accomplishment of such voice or singing tone development.

PAR. 2. Said respondent, when a prospective pupil enters into a contract with it and enrolls as such pupil, in consideration of the agreed cash tuition paid and agreed to be paid by such pupil, undertakes to sell and deliver to such pupil, through the United States mail or otherwise, such two-volume treatise or book, such course of instruction and such scientific apparatus and the several articles of which it is composed as above set forth, together with certain written or printed advice and information by and through correspondence thereafter to be carried on by and between said respondent and such pupil.

Thereafter, and in pursuance of said contract with such pupils, said respondent, Perfect Voice Institute, furnishes and causes to be transported from its said place of business into and through the several States of the United States, and to be delivered to such several pupils at their respective place of residence, the said treatise or books, course of instructions, and the other articles and things above enumerated.

PAR. 3. In all of its said business, and in the several parts thereof, and in the procurement of pupils to enroll as such and to purchase said courses of instruction and said articles, and things above enumerated and to pay therefor, respondent, Perfect Voice Institute, is in competition with other persons who are likewise engaged in the same or similar lines of business activity and who are seeking to procure prospective pupils in and throughout the several States of the United States to enroll as such and to purchase, receive and pay for treatises and books to be transmitted by United States mail or otherwise, for courses of instruction by correspondence, as above set forth, and for printed matter and other articles and things to be sold, furnished, and delivered to such pupils as incidental or accessory to the learning and practice of said instructions and the accomplishment of voice or singing tone development.

PAR. 4. In aid of its said business and for the purpose of inducing prospective pupils to enter into contracts with it, to enroll as such pupils with it, and to purchase of it the treatises, books, courses of instruction, and the articles and things above enumerated, and to pay

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to it the purchase price thereof, respondent, Perfect Voice Institute, causes advertisements of said treatises and books, of its said courses of instruction and of said articles and things incidental and accessory thereto, to be inserted and made accessible to the public and to prospective pupils in newspapers, magazines, periodicals, and other publications of general circulation in the United States and in the several States thereof, and in catalogues, and in pamphlets, letters, circulars, and other forms of printed, written, or mimeographed matter.

In all such advertisements and in all such ways and manners respondent, Perfect Voice Institute, makes the statements and representations hereinafter referred to, as follows:

(1) Said respondent represents that it is offering to prospective pupils who shall enroll as such within a certain limited time such treatises, books, courses of instruction, and such articles and things so incidental and accessory thereto, for which the regular and full price is the sum of \$120, at the temporarily reduced and special price of \$89.50. In truth and in fact said pretended reduced and special price of \$89.50 is the regular, permanent, and full price of the whole of said treatise, books, and course of instruction, together with all such articles and things incidental or accessory thereto and all other considerations to pass to such prospective pupils under said pretended reduced and special price.

(2) Said respondent represents that it is offering to give to prospective pupils freely and without compensation to respondent a certain complete outfit for practical work, to wit: The certain scientific apparatus above referred to and which is represented to "consist of mirror, electric torch, tongue depressor, tryhedron, tongue support, breath measure, and special harmonic resonator, all free of charge." In truth and in fact all of said things so represented as free gifts are parts of, and included in, the course of instruction, service and articles for which pupils pay said respondent in the payment of said permanent, regular, and full price charged by said respondent as above set forth; and none of said things so promised is given to pupils without such full payment therefor.

PAR. 5. The respondent's system of voice culture above mentioned is based according to the claims made for it in the manual and lessons above referred to, as well as in its advertising on the alleged new and recent discovery of one Eugene Feuchtinger, of the true function of the hyo-glossus muscle. It is stated in the lessons comprising the instruction that the hyo-glossus muscle controls the singing voice, and that the voice in its qualities of resonance, clear-

ness, pitch, range, and beauty depends upon the development of this muscle. As illustrating these various claims, reference is made to certain portions of the lessons introduced in evidence as Commission's Exhibit 15, which is duplicated, except as to paging, by Commission's Exhibit 1.³

(a) My method is the final solution of a singer's problems in voice training. (Page 5.)

(b) In referring to the general neglect of the voice, it must be stated that man has not been to blame; for never until now has there been a reliable, unfailing method of developing it. The real secret of voice building was only discovered and made practical within the past few years. (Page 6.)

(c) The vocal attack is made entirely through the action of the tongue, or, more exactly, through the instantaneous and automatic contraction of the hyoglossus muscle, which connects the tongue with the larynx below and the palate above it. (Page 23.)

(d) The muscle which we are trying to control—the hyo-glossus muscle—starts from the back part of the tongue. (Page 34.)

(e) The voice student can neglect almost anything else, but he must know, understand and master the action of the hyoid bone and hyo-glossi muscles. His salvation depends upon this. (Page 98.)

(f) My method lays emphasis on the importance of isolating the hyo-glossus muscle, because on this muscle depends not only the strength to be obtained, but also the quality of the voice to be obtained. (Page 151.)

(g) No progress whatsoever can be expected until you have succeeded in forming the groove silently without motion of either palate or larynx. You must first learn to isolate the hyo-glossi muscles. This is imperative. (Page 153.)

(h) The exact and isolated control of the hyo-glossi muscles is the most essential part of the course so far. No great improvement in your voice can be expected until you can make the groove in the rearmost part of the tongue. (Page 176.)

The means recommended by respondent in its course of instruction for the making of a groove in the tongue, the isolation of the hyoglossus muscle and its separate development, are entirely mechanical, consisting of inserting the finger tip under the tip of the tongue, the thumb, fleshy part uppermost, under the side of the tongue and toward the rear, and the use of certain instruments which constitute the free apparatus offered by respondent. The tongue support of the hard rubber is said to provide the mechanical resistance for strengthening the hyo-glossus muscle, serving the same purpose as the thumb. Certain tongue depressors, consisting of narrow strips of wood, are devised to be stuck down the throat, in order to tickle and depress the tongue, and assist in making a groove, which is said to be of importance. The student is taught to use these various appliances, as well as the thumb and the fingers, and other mechani-

³ Exhibits not published.

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cal means in order to produce a groove in the tongue and to develop the hyo-glossus muscle.

PAR. 6. The respondent, Perfect Voice Institute, in addition to the statements quoted in paragraph 5 hereof, represents by the methods and means mentioned in paragraph 4 hereof, as follows to wit:

(1) That every student can have a beautiful speaking or singing voice if he develops the hyo-glossus muscle by physical exercises, by performing a few simple silent exercises in the privacy of his own home and requires only a few minutes a day and the results are certain.

(2) Every day the student's voice will become stronger, richer, and wider in range by the simple silent exercises, if he trains his voice by Physical Voice Culture.

(3) That the primary cause of strong and weak, or perfect and imperfect voices, lies in the development and control of the hyo-glossus muscle.

(4) That my system of physical voice culture has been proved by every law of physics, anatomy, mechanics, and mathematics, and has proven infallible in practice by tests on thousands of students all over the world.

(5) That by just a few months of this wonderful silent exercises, the student can obtain a rich, powerful, beautiful, resonant, and vibrant voice.

The answer of the respondents admits the fact that such statements and representations are made by respondent, Perfect Voice Institute, and avers the same to be true.

The hyo-glossus muscle (plural, hyo-glossi, there being one on each side of the neck), is, as defined by physiologists and by the expert witnesses who testified at the hearings, both for the Commission and the respondents, a muscle which is attached to the hyoid bone and passes upwards and enters the side of the tongue. Its function is to depress the tongue and draw down its sides so as to render it convex from side to side.

This muscle serves no purpose in making a groove in the tongue. It is one of a very large group of swallowing muscles intimately connected and related, so that it is a physiological impossibility to isolate it or separately develop it. It serves no possible function in voice tone production. The so-called silent exercises taught by the respondent, Perfect Voice Institute, may enlarge the tongue and strengthen some of the muscles thereof, but such exercises can not and do not result in a "rich, powerful, beautiful, resonant, or vibrant voice", as represented by respondent. On the contrary, the probable result of such exercises would be to hinder the production of voice tones of the character contemplated by respondent's statements and representations.

All of the respondent's claims and representations mentioned in this paragraph of the findings, are false and misleading.

PAR. 7. Respondent also by the manner and means mentioned in paragraph 4 hereof, states and represents as follows:

That a post mortem examination of the throat of Caruso, showing a wonderful development of his hyo-glossus muscle, proves the amazing truth of the Feuchtinger discovery of the true functions of the hyo-glossus muscle.

Said statement and representation is false, the fact being that no post mortem examination of Caruso's throat, or any other part of his body, was ever had.

PAR. 8. Respondent further by the manner and means mentioned in paragraph 4 hereof, makes, as alleged in the complaint and admitted by the answer, the following statements and representations:

(1) That it took Caruso many years to instinctively control his hyo-glossus muscle, but in the end he became the greatest singer of this century.

(2) That the throat of every student is constructed exactly like the throat of Caruso and other world famous singers, with just one exception, they had developed their hyo-glossus muscle.

(3) That the main difference between the normal vocal organ of the student and the vocal organ of Caruso lies in the control, strength, and development of the hyo-glossus muscle.

The claims and representations in this paragraph set forth are false and misleading, in that, as heretofore found in paragraph 6 of these findings, the hyo-glossus muscle can not be isolated or separately developed, and has no function in voice tone production. There is not the slightest evidence in the record that Caruso either instinctively or consciously made any effort to control his hyo-glossus muscle, or that he ever in his lifetime claimed that his voice was due to his hyo-glossus muscle, or any other muscle. The implication from such representations that anyone by developing the hyo-glossus muscle, if such were possible, would become like Caruso, is wholly unwarranted and incredible. To suggest that any one of the pupils taking the course of instruction sold by respondent might develop a voice comparable with the voice of Caruso, is utterly unwarranted and deceptive.

PAR. 9. Each and all of the statements or representations set forth in paragraphs 6, 7, and 8 hereof have the capacity and tendency to deceive the public and induce persons to enroll as pupils of respondent, Perfect Voice Institute, in reliance upon the truth and accuracy of such representations, and to divert trade to respondent, Perfect Voice Institute, from its competitors.

CONCLUSION

The practices of said respondents under the conditions and circumstances described in the foregoing findings are to the prejudice

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of the public and respondents' competitors, and are unfair methods of competition in commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, the testimony, brief, and oral argument, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That respondents, Perfect Voice Institute, a corporation, its officers, agents, and employees and the respondent T. G. Cooke, in connection with the sale or offering to sell in interstate commerce between and among the various States of the United States and in the District of Columbia, the course of instruction denominated Physical Voice Culture, do cease and desist from, in any manner representing:

(1) That every student can have a beautiful speaking or singing voice if he develops the hyo-glossus muscle by physical exercises, by performing a few simple silent exercises in the privacy of his own home and requires only a few minutes a day and the results are certain.

(2) Every day the student's voice will become stronger, richer, and wider in range by the simple silent exercises, if he trains his voice by Physical Voice Culture.

(3) That the primary cause of strong and weak, or perfect and imperfect voices, lies in the development and control of the hyo-glossus muscle.

(4) That the system of instruction Physical Voice Culture has been proved by every law of physics, anatomy, mechanics, and mathematics, and has proven infallible in practice by tests on thousands of students all over the world.

(5) That by just a few months of this wonderful silent exercise, the student can obtain a rich, powerful, beautiful, resonant, and vibrant voice.

(6) That a post mortem examination of the throat of Caruso, showing a wonderful development of his hyo-glossus muscle, proves

the amazing truth of the Feuchtinger discovery of the true functions of the hyo-glossus muscle.

(7) That it took Caruso many years to instinctively control his hyo-glossus muscle, but in the end he became the greatest singer of this century.

(8) That the throat of every student is constructed exactly like the throat of Caruso and other world famous singers, with just one exception, they had developed their hyo-glossus muscle.

(9) That the main difference between the normal vocal organ of the student and the vocal organ of Caruso lies in the control, strength, and development of the hyo-glossus muscle.

(10) Representing that any price at which the course of instruction is offered is a special or reduced price, or is lower than the price ordinarily and usually received when such is not the fact.

(11) Representing that any apparatus or part thereof, or other article of merchandise is furnished free when the price or value of such article is included in the price specified as the price of the course of instruction.

It is further ordered that the said respondents shall, within 30 days after the service upon them of a copy of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

Complaint

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IN THE MATTER OF
KEMPER SILK COMPANY, INC.

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

Docket 1685. Complaint, July 15, 1929—Decision, Jan. 5, 1931

Where a corporation engaged in the designing and sale of fabrics to retail dealers, garment manufacturers, and jobbers,

- (a) Designated a cotton and rayon fabric somewhat resembling silk, "Taffet-Ray", and employed said name in describing such fabric in advertisements in newspapers and trade journals, and on the packages in which shipped to purchasers, counter display cards furnished for retailers, and labels supplied to garment makers, with capacity and tendency to deceive purchasing public into believing such fabric to be taffeta or silk;
- (b) Designated a fabric composed entirely of rayon, resembling satin, "Sparkal Satin", and employed such name in designating such fabric in advertising and labeling same, as above set forth, with capacity and tendency to deceive purchasing public into believing such fabric to be made entirely of silk; and
- (c) Employed phrase "Creators and Manufacturers of Artificial Silk Fabrics", upon its letterheads and other trade literature, notwithstanding fact that it did no manufacturing, but had such fabrics as it created or designed, made by manufacturers; with tendency and capacity to deceive purchasing public and induce purchase of its products as and for those bought directly from a manufacturer at a saving in cost, and to divert trade unfairly from competitors:

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

Mr. Alfred M. Craven for the Commission.

Kahn & Zorn, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation with principal place of business in New York City, engaged in the sale of textile fabrics to retailers and to garment makers for use in making dresses, underwear, slips, and other articles, with naming product misleadingly, misrepresenting business status, advertising falsely or misleadingly, and misbranding or mislabeling, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, for more than two years last past has named a fabric composed of cotton and rayon, but resembling taffeta in appearance, "Taffet-Ray" and has used said trade name to designate said fabric in its advertisements in newspapers of general circulation and on counter display cards furnished to retailers for the purpose of advertising the same, and on the packages in which shipped to the purchasers and on labels furnished by it to garment makers, to be affixed to the garments, and by other means and methods, and has similarly used the trade name "Sparkal Satin" to designate a fabric composed entirely of rayon, employing the same practices in connection therewith, as above set forth, with the tendency and capacity to deceive the purchasing public and induce the purchases by them of said fabrics as and for fabrics composed of silk, a product of the cocoon of the silkworm, understood by the public generally as signified and meant by the words "Taffeta" and "Satin".

Respondent further, as charged, neither owning, operating nor controlling any factory or mill, making the articles offered by it, represents upon its letterheads and other trade literature that it is a manufacturer, with tendency and capacity to deceive retailers and others into believing that persons dealing with respondents are buying directly from the manufacturer and thereby eliminating the profits of middlemen, and to cause dealers and others to purchase their merchandise in that belief.

Said acts and practices, as charged, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 719), the Federal Trade Commission, on the 15th day of July, 1929, issued and thereafter served its complaint against the respondent Kemper Silk Co., Inc., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondent having entered its appearance and filed an answer to the said complaint, a hearing was had before a trial examiner theretofore duly appointed, and testimony was heard and evidence re-

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ceived in support of the charges stated in the complaint, and in opposition thereto. Thereafter this proceeding came on regularly for decision and the Commission having duly considered the record and being now fully advised in the premises, makes this its report stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Kemper Silk Co. is now and has been since 1927 a corporation duly organized and existing under the laws of the State of New York with its principal place of business at New York City in said State engaged in the business of selling fabrics to retail dealers, garment manufacturers and jobbers throughout the United States. It also is a designer of weaves for some of the fabrics sold by it. It causes the fabrics sold by it to be transported and shipped in interstate commerce to the purchasers thereof at their various places of business in the several States of the United States. In the conduct of its said business, respondent is and has been since its incorporation, in competition with other individuals, firms, and corporations engaged in the sale of similar fabrics in interstate commerce between and among the several States.

PAR. 2. In the course and conduct of its said business, respondent sells a fabric composed of cotton and rayon resembling to some extent silk in appearance, under the trade name "Taffet-Ray", which trade name is used by respondent to designate and describe said fabric in advertisements inserted in newspapers and trade journals, on packages in which the fabric is shipped to the purchasers, on counter display cards furnished to retail dealers for the purpose of advertising said fabric, and on labels furnished by respondent to garment makers to be affixed to garments made of said fabrics and by other means and methods. The said fabrics and garments made therefrom are sold to the buying public under the description "Taffet-Ray".

PAR. 3. Respondent in the course and conduct of its said business and up to about the time of the issuance of the complaint herein, July 15, 1929, sold a fabric composed entirely of rayon resembling satin in appearance, under the trade name "Sparkal Satin". It used said trade name to describe and designate said fabric by the same means and methods mentioned in paragraph two hereof, relative to "Taffet-Ray".

PAR. 4. In the course and conduct of its said business the respondent has imprinted upon its letterheads and other trade literature circulated among its customers and prospective customers, the phrase "Creators and manufacturers of artificial silk fabrics". The re-

spondent, while it has created or designed certain fabrics and has had them manufactured by manufacturers, is not a manufacturer and is not entitled to describe itself as such. The use of the word "manufacturers" by respondent has a tendency and capacity to deceive the purchasing public and to induce them to purchase the fabrics sold by respondent in the belief that they are purchasing direct from a manufacturer at a saving in cost. The respondent at the hearing announced its intention of discontinuing the use of this word, and consented that the Commission might make a cease and desist order requiring the discontinuance thereof.

PAR. 5. The word "satin" used by respondent in the description "Sparkal Satin" disassociated from any word or words which indicate the material signifies to the trade and to the public, silk, the product of the cocoon of the silkworm. The use of the said trade name "Sparkal Satin", as descriptive of a fabric made of rayon, is misleading and has the capacity and tendency to deceive the purchasing public into the belief that the fabric of which the phrase is descriptive, is made entirely of silk. The respondent discontinued the sale of the fabric in question and of the description "Sparkal Satin", at or about the time of the issuance of the complaint herein, and consented at the hearing that the Commission might make an order prohibiting the use of said description as applied to a material made of rayon.

PAR. 6. The trade-mark and description "Taffet-Ray" is misleading and has the capacity and tendency to deceive the purchasing public into the belief that the fabric of which it is descriptive, is taffeta or silk. The word "taffeta" may mean a distinctive type of construction or weave, but when used alone, it signifies and means to the trade and the purchasing public, silk, the product of the cocoon of the silkworm. The respondent has consented on the record that the Commission may issue an order prohibiting the use of such description, unless accompanied by word or words clearly indicating that the fabric trade-marked as "Taffet-Ray" is not a silk fabric.

PAR. 7. The methods of competition mentioned in paragraphs 2, 3, 4, 5, and 6 hereof are unfair to the buying public and competitors of respondent and have the capacity and tendency to divert trade from such competitors.

CONCLUSION

The practices of said respondent, under the conditions and circumstances described in the foregoing findings, are to the injury and prejudice of the public and of respondent's competitors, and are unfair methods of competition in commerce and constitute a viola-

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tion of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

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

It is now ordered, That the respondent, Kemper Silk Co., Inc., its officers, agents, and employees in connection with selling or offering for sale of its merchandise in interstate commerce between and among the several States of the United States and in the District of Columbia, do cease and desist from:

(a) Representing on its letterheads, advertising, or otherwise that it is a manufacturer unless and until it owns or operates a mill or factory where its merchandise is made.

(b) Using the phrase "Sparkal Satin." as descriptive of a fabric not made entirely of silk.

(c) Using the word "Taffet-Ray", or the word "Taffeta" as a trade name for or to describe or designate a cotton and rayon fabric unless in connection therewith and in every instance where such description appears, there also appear word or words clearly indicating that the fabric is not silk, such as, "A cotton and rayon fabric", "Made of cotton and rayon", "Not silk", or equivalent terms.

It is further ordered, That the said respondent shall, within 30 days after the service upon it of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

Syllabus

IN THE MATTER OF
THE RUBBER CITY PAINT COMPANY AND THE BELL
PAINT COMPANY

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

Docket 1757. Complaint, Feb. 7, 1930—Decision, Jan. 5, 1931

Where two corporations, under common family control, engaged in sale by mail order of certain roofing preparations,

- (a) Employed word "manufacturers" on letterheads and falsely represented to purchasers and prospective purchasers that aforesaid products were made by them, and through advertising literature referred to their method of direct sales whereby profits of jobbers, retailers, and salesmen were eliminated, notwithstanding fact that said products were made by and purchased from a separate third company likewise thus controlled, and, to a small extent, from other manufacturers; and
- (b) Included words "liquid asbestos roofing" in designation of their aforesaid products in circulars, cards, and other advertising matter and represented asbestos content thereof as "the finest indestructible rock asbestos" and the product as "fully guaranteed to wear for ten years", and as asbestos product, facts being that said content, of approximately 5.7 per cent, was not sufficient to assist in preventing early disintegration, crawling, and cracking of the paint, to bind and hold the film together, or to add appreciably to the durability thereof, and that it was not composed of finest indestructible rock asbestos, nor an asbestos product, and durability thereof was from 3 to 5 years instead of the 10 claimed;

With tendency and capacity to mislead and deceive purchasers into believing said products to have content of sufficient asbestos to accomplish purpose for which ordinarily employed in roofing compounds, to be fireproof, and to have a life of 10 years, and that in purchasing same from them they were buying from the manufacturer and eliminating middleman's profit, and with tendency and capacity to divert to themselves trade of competitors who do not use such methods:

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

Mr. PGad B. Morehouse for the Commission.

Mr. Ralph Blue, of Cleveland, for respondents.

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SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondents, Ohio corporations with office and principal place of business at the same address in Cleveland, and with same corporate officers, and engaged in the advertisement and sale of a product known as "The Rubber City Liquid Asbestos Roofing" and also as "Bell's Liquid Asbestos Roofing" to purchasers in the various States, with misrepresenting business status and advertising falsely or misleadingly in regard thereto and as to composition and quality or characteristics of product, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged as above set forth, and neither making the aforesaid product, nor owning, controlling, nor operating any factory or plant, making the same, through use of the word "manufacturers" on letterheads and advertising matter, represent themselves to purchasers and prospective purchasers as fabricators of said product, respondent Rubber City Paint Co. further falsely representing through circulars, cards, and other literature sent to purchasers and prospective purchasers that it is located in the city of Akron, the fact being that it only maintains a private forwarding address in said city from which its mail is forwarded to it in Cleveland.

Respondents further, as charged, through use of the word "asbestos" in describing their said liquid roofing, in circulars, cards, and other advertising matter have represented and represent to prospective purchasers and purchasers throughout the various States that said products in whole or in predominant part is asbestos, respondent further representing that the same is made of "the finest indestructible rock asbestos", and that "it is fully guaranteed to wear for ten years, and is one of the few genuine liquid asbestos roofings offered to-day", fact being that product is not made of asbestos either in whole or in predominant part, does not contain "the finest indestructible rock asbestos", and will not wear for ten years.

Said statements, representations, and practices, and each of them, as alleged, "have the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the belief that the said respondents, and each of them, are the manufacturers of the products advertised and sold by them and that the purchasers, when buying from the respondents or either of them, the product so advertised and sold, are purchasing a product made in whole or in predominant

part of asbestos, when such is not the fact; that the product will wear for 10 years, when such is not the fact; that the product contains 'the finest indestructible rock asbestos', when such is not the fact, and that respondent 'The Rubber City Paint Co.' is located at Akron, Ohio, when such is not the fact", and said acts and things, and each of them, as charged, "are to the prejudice of the public and to the competitors of respondents and each of them, and constitute unfair methods of competition in commerce within the intent and meaning of section 5".

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, The Rubber City Paint Co., a corporation, and the Bell Paint Co., a corporation, charging them and each of them with the use of unfair methods of competition in interstate commerce, in violation of the provisions of said act.

Respondents having entered their appearance and filed their answers to the complaint herein, hearings were had and evidence was introduced upon behalf of the Commission and respondents, before a trial examiner of the Commission, duly appointed thereto, and said trial examiner having filed his findings of fact herein, and counsel for the respondents having filed his exceptions thereto,

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, The Rubber City Paint Co. and The Bell Paint Co. are both corporations organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with principal offices and places of business at 603 Mary Avenue, city of Cleveland, State of Ohio. From 1921 to 1926, The Rubber Paint Co. maintained an office at Akron, Ohio, but in 1926, economizing on account of business depression, it moved to Cleveland, Ohio, after making arrangements with a firm of public accountants, located at 714 North Main Street, Akron, Ohio, whereby such firm received and forwarded this respondent's mail to 603 Mary

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Avenue, Cleveland, Ohio. It is listed in the Akron City Directory, but has no employee nor any of its product in Akron. The name "Rubber City Paint Co." does not appear in the bulletin board in the lobby of the building at 714 North Main Street, Akron, Ohio, nor on any of the doors of the offices of the aforesaid firm of public accountants, nor in the telephone directory. These accountants have the corporate books of the company there. This respondent has no officer or employee in Akron authorized to accept service of legal process. Since the year 1926, this respondent has not been doing business in and from Akron, Ohio, although it has represented during that period, and still represents, that it is so doing business, making such representation because of the severe competition encountered with other paint companies doing business from the city of Cleveland, and because of its present Akron list of mail-order customers, it feels that many of them would be lost through any change in address.

PAR. 2. Each of the respondent companies has the same corporate officers, and the capital stock of each is closely held by the members of one family. This same family also own the stock of, control and operate the Phoenix Oil Co., a separate Ohio corporation (not one of the respondents), located in the same yard or tract of land as the respondents. None of the three mentioned companies, as such, holds or controls any stock of the others. The Phoenix Oil Co. engages in the manufacture of soaps, paints, oils, greases, and other products and has other roofing paint customers than respondents. Respondents are selling agencies for the Phoenix Oil Co., although they also buy about 5 per cent of their paint from other manufacturers than the Phoenix Oil Co.

PAR. 3. Respondents are, and each of them is and has been for several years last past, engaged at Cleveland, Ohio, in the business of advertising and selling a product known as "The Rubber City Liquid Asbestos Roofing", and also known as Bell's Liquid Asbestos Roofing", to purchasers located in the several States of the United States, and in causing said product, when sold, to be transported from its place of business through and into other States of the United States to purchasers thereof. In the course and conduct of its aforesaid business each respondent is in competition with other individuals, partnerships, and corporations engaged in commerce between and among the several States of the United States.

PAR. 4. Respondents sell their paint by means of mail orders. The business of respondent The Bell Paint Co. has averaged about \$50,000 a year for the past five years; and the business of respondent The Rubber City Paint Co. has averaged about \$15,000 a year for the

past five years. Competitors of respondents are very numerous, numbering as many as 50 or 60 in Cleveland alone. When orders are taken by the respondents for the so-called liquid asbestos roofing, they are turned over to the Phoenix Oil Co. and the oil company packs the material and makes shipments to the customers designated upon the orders submitted by respondents. The Phoenix Oil Co. is a much larger concern, its business amounting to about \$600,000 each year. Respondents' products are shipped to practically all parts of the United States.

PAR. 5. In the course and conduct of its aforesaid business, each of the respondents, by the use of the word "manufacturers" on letter-heads, has represented and does represent to its purchasers and prospective purchasers in the various States of the United States that it manufactures, makes or compounds the product aforesaid, and in its advertising literature refers to its method of direct sales whereby the profits of jobbers, retailers, and salesmen are eliminated. The true facts are, that the product so advertised and sold by each respondent is not manufactured, made, or compounded by it, but is manufactured by the Phoenix Oil Co., principally, and in some cases by other manufacturers, purchased by the respondents, and by the latter sold to the purchasers.

PAR. 6. In the course and conduct of their business as aforesaid, each respondent, by the medium of circulars, cards, and other advertising matter, through the use of the word "asbestos" in describing its liquid roofing, has represented and does represent to prospective purchasers and purchasers throughout the various States of the United States that its said product is an asbestos product; that the asbestos content of the product is "the finest indestructible rock asbestos", and that "it is fully guaranteed to wear for ten years". Respondents admit in their respective answers that the product in question is not an asbestos product. As a matter of fact, this product is composed of 28.6 per cent volatile thinner and 71.4 per cent non-volatile material, by weight. The larger part (61.7 per cent) of this nonvolatile matter is bitumen, either coal tar, asphalt, or both; the remainder of the aforesaid 71.4 per cent is determined to consist of mineral filler or ash and free carbon, in proportions of 5.7 per cent and 4 per cent respectively. Respondents' said product contains approximately 5.7 per cent asbestos. Lawrence R. Kleinschmidt, a junior chemist of the Bureau of Standards, of 10 years' experience, the last 2 of which have been devoted to specialization in analyzing and testing bituminous materials, including roofing compounds, testified that he would classify respondents' product as an "asphalt" paint. Hubert R. Snoke, an experienced chemist in charge of the

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bituminous testing laboratory at the Bureau of Standards, explained that similar material covered by Bureau of Standards' specification is known as "asphalt fibrous roof coating". Chester A. Holkesvig, technical director of the Tropical Paint & Oil Co. of Cleveland, Ohio, a competing firm, testified that such products are known to the trade as "roof paint"; that very often asbestos is put in roof paint and it is generally accepted that the paint is thereby improved; that the asbestos content in respondents' product is not considered by his company as sufficient to accomplish the advantages for which asbestos is put in roof paint, namely, to give it body and assist in holding it together rather than letting it crack and disintegrate; and that in his opinion about 15 per cent asphalt content would accomplish those advantages and leave the material thin enough to be practically applied to a roof; that the term "asbestos liquid roofing" does not indicate of itself the nature of the liquid portion of the paint at all, while an asphalt liquid paint, to him, definitely means something; that asbestos in connection with roofing brings a picture of durability and fireproofness, and in his opinion would so indicate to the average person's mind.

Actual tests were made and testified to by G. A. Sward, an expert chemist employed by the American Paint & Varnish Manufacturers' Association in its paint laboratories at Washington, D. C. He testified that the purpose of adding asbestos to bituminous paint is to help prevent crawling of the film, and consequent "cracking". It was demonstrated by these tests that an asbestos content of from 13 per cent to 15 per cent (the added asbestos being of the best grade possible to buy) could be applied, and when subjected to exposure in a testing machine, did give the paint body and did assist in holding it together. The three tests made of respondents' product were with the original asbestos content of 5.7 per cent, with an asbestos content of 13 per cent to 15 per cent, and with an asbestos content of 20 per cent, respectively. These tests showed that as the asbestos content is increased, there is a comparative tendency against the film of the paint crawling into small islands but the evidence shows that there is a point somewhere between 15 per cent and 20 per cent at which the asbestos content, if the other proportions of the paint remain the same, would be too high and make the liquid too plastic for the practical purpose of applying it to a roof with a brush. The respondents' product after being made to contain between 13 per cent and 15 per cent asbestos, the other proportions remaining the same, had some of the characteristics of an asbestos roofing. The result of such tests also show that 5.7 per cent of asbestos is totally insufficient to accomplish the aforesaid advantages. In other words,

the paint improves in durability and appearance proportionately to the amount of asbestos added. When subjected to exposure the film of such product tends to crawl or separate into circles or islandlike spots and as the asbestos content was increased in the tests, the size of these islands decreased. The asbestos fibers, like hair in plaster, tend to prevent the crawling and to retard cracking, because the crawling leaves areas between the islands, which areas have less durability than the thicker film and the whole surface less durability than a film of uniform thickness.

While expressly admitting that it is not an asbestos product, respondents object to ceasing from so designating it for the expressed reason that it gives the buyer the idea that it is possibly more fireproof than an ordinary roof paint would be.

From the entire evidence, the Commission finds that the purpose for which asbestos is put in a product of this kind is to assist in preventing an early disintegration, crawling and cracking of the paint, to bind the film and hold it together. There is nothing in the testimony which shows any fire resistance in respondents' product although respondents deliberately engender such a belief in the customers' minds through the use of the word "asbestos". Considering the testimony of the chemists and that the "expression of one excludes the other", fireproofness is not one of the purposes for which asbestos is put in such a compound. The Commission also finds that respondents' product does not contain an amount of asbestos sufficient to add appreciably to its durability through binding of the film or retarding of crawling and cracking as aforesaid.

Respondents' product is not an asbestos product. It is not made from the finest indestructible rock asbestos and its durability is approximately 3 to 5 years instead of 10 years as advertised by respondents.

PAR. 7. Statements of respondents using the word "asbestos" in describing their products, designating themselves as manufacturers, representing that their product contains the finest indestructible rock asbestos, and that such product is fully guaranteed to wear for 10 years, are false and misleading statements, each of which has the tendency and capacity to mislead purchasers and prospective purchasers into the belief that said respondents and each of them have a product containing an asbestos content sufficient to accomplish the advantage for which asbestos is ordinarily put in roofing compound, namely, to assist in holding the film together and preventing crawling or "cracking"; into the belief that said liquid roofing is a fireproof compound; and into the belief that respondents and each of them

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are manufacturers and that a middleman's profit is thereby eliminated; and into the belief that the product contains the finest indestructible rock asbestos; and into the belief that said product will wear for 10 years, when such are not the facts. Each of the aforesaid practices has the tendency and capacity to divert to respondents and each of them the trade of competitors who do not use such methods.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been considered by the Federal Trade Commission on the complaint of the Commission, the answers of respondents thereto, the testimony, evidence, brief, and oral argument of counsel for the Commission, and brief of counsel for the respondents, the oral argument for the respondents having been waived, and the Commission having made its findings as to the facts and its conclusion that respondents have been using unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondents, the Rubber City Paint Co., and the Bell Paint Co., and each of them, and their officers, agents, representatives, and employees, in connection with the advertising, offering for sale and sale, in commerce between and among the several States of the United States and in the District of Columbia, of the product "The Rubber City Liquid Asbestos Roofing" and "Bell's Liquid Asbestos Roofing", respectively, do cease and desist from directly or indirectly—

1. Using the word "asbestos" as a part of the name of such products.

2. Representing to purchasers or prospective purchasers—

- (a) That the respondents (or either of them) manufacture, make, or prepare said product, when such is not the fact.

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(b) That said product contains the "finest indestructible rock asbestos" (either by using the phrase herein quoted or by words of similar import) when such is not the fact.

(c) That the product is fully guaranteed to wear for 10 years, or that it will wear for 10 years, or for any other period, unless and until such product is in fact fully guaranteed to wear for such period so stated and will in fact wear for such period under the normal conditions to which such product is usually exposed in actual use by the consumer.

It is further ordered, That the respondents, The Rubber City Paint Co. and The Bell Paint Co., and each of them, shall, within 60 days after service upon it of a copy of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

Complaint

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IN THE MATTER OF

F. L. MENNIE, AN INDIVIDUAL TRADING AS MINERAL
COAL SAVER COMPANY, MENNIE MANUFACTURING
COMPANY, AND M. & K. MANUFACTURING COMPANYCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1770. Complaint, Mar. 10, 1930—Decision, Jan. 13, 1931*

Where an individual engaged in making a powder composed largely of common salt and in the sale thereof to coal dealers and other purchasers, under the name "Mineral Coal Saver",

- (a) Represented in leaflets, placards, circulars, and other advertising matter that said preparation made poor coal good and good coal better, increased the heat from a given quantity of coal in British thermal units, and gave 20 per cent more heat with less coal, and that said preparation was a chemical mixture of proven worth and scientific merit, the facts being that it did not increase the British thermal units, nor accomplish the other results above claimed, and that the alleged proven worth and scientific merit of the product had not been demonstrated through comparative tests thereof with other products under otherwise identical conditions;
- (b) Represented that such preparation was carefully compounded under the supervision of an experienced chemist employed by said individual, the facts being that it was made by hand by said individual, he had never been employed as a chemist nor, excepting his study of the subject in high school long before, practiced such occupation other than in the compounding of the product in question, and of other products such as furniture polish, extracts, etc., and that a neighboring chemist, occasionally consulted, was never present during the mixing of the product; and
- (c) Represented that said preparation prevented and removed soot and that in it modern science had produced a sootless and smokeless treatment for coal, the facts being that the small per cent of increased release of oxygen accomplished could have no substantial effect on prevention of soot and that said representations were grossly exaggerated and misleading;

With capacity and tendency to mislead and deceive prospective purchasers and ultimate consumers as to the property, composition, effect, results, and value of said product:

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

Mr. PGad B. Morehouse for the Commission.

Mr. James H. Hanley, of Omaha, Nebr., and *Mr. Thomas S. Kennedy*, of Washington, D. C., for respondent.

SYNOPSIS OF COMPLAINT

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

respondent individual, engaged in the manufacture of a compound by him designated "Mineral Coal Saver", made chiefly of common salt,¹ and in the sale of said compound to various coal dealers and other purchasers, and with principal office, factory, and place of business in Omaha, with advertising falsely or misleadingly as to results or nature of products, and money back guarantee, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, in advertisements, placards, cards, circulars, and other advertising matter supplied to his vendees, falsely represents that the product in question is a dry chemical preparation which, dissolved in water and applied to coal according to directions, will make poor coal good, good better, prevent and remove soot, increase heat from given quantity of coal from 22 per cent to 28 per cent in British thermal units, and give 20 per cent more heat with less coal, and that in said preparation modern science has produced a sootless, smokeless, and odorless treatment of coal, the facts being compound in question does not have the properties and will not produce the results claimed, science knows no chemical substance which will produce such results, and use of product as directed has no observable effect.

Respondent further, as charged, through use of a printed slip or tag, guarantees return of the price paid, namely, \$1.25 per pound package, or \$30 per case of 50, if the purchaser is not entirely satisfied with results obtained, said guarantee bearing the printed signature Mineral Coal Saver Co., Omaha, Nebr., facts being that "dissatisfied purchasers have been unable to obtain performance of this guarantee and mail addressed to 'Mineral Coal Saver Co., Omaha, Nebr.', has not been delivered; the post office at Omaha did not have respondent's address and respondent merely maintained a box number in said post office where he received his mail, said box number not being contained in or on said printed slip or tag or other advertising matter of respondent whereby the purchasers and prospective purchasers could communicate with respondent; and respondent in the manner aforesaid has not fulfilled and does not fulfill his said guarantee to his customers."

Respondent, further, as charged, "through the use of such phrases as Modern science, Not an experiment, Carefully compounded in our own factory under the direct supervision of our own chemist, in his aforesaid placards, circulars, and other advertising matter, together

¹ According to the complaint between 90 and 97 per cent of the product is composed thereof, disguised with a coating of dark red iron oxide, constituting about 1½ per cent, other chemicals being also present in very small proportions.

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with the prices at which he sells the said compound, as aforesaid, has represented and does represent to purchasers and prospective purchasers throughout the various States of the United States and has furnished and does furnish such purchasers with the means likewise to represent to the ultimate consumer that his product or compound sold and distributed as aforesaid is a chemical mixture of proven worth, scientific merit and value, and in that manner conceals from the purchasers and prospective purchasers the true composition of his said product or compound, which is fabricated in principal part of common salt worth at the most 10 cents per pound, and a little oxygen yielding material with coloring matter added to camouflage the salt," facts being respondent "has not and does not compound his said product under the direct supervision of a chemist, said compound is not a chemical mixture of proven worth or scientific merit and is not fairly or reasonably worth the prices charged and received therefor, and if the aforesaid purchasers and prospective purchasers were aware of the true composition of respondent's fabricated compound they could not be induced, as they now are and have been induced, to pay respondent the prices aforesaid, it being generally known that common salt used on hot fire with drafts open is of some assistance in doing away with soot."

"The foregoing statements, representations, and practices of the respondent," as alleged, "have the capacity and tendency to mislead and deceive purchasers and prospective purchasers and the ultimate consumers throughout the various States of the United States as to the properties, composition, effect, results, and value of the product so advertised, distributed, and sold and also as to the responsibility of respondent in the fulfillment of his aforesaid guarantee; and the aforesaid acts and things alleged to have been done by the respondent are to the prejudice of the public and the competitors of the respondent and constitute unfair methods of competition in commerce."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, F. L. Mennie, an individual trading as Mineral Coal Saver Co., Mennie Manufacturing Co., and M. & K. Manufacturing Co., charging him with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondent, having entered his appearance and filed his answer to the complaint herein, hearings were had and evidence was introduced upon behalf of the Commission and respondent before a trial examiner of the Commission duly appointed thereto, and said trial examiner having filed his findings of facts herein and counsel for both the Commission and the respondent having filed exceptions thereto,

Thereupon this proceeding came on for consideration on the record herein, briefs and oral arguments of both counsel for Commission and respondent, and the Commission having duly considered the matter and being fully advised in the premises makes this its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, F. L. Mennie, is an individual trading under the name and style of Mineral Coal Saver Co., Mennie Manufacturing Co., and M. & K. Manufacturing Co., with principal office and place of business at 1811 Vinton Street in the city of Omaha, State of Nebraska, and who is now, and for more than one year last past has been, engaged in the business of mixing or compounding a certain dry powder designated and described by him as Mineral Coal Saver. The directions for the use of this powder are to dissolve 1 pound in 6 to 12 gallons of water, depending upon the kind of coal, and apply the solution to the coal by sprinkling. Respondent sells this compound, which is composed in principal part of common salt, to various coal dealers and other purchasers located throughout the various States of the United States, causing the said compound when so sold to be transported from Omaha, Nebr., through and into the other States of the United States, to the purchasers thereof. In the course and conduct of his said business he is in competition with other individuals, partnerships, and corporations engaged in the sale of similar products in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of respondent's business and for the purpose of aiding his purchasers in the resale of the product, respondent caused to be printed and used in connection with his interstate commerce business aforesaid, certain leaflets, placards, cards, circulars, and other advertising matter wherein he made, among others, the representations herein set out. Where coal dealers purchased his product for resale, respondent supplied them with such advertising matter for the purpose of their making the same representations to the ultimate consumer and such coal dealers did use the advertising matter for that purpose:

- (1) That Mineral Coal Saver makes poor coal good and good coal better;
- (2) That Mineral Coal Saver prevents and removes soot;
- (3) That Mineral Coal Saver increases the heat from a given quantity of coal from 22 to 28 per cent in British thermal units;
- (4) That Mineral Coal Saver gives 20 per cent more heat with less coal;
- (5) That Mineral Coal Saver is carefully compounded under the supervision of an experienced chemist employed by respondent;
- (6) That Mineral Coal Saver is a chemical mixture of proven worth and scientific merit;
- (7) That modern science in Mineral Coal Saver has produced a sootless and smokeless treatment for coal.

Commission's Exhibit 6,¹ a display card for dealers, contains a reproduced photograph with the legend: "Briquette Manufacturers at Duluth, treating coal with Mineral Coal Saver." This card also contains the following in conspicuous black letters: "Mineral Coal Saver is not an experiment, but is recommended by many users and several State universities. Sold under a liberal guarantee. Sold here; 20 per cent more heat, less coal."

Commission's Exhibit 12 is a guarantee slip which contains in part: "Mineral Coal Saver burns the gases, producing British thermal units (B. t. u.) from a commodity which otherwise escapes a useless waste."

Commission's Exhibit 13, says in part: "Mineral Coal Saver makes good coal better and poor coal good."

At the time when testimony was taken in this cause, respondent was negotiating a contract with a western coal company for the exclusive national distribution of this product in the United States, and at that time he was compounding it solely for that company and claimed that he had ceased advertising the same. From all the evidence in regard thereto, the Commission finds that there has been no definite or final termination of respondent's usual conduct of his business as aforesaid.

PAR. 3. Analyses of this alleged coal-saving powder were made on behalf of the Commission by the U. S. Bureau of Mines, by the Food, Drug and Insecticide Administration of the U. S. Department of Agriculture, and by a Mr. Alexander D. Bell, a chemist in the Van Cleve Laboratories at Minneapolis, Minn.; and on behalf of respondent by an expert chemist, a Mr. Campen, a consulting chemist in Omaha, Nebr. These analyses were, in the order referred to, as follows:

¹ Exhibits not published.

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1. Bureau of Mines

This material is ordinary salt (NaCl), disguised with a coating of dark red iron oxide. The iron oxide coating constitutes about 1½ per cent of the material.

2. Department of Agriculture

	Per cent
Sodium chloride (salt)-----	85.24
Potassium permanganate-----	4.03
Water, insoluble, oxides of iron and manganese-----	2.51
Sulphates as Na ₂ SO ₄ -----	1.05
Total-----	92.83

3. Van Cleve Laboratories

Sodium chloride-----	97.00
Calcium sulphate-----	2.00
Iron oxide-----	1.00
Total-----	100.00

4. Mr. Campen

Insoluble residue-----	1.23
Sodium chloride (salt)-----	88.08
Potassium permanganate-----	3.67
Potassium chlorate-----	3.00
Moisture and undetermined-----	4.02
Total-----	100.00

Then there is the sworn testimony of Mr. Mennie, stating just what and how much he stirs together to make this powder. It will be noted that each analysis was made from a different sample of the product and shows a slightly different composition as to about 10 per cent and that approximately 90 per cent is common salt. Respondent testified that he puts 240 pounds of salt, using half as much rock salt as fine salt, to which he adds 12 pounds of potassium chlorate and 12 pounds of potassium permanganate, together with a small amount of coloring matter to camouflage the composition. The price he usually pays for the salt is \$1.25 a hundred pounds; for the potassium permanganate, 22½ cents a hundred pounds; and for the potassium chloride, 15 cents a pound. Respondent's testimony is confused throughout as to whether he used potassium *chloride* or potassium *chlorate*. Later he corrected his testimony to show potassium *chlorate*, which is an oxidizing agency, whereas potassium *chloride* is a nonoxidizing agency. The Commission considers from the fact that these materials were mixed by hand in large bulk and packed in small packages that the composition of the compound was

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not constant but variable, not only according to each particular batch of mixture but according to the place in each batch from which the content so analyzed happened to be selected. As will be shown later herein, the only material relevancy that this variability in the composition of the respondent's product has, is whether or not such chemicals, whatever they are, will oxidize sufficiently to accomplish the results claimed by respondent in the advertisements, inasmuch as respondent does not advertise the ingredients. This mixture is sold by the retailer for \$1.25 a pound.

PAR. 4. The actual results of the use of respondent's product as shown by the entire testimony will now be considered. When the treated coal is burned, a rather high yellow crackling flame appears. Another result of the chemicals is the release of from one-half to one and a half per cent additional oxygen in the fire chamber so that there is additional combustion to that extent. Mr. W. H. Campen, a chemist witness called by respondent testified that the potassium permanganate and potassium chlorate contained in Mineral Coal Saver would decompose in a fire at 450 and 750 degrees Fahrenheit, respectively, setting free quantities of oxygen while the burning coal is giving off volatile matter such as carbon and gases; that this freed oxygen aids combustion and causes consumption of the volatile matter that would otherwise escape, thus increasing the heat from a given amount of coal; that in addition to this advantage, the soot is consumed and prevented from forming on the sides and top of the fire compartment where it would act as a non-conductor and reduce the heat efficiency, through decreased conductivity, about 25 per cent; that the salt component in the compound made a yellow flame of greater conductivity which aided in consuming soot and the volatile gases; and that the combination of sale, potassium permanganate and potassium chlorate, had the effect of reducing the ash content because a greater percentage of the coal would be burned, leaving less ash and clinkers.

Respondent also testified to the chemical action and results of the use of Mennie's Mineral Coal Saver, agreeing generally with the foregoing testimony of Mr. Campen.

Respondent's chemist witness did not testify as to the per cent of increased oxidization to be expected to result from the use of this powder but the other expert chemists who testified agreed that the maximum increase in oxidization would be about 1½ per cent and that such increases would not make poor coal good and good coal better. As to the alleged saving of coal, respondent admits that his compound will not produce in a clean furnace the same results as are claimed for it in a sooty furnace.

Such testimony also shows clearly that a British thermal unit is that standard quantity of heat required to raise 1 pound of water 1 degree Fahrenheit, and that the application of this powder to coal as directed can not possibly increase the British thermal units. Respondent's own testimony refutes his claim in that respect. He testified as follows:

I want to say here that we do not increase the British thermal unit of coal. It is printed here and it is deceiving, I will admit, because the British thermal unit of coal can not be changed * * * (R. 59).

On the package, respondent formerly guaranteed his coal saver to save from 25 to 35 per cent of the coal, but he reduced that to 20 per cent, thinking that it would save 20 per cent if the furnace were kept clean, as he said. No scientific test of this particular powder had ever been made prior to the hearings and the highest saving of coal that had ever been reported to respondent was from 16 to 18 per cent. However, the Bureau of Mines had made 16 elaborate 48-hour tests of similar alleged coal savers, composed principally of salt with the addition of a small amount of chemicals having slight oxidization properties. By expert comparison of the analyses of the powders actually so tested with the analysis of this particular powder there is shown to be no different chemical component in respondent's powder which would be capable of effecting any substantial variation in the result of its use. Such tests showed no appreciable effect on the efficiency of the combustion.

The expert testimony of Chemists Bell, Barry, and Hood, who were the acting directors of the United States Bureau of Mines, was in agreement that whether the compound were mixed according to either one or the other of the foregoing formulas it would not make poor coal good and good coal better; it would not increase the heat from a given quantity of coal to any per cent in British thermal units and it would not give 20 per cent more heat with less coal.

The Commission finds that the representations in respondent's advertising to the effect that his product makes poor coal good and good coal better; that it increases the heat from a given quantity of coal to any per cent in British thermal units; that it gives 20 per cent more heat with less coal are false and misleading statements.

The facts, with reference to the compounding of Mineral Coal Saver under the direct supervision of respondent's own chemist, are that respondent makes this powder himself by hand. He studied chemistry in high school over 30 years ago, and has never been employed as a chemist or practiced that occupation other than in the compounding of this particular product together with other products

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such as furniture polish, extracts, leather dressing, and stop-leaks for radiators, which he also makes and sells. . Very occasionally he consults a neighboring chemist, who has never been present during the mixing of the product.

The Commission finds that the representations in respondent's advertising that Mineral Coal Saver is carefully compounded under the supervision of an experienced chemist employed by respondent is a false and misleading statement.

That science does not know of a powder which could produce the effects claimed by respondent is not considered by the Commission as establishing any lack of merit in respondent's product, but it is likewise clear that respondent's advertising, in claiming under the circumstances hereinbefore set out that his product is produced by modern science, and that it is a chemical mixture of proven worth and scientific merit, goes too far and constitutes an absolute misrepresentation of fact, having a capacity and tendency to mislead prospective purchasers, and the Commission so finds.

With reference to respondent's claim that Mineral Coal Saver prevents and removes soot, the testimony of Mr. W. H. Campen, respondent's chemist witness, and of respondent himself has been considered in paragraph 4, supra, in connection with other claims. Giving every possible weight to that testimony, it nevertheless appears clearly to the Commission that soot formation can be prevented by the use of Mineral Coal Saver only in so far as additional oxygen is released from the chemicals. According to respondent, no more than 8 per cent additional oxygen could be released, and Mr. Campen did not give any per cent in his testimony.

Alexander D. Bell, an expert witness called on behalf of the Commission, was a chemist of the Van Cleve Laboratories and was formerly assistant city chemist of St. Paul; also during the war he was a chemist at the United States Bureau of Standards, and he testified positively that while potassium permanganate, when dissolved in water, has some oxidizing properties (and in the formula shown by the analysis of the Food, Drug and Insecticide Administration would have not over 1 per cent of such qualities), when placed on a hot fire, the permanganate would be decomposed and the oxidizing properties destroyed, and the destruction thereof would not add sufficiently to the heat of the fire in which it was placed, to have any action.

Erwin H. Berry, for 20 years a chemist with the Food and Drug Administration of the United States Department of Agriculture, in considering the formulas shown by the analyses of the Bureau of

Mines and the Van Cleve Laboratories, testified positively that there were no oxidizing properties contained therein and with reference to the formula shown by his own analysis (the second one quoted in paragraph 3, supra) said that it contained very little oxidizing properties—"I don't suppose you could ever notice it, to tell the truth."

As to the removal of soot, after consideration of all the testimony on the point, it appears to the Commission that such removal is effected by blowing, scraping, or ignition. The ignition may be accomplished in either one of two ways, i. e., by raising the temperature of the fire chamber to the ignition point of the soot or by lowering the ignition point of the soot through the application of chemicals. The above small per cent of increased release of oxygen could have no substantial effect on the prevention of soot, nor could it, per se, raise the temperature of the fire chamber appreciably. The formula used does not comprise chemicals capable of lowering the ignition point of soot. Therefore, the use of this powder, by the weight of the evidence, will not prevent or remove soot. By the use of said powder, the formation of soot is retarded and diminished to the extent, however slight, of the additional oxidization and many users, without accurate or scientific comparative tests, have been satisfied with results.

Mr. B. M. Barndollar, friend of respondent and printer of some of his advertising, testified that he used Mineral Coal Saver, treating his coal according to directions on the package; that it had the effect of removing and preventing soot in his furnace and giving what he considered more heat from less coal; that these results were obtained from inferior coal; as he didn't find it necessary to use the treatment on the better grade of coal; that this treatment reduced ash and clinkers and that the results were very pleasing to him; that by putting on a limited amount of treated coal he increased the heat in his house to a marked degree. This witness said on cross-examination that he did not go to the trouble of treating the coal except when he needed it; that the furnace had to be pretty well filled up with soot to induce him to treat his coal. Formerly he burned zinc etchings with wood and obtained the same results as he did with Mineral Coal Saver.

Mrs. Marian F. Alvord, witness for respondent, testified that she used Mineral Coal Saver and that it kept her furnace clean and free from soot and reduced the smoke; that in the winter of 1928-29 she did not use Mineral Coal Saver and burned 16 tons of coal, and in the winter of 1929-30, which she thought was a more severe winter, she burned only 13½ tons, using Mineral Coal Saver; that there were less

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ashes when using the Coal Saver and she found it unnecessary to sift the ashes; that clinkers did not have to be taken out, but were broken up and consumed; that the house was cleaner; that before using Mennie's Mineral Coal Saver she burned semianthracite coal at \$12 or \$12.75 per ton; with the Mineral Coal Saver she burned a less expensive grade at \$6 to \$7 per ton; that this treatment made slack coal burn well. Witness and husband have been friends of respondent for six or seven years.

Mr. Fred T. Dohse, coal and feed dealer, testified for respondent that he had used Mennie's Coal Saver and had found results highly satisfactory; that he liked it so well that he treated 50 tons of coal to sell to his customers and that he received repeat orders on account of this; that it keeps the soot down and gives a brighter flame, better heat and better results; that he burned less coal and could burn slack; that he had less ash and less clinkers; that he believes it cut down the smoke; several customers who received treated coal praised it without knowing that it had been treated; that he made no actual comparative test. Respondent had about 75 letters from responsible persons, customers who had used Mineral Coal Saver and had expressed themselves as satisfied and pleased with its use.

The Commission considers that such testimonial letters were properly excluded upon objection by attorney for the Commission but the fact that such letters had been received by respondent and were complimentary to his product having been admitted, the Commission has taken that fact into its consideration. It is believed that such testimony does not weigh as heavily as the testimony of disinterested expert chemists for the reason that if two tests be run, one with improper firing methods or improper control and the other with better methods or a cleaner furnace, the cause of the difference in results can not be assigned to any one of the many variables. People may be self-deceived when unfamiliar with the necessities of carefully planned tests and while the Commission does not doubt the good faith of witnesses like Messrs. Barndollar and Dohse and Mrs. Alvord, it feels that it is not possible to give such testimony the same weight as that of experienced disinterested chemists. Respondent admitted his powder did not make the coal absolutely sootless or entirely smokeless.

A hot fire, with proper manipulations of drafts and a high flame can cause ignition of soot and removal thereof by burning while respondent's powder or any other inflammable materials are being consumed. Likewise it is clear that normally a saving of coal will result through cleaning the soot out of a heating plant. The Commission finds that Mineral Coal Saver does not make coal sootless or

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smokeless and that respondent's representations that his powder will prevent and remove soot and that modern science in this compound has produced a sootless or smokeless treatment for coal are grossly exaggerated and misleading statements.

PAR. 5. Paragraph 3 of the complaint charged that respondent did not fulfill his refund guarantee to his customers by reason of his failure to print his box number or street address on such guarantee. That as a result, mail addressed to Mineral Coal Saver Co., Omaha, Nebr., was not delivered. The facts in reference thereto are found to be that Mr. Mennie acted as his own salesman, and was away from home for long periods of time. His was a one-man business, and no arrangements were made for taking care of his mail during his absence, except when he would request the Omaha postmaster to forward it to him. On other occasions his mail would await his return in his post-office box, but sometimes registered letters would be returned to the sender by that post office before respondent returned to claim them or sent in such forwarding requests. Considering this evidence, the Commission finds that respondent does not fail or refuse to make good his refund guarantee.

PAR. 6. The use by the respondent of the foregoing statements, representations, and phrases in his advertising, placards, cards, and circulars has a capacity and tendency to mislead and deceive prospective purchasers and ultimate consumers throughout the various States of the United States as to the properties, composition, effect, results, and value of the product by him so advertised, distributed, and sold.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent thereto, the testimony taken and briefs filed herein, and oral arguments of counsel, and the Commission having made its findings as to the facts and its conclusion that the respondent has

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

It is now ordered, That the respondent, F. L. Mennie, an individual trading as Mineral Coal Saver Co., Mennie Manufacturing Co., and M. and K. Manufacturing Co., his agents, representatives, servants, and employees in connection with the sale or offering for sale, in interstate commerce, of the chemical product or compound, sold by respondent under the name of Mineral Coal Saver, or any product of substantially the same composition, do cease and desist from making or publishing the following statements and representations, or statements and representations of like or similar import and effect:

1. That such a compound makes poor coal good or good coal better;

2. That such a compound prevents or removes soot;

3. That such a compound increases the heat from a given quantity of coal to any extent in British thermal units;

4. That such a compound gives 20 per cent more heat with less coal;

5. That such a compound is carefully compounded under the supervision of a chemist unless and until such a time as the respondent actually employs some one especially skilled in the science of chemistry to directly supervise the compounding of same;

6. That such a compound is a chemical mixture of proven worth or scientific merit unless and until after a comparative test of the use of said product with the nonuse of said product, under otherwise identical conditions, its worth shall have been demonstrated scientifically;

7. That "modern science in such a compound has produced a sootless or smokeless treatment for coal."

It is further ordered, That the complaint herein be and the same is hereby dismissed as to paragraph 3 thereof on the ground that the charges contained in said paragraph have not been proven.

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

Syllabus

IN THE MATTER OF

LA LASINE INTERNATIONAL, INCORPORATED

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

Docket 1845. Complaint, June 16, 1930—Decision, Jan. 13, 1931

Where a corporation engaged in domestic manufacture, from a French formula, of an antiseptic for the mouth, throat, and general use, and in the sale thereof to vendees in the United States, principally, and also in sale and distribution thereof in foreign countries from sales offices in Paris and Rome,

- (a) Represented falsely in advertisements in newspapers and periodicals, that the preparation instantly reached every inch of mouth membrane, killing all poisonous decay germs, and gave protection to membranes of mouth and throat for hours after use, and enumerated 30 out of 50 common diseases as having their origin in the mouth area and coupled an appeal to help check meningitis with recommended use of the product in question, notwithstanding fact that said preparation was neither a preventive nor cure for meningitis, nor the other diseases enumerated;
- (b) Represented therein that the United States Government had "tested and passed La Lasine as an antiseptic because it kills germs," and that it fulfilled the exacting requirements of the Pure Food and Drug Act, facts being that analysis of the preparation in question afforded no basis in fact for such claims, which had neither the approval nor indorsement of the aforesaid bureau or of any department of the Government, and that label on bottles, cartons, and accompanying folders was approved by Department of Agriculture only in so far as said label related to contents of bottle and preparation's therapeutic value; and
- (c) Set forth on said cartons "LA LASINE—The Famous French Formula—Antiseptic . . . C'est Francais! C'est Merveilleux! . . . La Lasine International, Inc., New York, U. S. A. PARIS—ROME—NEW YORK"; With capacity and tendency to induce members of the public to purchase preparation as and for one imported from France, and to divert trade from competitors engaged in sale and distribution of preparations for similar purposes, without employing such practices:

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

Mr. James W. Nichol for the Commission.

Horowitz & Horowitz, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Delaware corporation engaged in the manufacture, sale and distribution of an alleged antiseptic preparation under the trade name of La Lasine, and with place of business in New York City, with advertising falsely or misleadingly and misbranding or mislabeling as to nature and results of product, Government indorsement, and source or origin, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, makes false and misleading claims and representations in advertising and describing its said product in newspapers, magazines, and periodicals, and on the cartons thereof and folders therein contained, to the effect that the product reaches every inch of the large surface of mouth membrane, killing all poisonous decay germs, gives protection for hours through its medication-holding deposit, prevents (by implication) 30 serious diseases, and also meningitis, and, through use of French words and phrases, that it is an imported instead of domestic preparation.¹

Said statements and representations, as alleged, "are calculated to and have had and have the capacity and tendency to mislead and deceive the public into purchasing said preparation, under the erroneous belief (a) that it is manufactured or produced in some country other than the United States of America, and imported by respondent into said United States of America prior to said purchase; and/or (b) that the claims made for the antiseptic properties of said preparation La Lasine have, as a result of tests, been passed upon and approved by some department of the United States Government, or bureau or branch thereof; and/or (c) that the claims made for the antiseptization of the mouth and throat by the use of said preparation, and statements and representations as to the curative or prophylactic properties of said preparation La Lasine are, in fact, true; all to the prejudice of the public and competitors and in violation of the aforesaid section.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Com-

¹ Various statements, above described, and as alleged in detail in the complaint, are reproduced in the findings below, the facts having been stipulated.

mission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served a complaint upon the respondent, La Lasine International, Inc., charging said respondent with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act. The respondent thereafter having made, executed and filed an agreed statement of facts, in which it is stipulated and agreed by and between the respondent and the Federal Trade Commission that the said Commission may take said agreed statement as the facts in this proceeding and in lieu of testimony in support of the charges stated in said complaint or in opposition thereto, and that said Commission may proceed upon said agreed statement of facts, to make its findings as to the facts, and to enter such order as it may deem proper, without briefs or argument in support of the same; and the Federal Trade Commission, having duly considered the record and being now fully advised in the premises, makes this its report, stating its findings as to the facts:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware. It was incorporated in July, 1927, with an authorized capitalization of 100,000 shares of Class A, no par value, 50-cent dividend stock, and 390,000 shares of no par value common stock—there being of the Class A stock 2,939 shares issued and outstanding, and of common stock 385,912 $\frac{2}{3}$ shares issued and reserved for issue. Its office and principal place of business is located at 505 Fifth Avenue, in the City and State of New York; and its officers are William D. Young, president, J. J. Donlan, vice president, and O. M. Young, treasurer. Since its organization, respondent has been and now is engaged in the manufacture, sale, and distribution of a preparation under trade name of La Lasine, which it advertises and sells as an antiseptic for the mouth and throat, and general use. The said preparation is made from a French formula perfected by one Laval in 1911, and was introduced into the United States of America in 1924 by La Lysine Fornari International, Boston, Mass. Since 1927 it has been distributed by the respondent. Said preparation is manufactured at respondent's plant at 529-a Broadway (South) Boston, State of Massachusetts, and is sold in packages of varying sizes and prices, being shipped in cartons containing one dozen packages each. The bulk of said preparation is shipped from respondent's said plant in Boston, Mass., and from public warehouses in said city of Boston, principally to vendees in the United States of

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America; distribution in certain foreign countries is made from respondent's sales offices in Paris, France, and Rome, Italy. Respondent causes its said preparation, when sold to vendees in the United States of America, to be shipped from its said plant in Boston, Mass., and from public warehouses in said city of Boston, into and through other States of the United States and the District of Columbia, to the vendees thereof at their respective points of location. In the course and conduct of its business, respondent has been and is in competition with individuals, partnerships, and other corporations engaged in the sale and distribution, in interstate commerce, of other preparations used for similar purposes.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent, in offering for sale and selling its said preparation La Lasine, caused and causes the same to be advertised to the general public: (a) In newspapers, magazines, and periodicals sold and distributed between and among the various States of the United States and the District of Columbia; (b) on the cartons in which the bottles containing said preparation were and are packed and sold; and (c) on the folders accompanying the bottles containing said preparation, on the inside of said cartons—all as more particularly described below.

With the exception of an advertisement published in the Indianapolis Star of January 7, 1930, referred to below, the respondent has not advertised in newspapers since January 1, 1930. Among the magazines and periodicals in which respondent has advertised are: Vogue, Harper's Bazaar, Life, and Liberty. At the present time, respondent does not advertise in newspapers, magazines, or periodicals.

In advertisements inserted by respondent: (a) In the Chicago Daily Tribune of September 24, 1929 (full page); (b) in the Des Moines, Iowa, Register & Tribune of October 8, 1929 (half page); and (c) in other leading newspapers sold and distributed between and among the various States of the United States and the District of Columbia—appeared the following language:

LA LASINE DESTROYS FOOD FILM

Its amazing ability to mix with mouth secretions enables it to instantly reach every inch of mouth membrane and kill all poisonous decay germs. The medication-holding deposit La Lasine leaves on the membrane of the mouth and throat not only destroys food film, but actually gives protection for hours after; *80 square inches inside your mouth where poisonous decay germs breed. In this area 30 serious diseases start.* Research at the Academy of Medicine

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reveals the startling fact that of fifty common diseases, thirty find their origin in the mouth area. They are:

Aortic	Grippe	Rhinitis
Arthritis	Influenza	Scarlet fever
Asthma	Laryngitis	Sinusitis
Bronchitis	Leprosy	Smallpox
Catarrh	Measles	Sore throat
Chicken pox	Parotitis	Tonsilitis
Common colds	Pleurisy	Tuberculosis
Croup	Pleuro-pneumonia	Typhoid
Diphtheria	Phthisis	Typhoid-pneumonia
Erysipelas	Pneumonia	Whooping cough

Is it any wonder, then, that thousands are now turning to La Lasine for protection against dangerous food film? THE UNITED STATES GOVERNMENT has tested and passed La Lasine as an Antiseptic because it kills germs. La Lasine has fulfilled the exacting requirements of the Pure Food and Drug Act.

An advertisement inserted by respondent in the Indianapolis (Indiana) Star of January 7, 1930, reads as follows:

HELP CHECK MENINGITIS

The Health Department asks your cooperation to prevent the spread of meningitis. Keep mouth and throat free from germs by using a mild, but effective antiseptic. La Lasine, officially tested by the United States Government, is an effective modern antiseptic. La Lasine, the modern mouth and skin antiseptic.

At the time of the insertion of said advertisement, there was prevalent in Indianapolis, Ind., an epidemic of spinal meningitis.

An advertisement inserted by respondent in the magazine Liberty for January 25, 1930, contains the following language:

Its effective protection lasts for hours after use.

On the folders accompanying the bottles in which respondent's said preparation La Lasine is marketed, appear the following statements:

La Lasine kills germs effectively
La Lasine kills germs

On the cartons in which the bottles containing respondent's said preparation La Lasine were and are packed and sold, appears the following language:

LA LASINE.—The Famous French Formula—ANTISEPTIC. C'est Français! C'est Merveilleux! La Lasine International, Inc., New York, U. S. A.—PARIS—ROME—NEW YORK.

PAR. 3. The preparation La Lasine, sold and distributed by respondent in interstate commerce, as described in paragraph 1 hereof, since 1927 has been manufactured by said respondent at its plant in the city of Boston, State of Massachusetts, and has not been and

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is not now imported by respondent from any foreign country into the United States of America prior to said sale and distribution. The use by respondent of the expressions "La Lasine—The Famous French Formula", "C'est Francais! C'est Merveilleux!" and "Paris—Rome", on the cartons in which the bottles containing its said preparation La Lasine were and are packed and sold, has the capacity and tendency to induce members of the public to purchase said preparation under the erroneous belief that it is imported from France.

PAR. 4. Analyses of respondent's said preparation La Lasine, made by the Food, Drug, and Insecticide Administration of the United States Department of Agriculture, afford no basis in fact for the claims made for the antiseptic properties of said preparation, as set forth in the advertisements quoted in paragraph 2 of these findings; nor do such claims have the approval or indorsement of said Food, Drug, and Insecticide Administration of the United States Department of Agriculture, or any other department of the United States Government, or bureau or branch thereof. The label now used by respondent on the bottles in which its said preparation La Lasine is marketed, on the cartons in which said bottles are packed, and on the folders accompanying said bottles, has the approval of the Food, Drug, and Insecticide Administration of the United States Department of Agriculture, in so far as the statements on said labels relate to contents of said bottle and the therapeutic value of said preparation La Lasine.

PAR. 5. The claims made by respondent for the antiseptization of the mouth and throat, by the use of its said preparation La Lasine, and statements and representations as to the curative or prophylactic properties of said preparation, as set forth in the advertisements quoted in paragraph 2 of these findings, were and are misleading and deceptive, in that said preparation can not instantly reach every inch of mouth membrane; the use of said preparation can not give protection, for hours after use, to the membranes of the mouth and throat; said preparation is not a preventive or cure for the thirty diseases referred to in the advertisement in said paragraph 2 as having their origin in the mouth area; and said preparation is not a preventive or cure for meningitis.

PAR. 6. The practices of the respondent in connection with the advertising, sale, and distribution of its product La Lasine, as hereinbefore set forth, have the capacity and tendency to divert trade from individuals, partnerships, and other corporations engaged in the sale and distribution, in interstate commerce, of other preparations used for similar purposes, who are in competition with respondent, and who do not employ the same or similar practices.

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CONCLUSION

The practices of said respondent, La Lasine International, Inc., under the conditions and circumstances set forth in the foregoing findings, are to the prejudice of the public and of respondent's competitors, and are unfair methods of competition in interstate commerce, and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the statement of facts agreed upon by the respondent and counsel for the Commission, and the Commission having made its findings as to the facts, with its conclusion that the respondent has violated the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondent La Lasine International, Inc., its officers, directors, agents, representatives, servants, employees, and successors—in connection with the advertising, offering for sale, and sale, in interstate commerce, of its preparation La Lasine—shall hereafter cease and desist:

(1) From the use of the expressions "La Lasine—The Famous French Formula", "C'est Francais! C'est Merveilleux!" and "Paris—Rome", and other or equivalent French or other foreign words or expressions, on the cartons in which the bottles containing its said preparation La Lasine are packed and sold, in advertising, and on business correspondence or elsewhere—except and unless said words or expressions, wherever used, are accompanied by qualifying language, equally conspicuous in character or type, clearly and affirmatively indicating that the said preparation La Lasine is manufactured in the United States of America—unless and until said preparation La Lasine is, in fact, manufactured in some country other than the United States of America.

(2) From the use of expressions or statements which, directly or indirectly, import or imply that its preparation La Lasine, as advertised, has received the indorsement of the Government of the United States, when such is not the case.

(3) From the use of expressions or statements which, directly or indirectly, import or imply: That said preparation La Lasine, when

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used as a mouth wash, instantly reaches every inch of mouth membrane and kills all poisonous decay germs; that it gives protection, for hours after use, to the membranes of the mouth and throat; that it is a preventive or cure for aortic, arthritis, asthma, bronchitis, catarrh, chicken pox, common colds, croup, diphtheria, erysipelas, grippe, influenza, laryngitis, leprosy, measles, parotitis, pleurisy, pleuropneumonia, phthisis, pneumonia, rhinitis, scarlet fever, sinusitis, smallpox, sore throat, tonsilitis, tuberculosis, typhoid, typhoid-pneumonia, whooping cough, or meningitis; or any other statement or expression which does not truthfully represent or describe the antiseptic or therapeutic properties of said preparation or the results which may be obtained from its use.

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

Complaint

IN THE MATTER OF

ADIEL VANDEWEGHE AND DAVID FESHBACK

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

Docket 1383. Complaint, May 12, 1926—Decision, Jan. 27, 1931

Where an individual engaged in importation and sale of Australian and New Zealand rabbit skins and in the dyeing thereof so as to resemble fur of genuine dyed sealskin, labeled the backs thereof "superior seal" and, later, "bonded northern seal" or "Baltic seal" in large and conspicuous letters, and, in small and inconspicuous letters, "seal dyed coney" or "dyed coney", as the case might be; and

Where a garment manufacturer, purchaser of such skins from said individual, sold garments made thereof labeled "superior seal" as above set forth;

With effect of placing in the hands of retail dealers means enabling them to mislead and deceive the consuming or purchasing public into buying said garments as and for those made of genuine sealskins, and of thereby diverting trade from competitors to said individual, and garment manufacturer:

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

Mr. James M. Brinson for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Adiel Vandeweghe, with principal office and place of business in New York City, and operating a factory at Ridgefield Park, N. J., engaged in dressing and dyeing Australian and New Zealand rabbit skins purchased and imported by him, through use of a process causing the fur of such skins to resemble that of genuine sealskins sufficiently to mislead and deceive the purchasing public as to garments made from such rabbit skins, and respondent David Feshback, engaged in New York City in the manufacture, sale, and distribution of fur garments, with misrepresenting product and misbranding or mislabeling, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent Vandeweghe, as charged, engaged as above set forth, causes each of the aforesaid rabbit skins dyed by it as above described, to be marked on the back thereof with a trade-mark contain-

ing the words "superior seal", and respondent Feshback purchases from said first named dyer respondent a substantial quantity of aforesaid rabbit skins thus dyed and resembling appearance of genuine seal fur as above set forth, though greatly inferior to seal-skins in pliability and wearing qualities of the leather and luster and wearing qualities of the fur, and sells and distributes garments made therefrom through retail dealers in the several States and the District of Columbia.

The designation, as alleged, "by the dyer respondent of rabbit skins dyed by him as 'superior seal' and the marking of such skins with a trade-mark containing the words 'superior seal', results in placing in the hands of the retail dealers to whom the manufacturing respondent and other manufacturers sell garments made from such skins, the means by which such retail dealers can perpetrate a fraud upon the purchasing public by representing that such garments are made from superior seal fur, the designation the dyer respondent has given the skins from which such garments are made, and by displaying to customers and prospective customers the trade-mark containing the words 'superior seal', to support their false representations that such garments are made from genuine seal fur, and such means have been employed and are now being employed by numerous retail dealers in such garments and numerous persons have been thereby induced to purchase such garments in the belief that such garments were in fact made of genuine seal fur."

Respondents' said practices, engaged in, as above set forth, for about three years last past, cause trade to be diverted to respondent manufacturer, from competitors, many of whom manufacture garments made of rabbit fur and market the same under designations, labels, and trade-marks disclosing such fact to the purchasing public, and others of whom manufacture and/or sell at wholesale garments made of genuine seal fur, and said practices further enable such respondent "to sell garments made by him from skins treated by the dyer respondent herein, in cases where, but for the use of such practices, such trade would go to competitors who do not use such practices"; all to the prejudice of the public and of respondents' competitors and in violation of the aforesaid section.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

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

Federal Trade Commission issued and served a complaint upon Adiel Vandeweghe and Davis Feshback, hereinafter called respondents, charging them with the use of unfair methods of competition in violation of the provisions of said act.

The respondents entered their appearance, applied for and received extension of time for answer to the complaint, but failed and neglected within the time prescribed therefor, to file an answer, or at all. Thereafter on August 8, 1929, testimony was taken and evidence received, after due notice to respondents, before an examiner of the Commission theretofore duly appointed for such purpose, whereupon the proceedings regularly came on for decision before the Commission, on the complaint, testimony, and evidence, record and argument of counsel, and the Commission having duly considered the same, now makes this its report in writing and states its findings as to the facts and conclusion drawn therefrom, as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Adiel Vandeweghe has engaged for several years last past in the City of New York and State of New York in the business of buying and importing Australian and New Zealand rabbit skins, and dressing and dyeing such skins or causing them to be dressed and dyed by others, and in their sale, and transportation when sold, from his place of business in the City of New York and State of New York, to purchasers consisting of fur dealers and manufacturers of fur garments in the various States of the United States. When dyeing such skins himself or causing them to be dyed by others a process has been used therefor, which causes the fur of such rabbit skins to resemble in appearance the fur of genuine dyed sealskin. It has been and was the practice of the respondent Adiel Vandeweghe at the time when complaint was issued herein, that is to say, on or about May 12, 1928, to cause rabbit skins dyed and sold by him to be marked on the backs thereof with a trade-mark containing the words "superior seal" unaccompanied by any word or words showing that the skins so marked have been or were dyed rabbit skins. The practice by said respondent of marking rabbit skins sold by him with the trade-mark "superior seal" was discontinued about the time complaint issued as aforesaid, and thereupon he caused, and ever since has caused, rabbit skins sold by him in interstate commerce, to be dyed by various corporations engaged in such business, chiefly by the Great Northern Fur Dyeing & Dressing Co., Inc., and by Philip A. Singer & Bro., Inc. Rabbit skins dyed for him by said Great Northern

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Fur Dyeing & Dressing Co., Inc., and offered for sale and sold by him in interstate commerce, bear the trade-mark "bonded northern seal" in large and conspicuous letters and near them the words "sealed dyed coney" in small and inconspicuous letters. The rabbit skins dyed for him by Philip A. Singer & Bro., Inc., are marked with the words "Baltic seal" in large and conspicuous letters accompanied by the words "dyed coney" in small and inconspicuous letters.

In the course and conduct of his said business, respondent Adiel Vandeweghe has been, was, and still is, in competition with individuals, partnerships, and corporations engaged in the sale and distribution of rabbit skins and sealskins in interstate commerce.

PAR. 2. At the time complaint issued herein or on May 12, 1926, respondent David Feshback was, and for several years prior thereto had been, engaged in the manufacture, in the City of New York and State of New York, of fur garments from rabbit skins dressed and dyed by respondent Adiel Vandeweghe and purchased from him for such purpose, and in offering for sale and selling such garments in the various States of the United States still bearing on the backs of the rabbit skins from which made, the trade-mark "superior seal" placed thereon, as described in paragraph 1 hereof, by respondent Adiel Vandeweghe. Said manufacturing respondent David Feshback caused such garments so manufactured by him from rabbit skins dyed by respondent Adiel Vandeweghe, when sold, to be transported from his place of business in the City of New York and State of New York to purchasers in the various other States of the United States.

PAR. 3. The practice of respondent Adiel Vandeweghe in selling in interstate commerce to fur dealers and manufacturers of fur garments rabbit skins dyed to resemble dyed sealskins and marked and designated "superior seals" has placed, and the practice of respondent David Feshback in manufacturing fur garments from rabbit skins so dyed and marked by respondent Adiel Vandeweghe, and of selling such garments in interstate commerce bearing such trade-mark or designation "superior seal", has likewise placed, in the hands of retail dealers in the various States of the United States, the means by which they have been enabled to mislead and deceive the consuming or purchasing public into buying garments made from rabbit skins so marked or designated, in the belief that such garments have been made from or consisted of genuine sealskins and thereby to divert trade to respondents from their competitors.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard on complaint issued and served upon respondents Adiel Vandeweghe and David Feshback and on testimony, evidence, briefs and arguments of counsel, and the Federal Trade Commission having made its report stating its findings as to the facts with its conclusion that said respondents Adiel Vandeweghe and David Feshback have been violating the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is therefore ordered, That respondent David Feshback and respondent Adiel Vandeweghe, cease and desist, the former, David Feshback from offering for sale or selling in interstate commerce garments made from dyed rabbit skins bearing the trade brand, trade-name, trade-mark, designation or description "superior seal" or "seal", except and unless it is made prominently to appear in immediate conjunction with the word "seal" in conspicuous type or letters apt and adequate words clearly showing that such garments have been or are made from rabbit skins; and the latter, Adiel Vandeweghe from stamping, branding, marking, or labeling as "superior seal" or "seal" rabbit skins dyed by it for respondent David Feshback or others engaged in the manufacture and sale of fur garments in interstate commerce, except and unless it is made prominently to appear in immediate conjunction with the word "seal" in conspicuous type or letters apt and adequate words clearly showing that such garments have been or are made from rabbit skins.

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

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IN THE MATTER OF

PHILIP A. SINGER & BRO., INCORPORATED, AND HERMAN GELBERG AND BENJAMIN SCHWARTZ, PARTNERS, TRADING UNDER THE NAME AND STYLE OF GELBERG & SCHWARTZ

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

Docket 1384. Complaint, May 12, 1926—Decision, Jan. 27, 1931

Where a corporation engaged for garment manufacturers in dressing and dyeing rabbit skins so as to resemble the appearance of the much more pliable, lustrous, and better wearing superior dyed sealskins or genuine beaver skins, stamped the backs thereof "Baltic seal" or "Baltic beaver", as the case might be, with effect of aiding, assisting, and abetting in distribution and sale of garments made therefrom; and

Where manufacturers of such garments sold same to retail dealers, with aforesaid trade-mark "Baltic seal" or "Baltic beaver", and, later, the words, in much smaller and less conspicuous letters, "dyed coney", stamped on the back of the pelts, and covered only by the usual linings;

With result of placing in hands of retail dealers the means enabling said retailers in turn to mislead and deceive the consuming public into purchase of such garments as and for those made of genuine seal or genuine beaver skins, and with tendency to divert trade from competitors to themselves:

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

Mr. James M. Brinson for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Philip A. Singer & Bro., Inc., a New Jersey corporation, with principal place of business at Newark, engaged in the business of dressing and dyeing rabbit skins on contract for the owners for such skins, through use of a process resulting in the fur resembling that of genuine seal or beaver sufficiently to mislead and deceive the purchasing public as to garments made from such rabbit skins, and respondents Gelbert & Schwartz, partners, engaged in New York City in the manufacture of fur garments and sale and distribution thereof to retailers in New York and other States, with misrepresenting product and misbranding or mislabeling, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent corporation, as charged, engaged as above set forth, stamps on the back of each of the skins thus treated by it its trade-mark "Baltic seal" or "Baltic beaver", as the case may be, and respondent partners make garments from large quantities of such rabbit skins, thus dressed, dyed, and trade-marked for them by the aforesaid dyer respondent, and resembling, as above set forth, appearance of genuine seal fur or genuine beaver fur, as the case may be, though greatly inferior to skins of seals and beaver in pliability and wearing qualities of the leather and luster and wearing qualities of the fur.

The designation, as alleged, by the dyer respondent of rabbit skins treated by it as above set forth, "as 'Baltic seal' and 'Baltic beaver', respectively, and the marking of such skins with trade-marks containing the words 'Baltic seal' and 'Baltic beaver', respectively, results in placing in the hands of the retail dealers to whom the manufacturing respondents sell garments made from such skins the means by which such retail dealers can perpetrate a fraud upon the purchasing public, by representing that such garments are made of Baltic seal fur, or Baltic beaver fur, the designations the dyer respondent has given the skins from which such garments are made, and by exhibiting to customers and prospective customers the trade-mark stamped on the back of each of the skins from which said garments are made, which trade-marks contain either the words 'Baltic seal' or 'Baltic beaver' to support their false representations that such garments are made from genuine seal fur or genuine beaver fur, and such means have been employed and are being employed by numerous retail dealers in such garments, and numerous persons have been thereby induced to purchase such garments in the belief that such garments are in fact made of genuine seal fur or genuine beaver fur."

Said practices of respondents, engaged in for about three years last past, cause trade to be diverted to aforesaid manufacturing respondents, from competitors, many of whom make garments from rabbit skins and market the same under "designations, labels, and trade-marks which disclose to the purchasing public" that such garments are made from rabbit skins, and others of whom manufacture and/or sell at wholesale "garments made of genuine seal fur and genuine beaver fur", and further enable such respondents "to sell garments made by them from rabbit skins treated by the dyer respondent, in instances wherein but for the use of such practices such trade would go to competitors who do not use such practices", and the placing by the dyer respondent of its trade-marks as above set forth on the back of rabbit skins thus dressed and dyed by it further causes trade to be diverted to it from competitors "who do

not stamp rabbit skins dressed and dyed by them with trade-marks which contain the names of animals other than rabbits"; all to the prejudice of the public and competitors in violation of the aforesaid section.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served a complaint upon Philip A. Singer & Bro., Inc., and Herman Gelberg, and Benjamin Schwartz, hereinafter called respondents, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having entered their appearance and filed answer, testimony and evidence were duly received and recorded and filed in the office of the Commission and thereafter the proceeding regularly came on for decision before the Commission on such complaint, answer, testimony and evidence and brief of counsel, and the Commission having duly considered the same, now makes this its report and states its findings as to the facts and conclusion as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Philip A. Singer & Bro., Inc., is now, and for several years last past, has been a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with principal place of business at Newark in said State, and during said period of time has been and now is engaged in the business of dressing and dyeing rabbit skins, principally on contracts for the owners thereof. Said respondent has used and uses a process for dressing and dyeing rabbit skins which causes the fur of such skins to resemble in appearance the fur of genuine dyed sealskins or genuine beaver skins, and these skins so treated by respondent are greatly inferior to the skins of seals and beavers, in that the pliability and wearing qualities of the leather and luster and wearing qualities of the fur of skins so treated by respondent are greatly inferior to those qualities of genuine sealskins and genuine beaver skins, and the fur so produced from rabbit skins resembles a genuine seal fur and genuine beaver fur in appearance only. Said respondent has engaged in the practice of causing to be stamped or marked on the backs of rabbit skins so dressed and dyed by it, its trade-mark Baltic seal, or Baltic beaver, as the case may be.

PAR. 2. Respondents Herman Gelberg and Benjamin Schwartz were until complaint issued herein on or about May 12, 1926, partners trading under the name and style of Gelberg & Schwartz, and were engaged in the manufacture of garments from rabbit skins which they had caused and were then causing to be dyed by respondent Philip A. Singer & Bro., Inc., and in the sale of such garments to dealers in fur garments in the various States of the United States. They caused such garments when sold to be transported from their place of business, which was situated in the City of New York and State of New York to purchasers located in the various other States of the United States, in competition with individuals, partnerships, and corporations engaged in the sale in commerce among and between the various States of the United States of garments made from rabbit skins, sealskins, and beaver skins.

Large quantities of rabbit skins were so dressed, dyed, and trade-marked by respondent Philip A. Singer & Bro., for respondents Gelberg & Schwartz until dissolution of said partnership, which occurred shortly after issuance of complaint herein, May 12, 1926, and for other manufacturers of fur garments, theretofore and thereafter, by its said process and from such skins so dressed, dyed, and stamped by respondent, Philip A. Singer & Bro., Inc., for respondents Gelberg & Schwartz, and for other manufacturers of fur garments, respondents Gelberg & Schwartz have made and other manufacturers of fur garments have made coats and other garments which have been, and were sold and distributed by said manufacturers, including said manufacturing respondents, Gelberg & Schwartz, until their said dissolution, among and between the various States of the United States. As a result of such practice fur coats and other garments have been sold by retail dealers in the various States of the United States manufactured from rabbit skins dyed and dressed by respondent Philip A. Singer & Bro., Inc., bearing on the back of the pelts composing said garments the trade-mark Baltic seal or Baltic beaver covered only by the usual lining or linings of said coats or garments.

After service of complaint in this proceeding, respondent Philip A. Singer & Bro., Inc., adopted the practice of stamping on the back of each of the rabbit skins dressed and dyed by it for the owners thereof, in addition to, and immediately below its said trade-marks Baltic seal or Baltic beaver the words "dyed coney." Such additional words "dyed coney" have appeared and continue to appear below such trade-mark in much smaller and less conspicuous letters than those in which the words "Baltic seal" or "Baltic beaver" appear.

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PAR. 3. The practice of respondent Philip A. Singer & Bro., Inc., of dyeing rabbit skins of respondents Gelberg & Schwartz so as to resemble dyed sealskins or dyed beaver skins, and in returning them when dyed, to said respondents Gelberg & Schwartz, stamped or marked "Baltic seal" or "Baltic beaver", aided, assisted, and abetted said manufacturing respondent in the distribution and sale of garments made from such rabbit skins in interstate commerce, enabling them to put into the hands of retail dealers in the various States of the United States the means by which they in turn have been enabled to mislead and deceive the consuming public into the purchase of garments made from rabbit skins so dyed and marked, as and for garments made from genuine sealskins or genuine beaver skins. Such practice has had the tendency to divert trade to respondents from their competitors.

CONCLUSION

The above and foregoing practices of respondents under the conditions and circumstances described in these findings as to the facts are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding having been heard on complaint issued and served upon respondents, Philip A. Singer & Bro., Inc., and Herman Gelberg, and Benjamin Schwartz, trading as Gelberg & Schwartz, their answer thereto, testimony, evidence, brief and argument of counsel, and the Federal Trade Commission having made its report in writing stating its findings as to the facts with its conclusion that said respondents have been and are violating the provisions of an act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is therefore ordered, That respondents Herman Gelberg and Benjamin Schwartz, partners, trading under the firm name and style of Gelberg & Schwartz, and Philip A. Singer & Bro., Inc., respectively, cease and desist, the former, Herman Gelberg and Benjamin Schwartz, from offering for sale or selling in interstate commerce garments made from dyed rabbit skins bearing the trade brand, trade name, trade-mark, designation, or description "Baltic seal" or

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“Baltic beaver” or “seal” or “beaver,” except and unless it is made prominently to appear in immediate conjunction with the word “seal” or the word “beaver” in conspicuous type or letters apt and adequate words clearly showing that such garments have been or are made from rabbit skins; and the latter, Philip A. Singer & Bro., Inc., from stamping, branding, marking or labeling as “Baltic seal,” or “Baltic beaver,” or “seal,” or “beaver” rabbit skins dyed by it for respondents Herman Gelberg and Benjamin Schwartz or for others engaged in the manufacture and sale of fur garments in interstate commerce, except and unless it is made prominently to appear in immediate conjunction with the word “seal” or the word “beaver” in conspicuous type or letters apt and adequate words clearly showing that such garments have been or are made from rabbit skins.

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

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

Docket 1726. Complaint, Dec. 2, 1929—Decision, Jan. 27, 1931

Where a corporation engaged in sale of preserves, canned fruits, pickles, vegetables, sea foods, and other articles direct to the consuming public, adopted and employed a trade and corporate name including the word "preserving" and displayed and used the same in all its business affairs and on its letterheads, envelopes, order blanks, labels, and other printed matter, notwithstanding the fact that it neither packed, preserved, nor prepared any of the products sold by it, but purchased same from the preservers and packers thereof, who, at its direction, affixed to the containers of the products so packed, labels bearing the name of the product and its said corporate name; with effect of misleading and deceiving purchasing public into buying said products from it as purchased direct from the packer or preserver thereof at a saving of jobber's or wholesaler's profit and of diverting to it trade from competitors actually packing, preserving, or otherwise preparing the canned and preserved products sold by them, and with capacity and tendency so to do:

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

Mr. G. Ed. Rowland for the Commission.

Mr. Samuel M. Birnbaum, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation engaged in the sale of preserves, canned fruits, pickles, vegetables, sea foods, and other articles direct to the consuming public, with office and principal place of business in New York City, with soliciting customers of competitor through aid of former employee thereof, passing off and/or misrepresenting source or origin of product, business status, identity and connections, simulating labels and order blanks of competitors, and using misleading corporate name, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, through the instrumentality of one I. S. Horowitz, its vice president, organizer, and former employee of

Braden's California Products Co., Inc., until his discharge,¹ engaged as alleged, in the following acts and practices:

Called upon and solicited customers of said Braden's California Products Co., through said Horowitz and through its salesmen, whom Horowitz supplied with names of the Braden's Co.'s customers for such purpose, and through said Horowitz and its other salesmen "misled and deceived said customers into purchasing the products of respondent, in the mistaken belief that they were purchasing the same products which they had formerly purchased from said Braden's California Products Co., Inc., and that they were still dealing with that company", said Horowitz (1) instructing respondent's salesmen to represent to prospective customers that the products offered were exactly the same as those theretofore sold to the customer by the Braden's Co., and came from the Braden's plant in California, (2) telling customers theretofore solicited by him while in the employ of the Braden Co., that respondent had taken over said company's business and was its successor and, in other instances that said Braden Co. was under new management and that respondent was selling the identical products theretofore sold said customers by said Horowitz when a representative of the Braden Co., (3) admitting to former customers, advised of his discharge from the employ of the Braden Co., said fact but stating that he had been reemployed, was now said Braden Co.'s authorized representative, and reading to the customer a fictitious letter purporting to be from said company reemploying him and authorizing him to take orders for it, and (4) calling on said last named customers, and, without advising them that he no longer represented said Braden Co., asking them if they had placed their orders for the current year and taking said orders for respondent, and leading the customer to believe that he, said Horowitz, was still representing said Braden Co.

"All of said statements and representations made by said Horowitz and the other salesmen of respondent concerning the business of said Braden's California Products Co., Inc., and said respondent, as alleged, are untrue, false, and deceptive, and the use of such false, deceptive, and untrue statements and representations by respondent has enabled said respondent to sell its products as and for the products of said Braden's California Products Co., Inc., and has caused

¹ During said employment, as alleged, said Horowitz solicited orders from said company's customers and prospective customers, had access to the names of many other customers of said company, and, prior to his discharge by said company, induced another employee thereof to give him the names of those from whom said company "bought its various products, together with the prices paid therefor, and endeavored to induce and persuade said other employee to give him other confidential information relating to his employer's business including lists of all the customers of said Braden's California Products Co., Inc."

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many of the public to purchase the products of said respondent in the belief that they were purchasing the products of that company."

Respondent further, as charged, in the course and conduct of its said business and with the intent to sell its products as and for those of said Braden Co., "has adopted labels and order blanks for its products which are so similar in general appearance and design to the order blanks and labels used by Braden's California Products Co., Inc., as to mislead and deceive purchasers of its products, and to cause them to buy its said products in the belief that they are purchasing the products of said Braden's California Products Co., Inc."

Respondent further, as charged, "has adopted and uses on its letterheads, envelopes, order blanks, labels, and other printed matter the name 'California Preserving Co., Inc.," notwithstanding the fact that respondent does not "preserve or otherwise prepare any of the products which it sells, but buys all of said products from the makers thereof", with "the tendency and capacity to mislead and deceive the public into the belief that respondent preserves or otherwise makes the products which it sells, and to purchase said products in that belief."

The above and foregoing acts and practices "of respondents are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of section 5."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondent above named, charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act.

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

Thereupon this proceeding came on for final hearing, and counsel for the Federal Trade Commission and counsel for respondent having submitted briefs and having argued the case before the Commission, and the Commission having duly considered the record, and being now fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized and existing by virtue of the laws of the State of New York, with its office and

principal place of business at 41 East Twenty-first Street, in the City of New York, in said State. It is engaged in the sale of preserves, canned fruits, pickles, vegetables, sea foods, and other articles direct to the consuming public, in various States of the United States. In the course and conduct of its said business, respondent is in competition with other individuals, partnerships, and corporations engaged in the sale of preserves and canned goods and the transportation thereof in commerce between and among the various States of the United States.

PAR. 2. Respondent was organized and began doing business in 1928, and its officers are Morris Pelz, president; I. S. Horowitz, vice president; and Samuel Pelz, secretary and treasurer. Respondent sells its products through salesmen, who call on prospective purchasers and take orders for its various products for future delivery, collecting 25 per cent of the amount due with the order, the balance to be paid on delivery of the goods. Respondent causes its said products so sold to be transported from its said principal place of business in the City of New York, into and through other States of the United States to said purchasers at their respective points of location.

PAR. 3. Respondent adopted for its trade name "California Preserving Co., Inc.", and was incorporated under said name under the laws of the State of New York, in June, 1928. Since that time respondent has at all times used said name in all of its business affairs, and on its letterheads, envelopes, order blanks, labels, and other printed matter. Respondent does not pack, preserve, or otherwise prepare any of the products which it sells, but buys all of said products from the preservers and packers thereof, which said preservers and packers affix to the containers in which the products are packed, by direction of respondent, labels bearing the name of the product, together with the corporate name of respondent.

PAR. 4. The word "preserving" in the corporate or trade name of a company indicates and means to the trade and purchasing public that the company using it packs, preserves, or otherwise prepares the canned and preserved products which it sells. The use by respondent of the name California Preserving Co., Inc., is false and misleading because it indicates to the purchasing public that respondent company actually packs, preserves, or otherwise prepares the products which it sells, when such is not the fact, and such use has the capacity and tendency to, and does, mislead and deceive the purchasing public into purchasing products from respondent in the erroneous belief that they are buying direct from the packer or preserver of such products, and that by so doing they save the profit of the jobber or wholesaler, and such use by respondent tends to

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and does divert trade to respondent from competitors who actually pack, preserve, or otherwise prepare the canned and preserved products which they sell.

CONCLUSION

The practices of respondent, California Preserving Co., Inc., under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

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

It is now ordered, That the respondent, California Preserving Co., Inc., its officers, agents, representatives, and employees, in connection with the sale of preserves, canned fruits, vegetables, sea foods, and other articles in commerce between the several States of the United States and in the District of Columbia, or between the District of Columbia and any State of the United States, cease and desist from:

Using as part of its corporate or trade name, or on its letterheads, envelopes, order blanks, labels, and other printed matter, the word "preserving", or any other word or words which indicates, implies, or creates the impression that said respondent packs, preserves, or otherwise prepares the food products which it sells, unless and until said respondent owns, operates, or actually controls a plant in which it in fact packs, preserves, or otherwise prepares the food products sold by it.

And it is further ordered, That respondent shall within 60 days after the service upon him of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which this order has been complied with and conformed to.

Complaint

IN THE MATTER OF

GOLDEN FUR DYEING COMPANY, INCORPORATED, AND
SAMUEL JACOBS AND ISIDOR SACHS, PARTNERS,
DOING BUSINESS UNDER THE TRADE NAME AND
STYLE JACOBS & SACHS

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

Docket 1381. Complaint, May 11, 1926—Decision, Jan. 29, 1931

Where a corporation engaged in dressing and dyeing skins of fur bearing animals, stamped "Golden Seal", and, inconspicuously and later, "Seal dyed coney" on large quantities of rabbit skins dyed black for garment manufacturers, and employed the words "The seal of safety", and said "Golden Seal" trade-mark in trade periodical advertising, and, conspicuously, the statement, "The stamp of approval on sealines that guarantees brilliance of lustre", etc., and the admonition to "Look for the Golden Seal", with result of aiding, abetting, and promoting sale by said manufacturers of garments made from rabbit skins as "sealines"; and

Where said garment manufacturers caused rabbit skins to be so dyed, and made into coats without removal of said "Golden Seal" mark or designation and advertised such coats as "sealines"; with effect of enabling dealers to open linings thereof in various places and display said "Golden Seal" mark or the subsequently employed "Bonded northern seal", without exposing aforesaid later qualification, and thereby mislead purchasers and prospective purchasers;

With effect of placing in hands of retail dealer vendees means enabling them to mislead or deceive the consuming or purchasing public, and with capacity and tendency to divert trade to said corporation and manufacturers from competitors offering and selling garments made from genuine sealskins and those made from furs of other animals, truthfully described or designated:

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

Mr. James M. Brinson for the Commission.

Burnstine & Geist, of New York City, for respondent Golden Fur Dyeing Co., Inc., and *Mr. Morse S. Hirsch*, of New York City, for respondents Samuel Jacobs and Isidor Sachs.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Golden Fur Dyeing Co., Inc., a New York corporation with principal place of business in New York City, engaged in

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dressing and dyeing Australian and New Zealand rabbit skins on contract for owners of such skins, through use of a process causing the fur to resemble the appearance of that of genuine sealskins sufficiently to mislead and deceive the public as to garments made of such rabbit skins, and respondent partnership Jacobs & Sachs, engaged in New York City in the manufacture and sale of garments made of rabbit skins, with misrepresenting product and misbranding or mislabeling, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent corporation, as charged, engaged as above set forth, causes to be stamped on the back of the rabbit skins dyed by it as aforesaid, on contract for respondent manufacturers, its trade-mark containing the words "Golden Seal", and respondent manufacturers utilize such rabbit skins thus dyed and marked and resembling genuine seal, though greatly inferior thereto in pliability and wearing qualities of the leather, and luster and wearing qualities of the fur, for manufacture of garments which it sells and distributes to retail dealers throughout the various States and the District of Columbia.

The designation, as alleged, "by the dyer respondent of rabbit skins dyed by it as 'Golden Seal', and by marking such skins with a trade-mark which contains the words 'Golden Seal', results in placing in the hands of the retail dealers to whom the manufacturing respondents and other manufacturers sell garments made from such skins, the means by which such retail dealers can perpetrate a fraud upon the purchasing public by representing that such garments are made from 'Golden Seal' fur, the designation which the dyer respondent has given the skins from which such garments are made, and by displaying to the customers and prospective customers the trade-mark containing the words 'Golden Seal' stamped by such dyer respondent upon the skins, from which such garments are made to support their false statements that such garments are made from genuine seal fur, and such means have been employed and are being employed by numerous retail dealers in such garments, and numerous persons have been thereby induced to purchase such garments in the belief that such garments are in fact made from genuine seal fur."

Said practices of respondents, engaged in, as above set forth, for about three years last past, cause trade to be diverted to manufacturing respondents, from competitors, many of whom make garments from rabbit skins and market the same under designations, labels, and trade-marks disclosing to the purchasing public such fact, and others of whom manufacture and/or sell at wholesale garments made

of genuine seal fur; all to the prejudice of the public and respondents' competitors, and in violation of the aforesaid section.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served a complaint upon The Golden Fur Dyeing Co., Inc., and Samuel Jacobs and Isidor Sachs, partners, doing business under the trade name and style "Jacobs & Sachs", hereinafter called respondents, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondents having entered appearances and filed answers, testimony and evidence were duly received and recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for decision before the Commission on such complaint, answer, testimony and evidence received, briefs and arguments of counsel, and the Commission having duly considered the same now makes this its report in writing and states its findings as to facts and conclusion as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Golden Fur Dyeing Co., Inc., is now, and for several years last past has been, a corporation organized and existing under and by virtue of the laws of the State of New York, with principal place of business in the city of Brooklyn and State of New York. It was engaged for several years prior to April 1, 1928, at 271 Siegel Street in said city of Brooklyn, N. Y., in the business of dressing and dyeing the skins of fur-bearing animals in pursuance of contracts with the owners thereof.

PAR. 2. Respondents Samuel Jacobs and Isidor Sachs are now and for several years last past have been partners trading under the firm name and style of Jacobs & Sachs, with their principal place of business in the City of New York and State of New York. Said respondents have been, during all such period of time, and now are, engaged in the manufacture of fur garments and their sale in and among the various States of the United States, and in the transportation of such garments when sold to purchasers in the various other States of the United States than the State of New York, in competition with individuals, partnerships, and corporations engaged in the sale and distribution of fur garments in interstate commerce. They have more particularly engaged in the advertisement

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and sale of such commerce of a line of garments made from rabbit skins described or designated by them as "Sealines."

PAR. 3. Respondents Jacobs & Sachs during the years 1925 and 1926, and until some time in 1927, caused several hundred thousand skins of rabbits to be dyed black for them by respondent Golden Fur Dyeing Co., Inc., which thereupon caused to be impressed or stamped on the backs of such skins its trade-mark consisting of the words "Golden Seal" inclosed in a circle $2\frac{1}{2}$ inches in diameter. Such rabbit skins so dyed and marked by respondent Golden Fur Dyeing Co., Inc., were delivered from time to time by it to respondents Jacobs & Sachs, and thereafter were made into coats for women by respondents Jacobs & Sachs without removal therefrom of the mark or designation "Golden Seal." About 40 of such skins were ordinarily used by respondents Jacobs & Sachs for each coat so made, which when made had the words "Golden Seal" in 40 different places on the inside of the coat except where affected by cutting the skins in construction of the coat.

PAR. 4. Respondent, Golden Fur Dyeing Co., Inc., advertised in a magazine known to the fur trade generally in the United States as The American Fur Designer during the period when it was dyeing rabbit skins for respondents Jacobs & Sachs, as follows: "The seal of safety," with its trade-mark containing the words "Golden Seal" appearing immediately below such words "The seal of safety," followed by the words in large and conspicuous letters "The stamp of approval on sealines that guarantees brilliance of luster, fastness of color, and maximum of wear and service." Its advertisement also contains the following: "Look for the Golden Seal."

PAR. 5. Respondents Jacobs & Sachs in manufacturing coats for women from dyed rabbit skins marked, described or designated as stated in paragraph 3 hereof and in selling them advertised as "sealines" placed in the hands of dealers in the various States of the United States the means by which they have been and were enabled by opening the lining of such coats in various places on the inside of the garments to show the mark or designation "Golden Seal" to purchasers and prospective purchasers and thereby to mislead them into buying such garments in the erroneous belief that they had been or were made from genuine sealskins.

The acts and practices of respondent Golden Fur Dyeing Co., Inc., in dyeing rabbit skins black for respondents Jacobs & Sachs and in marking them with the words "Golden Seal", together with its advertisement of such "Golden Seal" as the "Stamp of approval on sealines", which it represented in such advertisement should be sought as a guarantee for various desirable qualities, have aided, assisted, abetted, promoted, and subserved the sale in interstate com-

merce by respondents Jacobs & Sachs of their garments made from rabbit skins, as "sealines", by furnishing said respondents Jacobs & Sachs with the means to put, and which they have put, into the hands of retail dealers, for sale of such garments as and for garments made from genuine sealskins.

The aforesaid acts and practices of respondents Golden Fur Dyeing Co., Inc., and Samuel Jacobs and Isidor Sachs have also had the capacity and tendency to divert trade to said respondents from competitors offering for sale and selling in interstate commerce, garments made from genuine sealskins, and garments made from the furs of other animals than sealskins truthfully described or designated.

PAR. 6. Sometime after complaint issued herein, that is to say, after May 11, 1926, respondent Golden Fur Dyeing Co., Inc., altered its said trade-mark by adding the words "Seal dyed coney" in small and inconspicuous letters at a distance of an inch or an inch and a quarter beneath the lower edge of the circle inclosing the words "Golden Seal". The words "Seal dyed coney" are so located with reference to said trade-mark that dealers in fur garments can open the lining thereof and display the words "Golden Seal" without exposure of the words "Seal dyed coney". Respondent Golden Fur Dyeing Co., Inc., used this method for marking skins dyed by it until 1928, when it transferred its business, exclusive of its real property whereon its plant was and is situated, to the Great Northern Fur Dyeing & Dressing Co., Inc., and it now owns or controls 20 per cent of the capital stock of said Great Northern Fur Dyeing & Dressing Co., Inc.

PAR. 7. Respondents Jacobs & Sachs discontinued in 1927 the manufacture of coats or other garments from rabbit skins dyed for them by respondent Golden Fur Dyeing Co., Inc., and thereupon caused, and ever since have caused, their rabbit skins used for the manufacture of garments to be dyed for it by the Great Northern Fur Dyeing & Dressing Co., Inc. This company has caused, and causes such skins dyed by it for respondents Jacobs & Sachs to be marked on the backs thereof with the words "Bonded northern seal" in large and conspicuous letters, accompanied by the words "Seal dyed coney" in small and inconspicuous letters. The discontinuance in 1927 of the practice of manufacturing coats from rabbit skins dyed for it by respondent Golden Fur Dyeing Co., Inc., has been followed by the practice of manufacturing garments from rabbit skins branded by the said Great Northern Fur Dyeing & Dressing Co., Inc., which continues to put into the hands of retail dealers to whom respondents Jacobs & Sachs sell their products the means by which they may mislead or deceive the consuming or purchasing public.

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CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard on complaint issued and served upon respondents Samuel Jacobs and Isidor Sachs, partners trading under the firm name and style of Jacobs & Sachs, and the Golden Fur Dyeing Co., Inc., answers thereto, testimony and evidence, briefs and arguments of counsel, and the Federal Trade Commission having made its report in writing stating its findings as to the facts, with its conclusion that respondents have been and are violating the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is therefore ordered, That respondents Samuel Jacobs and Isidor Sachs, partners, trading as Jacobs & Sachs, and the Golden Fur Dyeing Co., Inc., respectively, cease and desist, the former Samuel Jacobs and Isidor Sachs, from offering for sale or selling in interstate commerce garments made from dyed rabbit skins bearing the trade brand, trade name, trade-mark, designation or description "Golden Seal" or "Seal," except and unless it is made prominently to appear in immediate conjunction with the word "seal" in conspicuous type or letters apt and adequate words clearly showing that such garments have been or are made from rabbit skins; and the latter, Golden Fur Dyeing Co., Inc., from stamping, branding, marking, or labeling as "Golden Seal," or "sealines" or "seal" rabbit skins dyed by it for respondents Samuel Jacobs and Isidor Sachs or for others engaged in the manufacture and sale of fur garments in interstate commerce, except and unless it is made prominently to appear in immediate conjunction with the word "seal" or the word "sealines" in conspicuous type or letters apt and adequate words clearly showing that such garments have been or are made from rabbit skins.

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

Complaint

IN THE MATTER OF
ARTLOOM CORPORATION TRADING AS ARTLOOM
RUG MILLS

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

Docket 1675. Complaint, June 29, 1929—Decision, Feb. 9, 1931

Where a corporation engaged in the manufacture and sale of rugs and carpets, labeled, advertised, and sold as "Wiltons" certain less costly, lower priced rugs, notwithstanding the fact that said rugs were not so made that the warp pile yarns were continued in, or carried into the subsurface of the fabric when not required at the surface for the design or pattern, if any, and were not Wiltons as ever generally considered by the trade; with effect of deceiving retailers and ultimate purchasers throughout the various States into the erroneous belief that in purchasing the rug fabric in question they were purchasing one of that kind, quality, and construction properly known and designated as a genuine Wilton rug fabric and of diverting trade from competitors to it and with capacity and tendency so to do:

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

Mr. PGad B. Morehouse for the Commission.
Fraley & Paul, of Philadelphia, Pa., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Pennsylvania corporation engaged in the manufacture and sale of tapestries, pile fabrics and rugs, and with principal place of business in Philadelphia, with misrepresenting product, advertising falsely or misleadingly and misbranding or mislabeling in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, designates, represents, describes, advertises, labels, and brands as Wilton rugs certain of its rugs, not manufactured "in accordance with that definite and specific process" for making rugs known and properly described as Wilton rugs and not having the definite and specific characteristics of rugs so manufactured, with the effect of misleading and deceiving many persons into purchasing the rugs in question as and for those made in accordance with such process, and with the characteristics, and qualities of the rugs long known and described as Wilton rugs, and with the capacity and tendency so to mislead and deceive; all to

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the injury and prejudice of the public and respondent's competitors, and in violation of the aforesaid section.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondent, Artloom Corporation, trading as Artloom Rug Mills, charging it with the use of unfair methods of competition in interstate commerce, in violation of the provisions of said act.

Respondent, having entered its appearance and filed its answer to the complaint herein, hearings were had and evidence was introduced upon behalf of the Commission and respondent before a trial examiner of the Commission duly appointed thereto.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Artloom Corporation, is a corporation organized under and by virtue of the laws of the State of Pennsylvania, having its principal office and place of business in the city of Philadelphia, in said State. In the course of its business, the respondent in addition to its corporate name, uses the trade names of "Artloom Rug Mills" and "Philadelphia Tapestry Mills." During all of the time since the organization of respondent it has been and is now engaged in the business of manufacturing, among other products, rugs and carpets for floor coverings and selling same to purchasers located in States other than the State of Pennsylvania and causing the said products to be transported from the city of Philadelphia into and through many of the States of the United States to the purchasers thereof. There are in the United States seventeen or eighteen manufacturers of Wilton fabrics, exclusive of the respondent, operating approximately 2,400 looms. These manufacturers compete with each other and with the respondent, and all are engaged in interstate commerce.

PAR. 2. During all of the time since its organization, respondent has manufactured and sold in interstate commerce as aforesaid among other rugs a certain type of rugs in size usually 9 by 12 feet, which will be more particularly described hereafter and which rug the respondent has labeled "Bagdad", and which it now and for several years last past has called and labeled "Bagdad Seamless Jacquard

Wilton". In certain of its advertisements in trade journals and through periodicals circulated in the trade and generally throughout the United States, the respondent has referred to and called said rug a Wilton. Large department stores in Philadelphia, New York, Detroit, and elsewhere are purchasing from respondent and reselling to the public the "Bagdad" type of respondent's rug fabric as and for a genuine Wilton and have done so during the past five or six years.

Many definitions of the word "Wilton" as applied to carpets and rugs were put in evidence, as well as a large number of technical authorities¹ on the point, extending over a period of the last hundred years. All these have been duly considered by the Commission, together with the sworn testimony of several witnesses, some expert in the art and others having knowledge of the present and past trade practices in regard to such fabrics. With the exception of a definition formulated for respondent by Mr. A. S. Browne, a professional expert witness, and the expert testimony of Samuel J. Johnston, a salaried employee of respondent, these definitions, descriptions of, and testimony concerning all Wilton fabrics which display a design on the surface, call for a loom with a jacquard attachment substantially as illustrated in Commission's Exhibits Nos. 23, 26 and 36,² and in substance describe the process to be as follows: Each yarn, which in the process of weaving becomes an element in producing the design, is dyed in the skein, one color throughout its entire length.

¹ See list of appended authorities as follows:

TECHNICAL WORKS
FROM WHICH EVIDENCE WAS ADDUCED BY
CONSENT OF COUNSEL

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| <p>"<i>Textile Fabrics.</i>" By Geo. H. Johnson (1927)—pp. 178-9; 183-4.</p> <p><i>Farmers Bulletin No. 1919</i>, a publication of the U. S. Dept. of Agriculture (1921) on "Floors and Floor Coverings."</p> <p><i>Encyclopedia Britannica</i> (11th Ed.) Vol. XV, article on "Jacquard, Joseph Marie." Also (14th Ed.) Vol.,— article "Carpet Manufacture."</p> <p>"<i>Jacquard Machine Analyzed and Explained.</i>" E. A. Possalt, pp. 108, 111-112.</p> <p>"<i>Common Commodities in Industries.</i>" R. S. Brington (1919).</p> <p><i>New International Encyclopediz</i> Vol. IV (2d Ed.) (1918) article on "Carpets and Rugs."</p> <p>"<i>Century of Carpet and Rug Making In America,</i>" Bigelow Hartford Co. (1925) pp. 72, et seq., also 91 and 95.</p> <p>"<i>Carpet and Rug News.</i>"</p> <p><i>International Library of Technology</i>, Vol. 81, Sec. 82.</p> <p>"<i>Carpets and Rugs</i>" (1923), Otis Allen Kenyon of the Hoover Company—Plate illustrations.</p> | <p>"<i>European and American Carpets and Rugs</i>" (1929). Cornelia Bateman Faraday.</p> <p>"<i>The Art of Weaving</i>" (1844). Clinton G. Gilroy.</p> <p>"<i>Carpet Manufacture.</i>" Fred Bradbury (1904) pp. 201-2; 127-28.</p> <p>"<i>Carpet and Rugs.</i>" Robert S. Beaumont (1924) pp. 353-4.</p> <p><i>British Abridgment of Patents</i> (1861) 1620-1856 A. D., pp. 307; 318-320.</p> <p>"<i>Textile Textis</i>" (1917). Draper Co.</p> <p>"<i>Knight's Cyclopediz of the Industry of All Nations</i>" (1851) pp. 535-539 article on "Carpets"; also p. 538.</p> <p>"<i>Cyclopedia of Useful Arts</i>" (1852). Charles Tomlinson.</p> <p>"<i>Knight's American Mechanical Dictionary,</i>" Vol. III (1882) pp. 2490; 2589; 2776. Article entitled "Tapestry Carpet."</p> <p><i>A Dictionary of Arts, Manufactures and Mines</i> (1854). Andrew Ure, Vol. I, p. 381.</p> <p>"<i>The Mechanism of Weaving</i>" (1894). T. W. Fox.</p> |
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² Various exhibits and figures referred to in the "findings" not published.

After the dyeing process is completed each warp yarn is wound on separate spools placed in frames, in number from two to six, depending on the number of colors in the design, and is drawn from the spools to the loom. In such process the fabric must be woven from spools because the requirements of the design call for varying quantities of yarn of different colors. The jacquard is a pattern-selecting mechanism which controls a harness over and above the loom by means of cards perforated in accordance with the requirements of the design. Passing through the perforations are long wires or needles which, as the rug is being woven, select from each frame the appropriate colored strands of warp yarn and lift them in raised loops to the surface of the fabric, thus forming the pattern. At the same time the yarns from the remaining frames are being carried into the fabric in a "buried" or "dormant" position. These latter yarns run through the body of the fabric underneath the pile, until the jacquard allows the lifted yarns to drop to the "dormant" position, at the same time lifting a frame of "buried" yarns to be woven into the surface design. This results in a weave such as is shown in figure 1, which is a cross-section of a five-frame Wilton. The warp threads not selected by the jacquard will always be found running continuously through the center of the fabric. The raised loops are cut at the surface of the rug for a Wilton—uncut for a Brussel.

There is found to be another Wilton weave for fabrics which do not display a design on the surface. In this, typified by Commission's Exhibit No. 38 (plain Wilton-Green), the warp or pile yarns come from two or more frames of spools, the jacquard being used or not, at the option of the manufacturer, the yarns on all of the frames being of a uniform color throughout, only one frame of yarn appearing on the surface of the fabric and the yarns from the remaining frames being carried into the body of the fabric and buried.

A Wilton rug which displays a design is in appearance a rug with a close-cut, velvety pile. The colors in the pattern are sharply defined and there is no "bleeding" or blending of one color into another, due to the fact that each separate strand of warp yarn is dyed in the skein one solid color throughout its entire length. A Brussels rug is made substantially by the same method as a Wilton. The Brussels fabric originated in Brussels, Belgium, and about the year 1740 French weavers were brought from France to England by the Earl of Pembroke and introduced into the town of Wilton the making of loop pile or Brussels carpeting, which was followed in the course of development by the cut pile fabric to which the town gave its name. The foregoing descriptions of weave and process are consistent with the history of the Brussels and Wilton fabrics. The chief difference between a Wilton and a Brussels rug is that in the Wilton the pile is cut, either by the

withdrawal from the woven loops of a flat wire with a knife-like end, or with a circular band or reciprocating knife, depending on whether the fabric is woven on a narrow 27-inch or on a broad 9-foot loom. There is slightly more worsted yarn than is needed for Brussels, because the cut ends require more binding into the fabric. Three shots of weft are usual in the binding of a Wilton, whereas in Brussels, the loops being uncut, two shots of weft are sufficient. Also, Wilton is generally woven a little closer than Brussels in the up and down way of the carpet. The number of colors in a Wilton pattern is limited to six, and five is a very good grade. Because only one frame of worsted warp threads appears at one time on the surface and the other frames of worsted warp threads are bound into the body where they do not show from the surface, a Wilton is an expensive fabric as to quality of worsted yarn consumed and the added amount of worsted gives resistance to wear as well as resiliency.

The Commission finds that while there was no attempt on the part of the industry, prior to 1925, to specifically define the word "Wilton" as applied to floor coverings, all the writers on the subject of carpets and rugs, both ancient and modern, are in substantial agreement that the process of weaving the figured or patterned Wilton is as hereinbefore described with the exception of one variation in the history of the industry, presented in connection with the Whytock patent, hereinafter referred to. The foregoing principles involved in the definition of a Wilton rug have been known to buyers in the trade for at least 50 years, and the term "Wilton" has come to signify a particular distinction as to quality in the minds of the general public.

PAR. 3. The type of respondent's rug represented by its "Bagdad Seamless Jacquard Wilton" is not made in accordance with the processes above described and the resulting product does not answer the same description. (See fig. 2, which is the cross section of the Bagdad type of weave.) This rug is a multi-colored cut-pile fabric displaying a design on the surface, as evidenced by respondent's Exhibit No. 10 and Commission's Exhibits Nos. 2 and 20. Respondent's Exhibits Nos. 8 and 9 represent the same weave in a plain, one-color nonpatterned "Bagdad." These plain "Bagdad" fabrics are not put out by the respondent to-day, nor made by it except upon special orders, and there have been no such special orders for a long time.

Power looms for the manufacture of different cut-pile floor coverings came into commercial use in the United States about 1850, and up to six or seven years ago all carpets and rugs were woven on looms 27 inches wide, which necessitated sewing together the 27-inch strips, in order to make a rug. Within the past six or seven years there has been, and still is, a demand for seamless rugs, and that demand has compelled many of the manufacturers to put in broad looms on which

rugs 9 by 12 feet can be woven. The respondent was the first manufacturer of carpets and rugs in the United States to make use of the broad loom. There is no patent on the broad loom, but respondent's method of dyeing the yarn used in making the "Bagdad" is protected by a patent issued to J. Zimmerman, one of respondent's officers, on August 22, 1916.

In the "Bagdad" process the warp yarns proceed from a creel or frame holding not less than 800 spools of individual pile yarn. This yarn is not colored. The spools are arranged in horizontal tiers, one above the other, for a 9-foot-wide loom. This arrangement does not differ materially from that used in connection with the Wilton loom, except that in the former the spools are in five tiers instead of two or more frames of from 200 to 250 spools each. The warp yarns from the spools in each tier are all brought into parallel relation at a set of rollers, and then proceed through and under the jacquard harness which is a part of the patented Zimmerman printing machine. The jacquard on this printing machine operates precisely as the jacquard over the Wilton loom, having cut or stenciled cards which raise the selected yarns according to a predetermined pattern, so as to bring them in contact with the dye in successive dye vats, thus putting different measured lengths of color on each of the 800 yarns. After the yarns are dyed they pass to a steam box, thence to a wash pan, and thence over drying coils to a beam, which is a large spool equal in length to the loom. From that beam the yarns feed into the loom and are woven into a rug, all of the warp yarns being on the surface of the pile and the desired pattern appearing because of the different measured lengths of color on each of the yarns.

The loom is a "double shuttle", "face to face" loom, 9 feet wide, and weaves two rugs, 9 by 12 feet, simultaneously. The two rugs so woven must be separated, either during the process of weaving or after the process is finished. For this purpose the respondent uses knives, one of which is a reciprocating knife attached to a part of the loom, traveling across the loom back and forth as the rug comes off, thus at the same time severing the warp threads, separating the rugs, and producing a velvet pile similar in appearance and feel to the Wilton fabric. Another method used by respondent to separate the rugs and cut the pile is a band knife, which is not attached to the loom and is not a part thereof. Because of the "face to face" weaving on broad, double-shuttle looms, the respondent can produce twice the amount of fabric that can be produced in a given time by a single-shuttle loom operating for the same period of time. An additional saving is made by the elimination of the "dormant threads"—that is, there are no warp yarns buried in the pile of the fabric when not brought to the surface at the loom by the jacquard for the purpose of producing the

design or figure. Another advantage which the respondent's method of manufacture has over that of fabrics produced on the narrow 27-inch loom is that its products require no stretching or sewing. With these advantages and certain other economies in handling the fabrics and the materials of which they are composed, respondent can and does use a high-grade material in the construction of the "Bagdad" and produces a colored patterned rug at less cost than that at which a Wilton fabric displaying a colored surface design can be produced.

The Commission finds the main difference between respondent's patterned "Bagdad" type of rug and the genuine patterned Wilton rug to be that in the case of the Wilton, each worsted warp yarn dyed in the skein one color throughout its length is manipulated by the jacquard device in such way as to "build" the design with yarns in the pile of the rug, and at such places as each yarn has not been lifted to the surface to be a part of the pattern, that yarn will be found running along underneath the pile in a buried or "dormant" position until again needed at the surface of the design. As a result, in buying a Wilton rug, the same quality of worsted yarn which one sees and feels on the surface extends three, four, or five fold through the body of the rug, and there can be no question as to its being the same quality, for the reason that it is a continuation of the same strand of yarn. Whereas, in the "Bagdad" type of patterned rug the worsted warp yarns are not dyed in the skein one color throughout their length, but by an ingenious combination of the jacquard with the Zimmerman printing machine, the predetermined pattern is "built" upon the warp yarns by dyeing them different colors throughout their length prior to the actual weaving, and after weaving, such warp yarns will all be found at the same level on the surface of the pile. An entirely different construction, as will readily be seen by a comparison of figures 1 and 2. In the "Bagdad" type of weave, the resiliency and body of the rug is obtained by three stuffers of jute, or jute and cotton, instead of by a continuation of the worsted warp pile yarns beneath the surface. One result of the pattern being sectionally forecast on the pile yarns is to give the pattern, in some instances, a slight appearance of one color running over into an adjacent color, as is apparent in Commission's Exhibit No. 2. The pattern is not so clear cut as in Commission's Exhibit No. 22, a sample of the genuine patterned Wilton weave. The main differences, however, between respondent's "Bagdad" rug and a genuine Wilton are not apparent to the eye except upon dissection by cutting and unraveling.

Six out of eight qualified experts, after examination by dissection of respondent's "Bagdad" type of rug weave, specifically testified that it was not a Wilton. The other two, Mr. A. S. Browne and Mr. Samuel R. Johnston, experts called on behalf of respondent, testified to the general effect that it was a Wilton.

Upon consideration of all the testimony, technical authorities, descriptions, definitions, and diagrams collected and adduced in evidence by counsel for both sides, the Commission finds that the "Bagdad Seamless Jacquard Wilton" type of fabric, displaying on its surface a design or pattern of two or more colors, is not a Wilton rug and has never been generally so considered by the rug trade. It has the appearance of the Wilton rugs manufactured by respondent's competitors; costs less to manufacture, sells at a lesser price than genuine Wiltons with the exception of one or two of such Wiltons of inferior quality, and is being sold throughout the United States as and for a Wilton.

PAR. 4. It was conceded, and the evidence shows, that during the past twenty-five or thirty years plain, one-colored rugs, without a design or pattern, of a weave construction similar to that of respondent's patterned "Bagdad" rug of two or more colors displaying a design, have been put out by carpet manufacturers in the trade, labeled "Wilton," generally using that word in conjunction with some other word, and that such fabrics were sold by dealers to the public as "Wiltons." Such rugs are in evidence as respondent's Exhibits Nos. 4, 7, 32, 34, 35, and 36, and are of a one-frame construction with the warp pile yarns all on the surface. (See fig. 3.)

The Commission finds, from a careful consideration of all the evidence, oral and documentary, that fabrics of such a type of weave are not genuine Wilton fabrics; that such fabrics are known to the trade as "plain velvet" and were formerly called "Wilton velvet" or "plain Wilton"; that there has been a change in the trade practice during the past 10 years. A great many concerns are not handling any plain goods of this description at all. Others are handling them simply under a trade name without describing them either as Wiltons or velvets; and others are selling them as velvets when they are of the weave depicted by the said diagram. One firm, which is the third largest department store in the United States and which has sold from 3,000 to 5,000 patterned "Bagdad" rugs in the last three to five years, has not handled any "plain Wilton" rugs for 20 years.

The Commission also finds that the "Bagdad Seamless Jacquard Wilton" rug is a patterned figured rug of two or more colors; not comparable with a plain one-color rug except in so far as the diagrammatic representation of the respondent's weave is concerned.

PAR. 5. The Commission finds that during the past 20 years there has been a practice in the trade of dip-dyeing two colors on one skein of yarn similarly to that shown on respondent's Exhibit No. 17. This carpeting, when woven, presents a streaked appearance and can be termed a two-colored rug, but it is not a patterned or figured one. It has been known in the trade as "Jasper Wilton." An example was

received in evidence as respondent's Exhibit No. 5. All of the pile tufts are on the surface and it contains no "dormant" threads. It has also been known in the trade as "Morosque." It is woven from one frame of spools of worsted yarn on a Wilton loom, and a very large and reputable rug manufacturer put it out in the trade that way for several years in patterned rugs, as background or ground for the pattern. Such firms discontinued calling such a fabric a Wilton six or seven years ago. A similarly appearing rug is sometimes made by the folding together of three colors on three separate skeins, in which case each ply of the yarn is the same color throughout its length. The Commission has given to this exhibit and to the testimony relating thereto full consideration, in finding that the "Bagdad Seamless Jacquard Wilton" rug of respondent, displaying a design upon its surface, is not a genuine Wilton rug.

PAR. 6. About 1832, one Richard Whytock was granted an English patent covering a method of making pile carpets from multicolored printed yarns. As elsewhere noted, in order to produce a colored design upon the Brussels and Wilton fabrics a thread of each color must cross the entire fabric and at such points as it is required brought to the surface by the jacquard for producing the figure or pattern, and because such threads are taken up at varying rates of spool speed they can not be wound on a beam but each must be wound on separate spools. Whytock's patent provided for the coloring of the yarns with sections of different colors applied at different portions of the length of the yarn in a regulated succession of colors, so that when woven into the cloth or fabric by a loom used for weaving plain fabrics without the use of a jacquard, predetermined figures or designs are produced by reason of such multicolored yarns. Whytock produced by this method fabrics which he called Brussels and Wilton carpets. Modern authorities classify fabrics produced by Whytock and similar methods as "tapestry" when the pile is uncut and "velvet" when the pile is cut. A. M. Henshall introduced certain variations of Whytock's method. These inventors classified fabrics produced by their respective processes as Wiltons if the pile was cut. One technical authority, introduced by respondent, the "Art of Weaving," by Clinton G. Gilroy, published in 1850, has this Whytock process indexed only under the titles "Velvet Pile Carpet, Whytock's" and "Whytock's Velvet Pile Carpet." Modern authorities and men of practical experience in the industry, excluding respondent's officers, employees, and Mr. A. S. Browne, agree that floor coverings produced by the Whytock method, are classed as "tapestry" or "tapestry velvet" depending on whether the pile is cut or uncut. Mr. Browne testified that if he were purchasing a "Whytock" or a "Henshall Wilton" he would ask for a tapestry velvet. The weave construction of a tapestry velvet is shown in figure 3.

PAR. 7. In the carpet industry two sizes or kinds of looms are in use: (1) A 27-inch loom, which has been the standard loom for the production of carpets and rugs since the introduction of power looms; (2) the broad loom, usually 9 feet in width, of which the respondent now uses 88 in the production of rugs.

From 1904 to 1906 respondent by experimentation and by the expenditure of substantial sums of money developed a method of face to face weaving on a broad loom, which proved a commercial success, and while the broad loom and face to face weaving were known in the carpet industry prior to 1904, it was not until about 1928 that other carpet and rug manufacturers commenced the installation of broad looms. During 1928 and 1929 respondent's competitors installed approximately 115 broad looms in mills which had theretofore been using 1,300 to 1,400 27-inch looms. Some of respondent's competitors installed broad looms equipped for face to face weaving.

The respondent has been manufacturing seamless rugs on broad looms by the face to face method since about 1906 and it started to manufacture the fabric which it now calls "Bagdad Seamless Jacquard Wilton" about the year 1914. Sometime later and about 1925 and 1926, at the request of some of respondent's customers, who claimed that the Bagdad rug would sell better if it had the word "Wilton" on it, the respondent adopted the name and brand for the rug which it now uses.

There was no criticism or complaint made by any of respondent's competitors with respect to its advertising or with respect to the brand name of the Bagdad rug until about 1926 or 1927, when the secretary of the Brussels and Wilton Association took the matter up with the National Better Business Bureau.

PAR. 8. The use by respondent of the word "Wilton" in its advertisements, labels, and brands as applied to the type of rug weave shown by figure 2 herein, and as represented by the "Bagdad Seamless Jacquard Wilton" rug fabric has a capacity and tendency to deceive and does deceive retailers and ultimate purchasers throughout the various States of the United States into the belief that in purchasing such a rug fabric they are purchasing a rug fabric of the kind, quality, and construction properly known and designated as a genuine Wilton rug fabric when such is not the fact, and thereby trade is diverted from competitors to the respondent.

CONCLUSION

The practices of the said respondent under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondent's competitors, and are unfair methods

of competition in interstate commerce, and constitute a violation of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

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

It is now ordered, That the respondent Artloom Corporation, a corporation doing business under the name and style of Artloom Rug Mills, its agents, representatives, servants, and employees, in connection with the sale and distribution in interstate commerce of rug and carpet fabrics, do cease and desist from directly or indirectly—

1. Using the word "Wilton" in describing, designating or labeling any rug fabric on the surface of which is displayed a design or pattern in two or more colors, which is of the same weave construction as the "Bagdad Seamless Jacquard Wilton" rug fabric now manufactured by respondent, or which is of a weave construction in which the warp pile yarns, when not required at the surface for the said design or pattern, are not continued in the subsurface structure of the fabric.

2. Using the word "Wilton" in describing, designating, or labeling any plain unpatterned one-colored rug fabric of such a weave construction that the warp or pile yarns are not carried into the subsurface structure of the fabric in addition to the usual stuffer warps.

And it is further ordered, That respondent is, within 60 days after service upon it of a copy of this order, to file with the Commission a report in writing, setting forth in detail the manner and form of its compliance with this order.

Complaint

14 F. T. C.

IN THE MATTER OF

FRANK W. BLACK, WALTER HOWTON, AND MAX LEONHART, INDIVIDUALLY AND AS PARTNERS DOING BUSINESS UNDER THE FIRM NAMES OF FRANK W. BLACK & CO. AND GRIFFITTS ENGRAVING CO.

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

Docket 1697. Complaint, Oct. 1, 1929—Decision, Feb. 10, 1931

Where a firm engaged in production and sale of visiting and business cards, Christmas cards, invitations, and similar products under its so-called Nu-Process method, involving application to type printing of powdered chemical and heat, and resulting in a raised letter effect very closely simulating engraving.

- (a) Employed the word "engraving" in their firm name, with capacity and tendency to mislead and deceive the purchasing public into the erroneous belief that they were engravers instead of printers, and thereby divert trade to them from their competitors; and
- (b) Described themselves upon their letterheads and in advertising literature as "Commercial printers and copper-plate engravers" and as "Designers, printers, and engravers" and represented cards, etc., sold by them as engraved, with capacity and tendency to mislead and deceive the purchasing public into the erroneous belief that the letters, words, etc., appearing thereon were produced through application under pressure of specially engraved, incised, cut, or carved metal plates and were genuinely engraved as understood by the trade and purchasing public and thereby to divert trade to them from their competitors:

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

Mr. Alfred M. Craven for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondents Frank W. Black, Walter Howton, and Max Leonhart engaged in Chicago in production of printed matter including visiting and business cards, wedding invitations, announcements, commercial announcements and invitations, Christmas cards, greeting cards and other stationery, under the trade name and style of Frank W. Black & Co. and Griffiths Engraving Co., and in the sale and transportation of the aforesaid products through the mails to customers in several of the States, with using misleading trade name and advertising falsely or misleadingly in violation of the provisions of

section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged as above set forth, for more than two years last past in the circulars, leaflets, and literature sent by them to persons and concerns in different States, together with samples of their printing, used such statements or communications as—

GRIFFITTS ENGRAVING CO.
DESIGNERS, PRINTERS, ENGRAVERS
432 SOUTH DEARBORN STREET, CHICAGO

THE NU-PROCESS METHOD

It would be to your advantage * * * if you would point out to your prospective customers the more reasonable cost of having cards made with the Nu-Process. This Nu-Process eliminates the necessity of having a plate made up which means a saving to your customers. * * * Also saves your customers money * * *. Cards shown in this portfolio are matched with type and engraved by the Nu-Process method.

FRANK W. BLACK AND COMPANY
COMMERCIAL PRINTERS—COPPER PLATE ENGRAVERS, ETC. * * *

Nu-Process name and cards
Old plate and cards
New plate to match and cards
Cards only

notwithstanding the fact that the letters, words, or designs produced upon respondents' stationery through application to inked type or cuts, while wet, of a powdered chemical and heat, with a raised letter effect so closely resembling true "engraving" products (i. e., products containing letters, words, or designs raised from the general plane of the stationery surface, resulting from application of an especially engraved cut or carved metal plate) in appearance, feel, and finish that persons not experts are unable to distinguish between respondents' products and engraved products.¹

The use by respondents, as alleged "of the word 'engraving' in the name of Griffiths Engraving Co. and the use by respondents of words and phrases, as set out * * * in advertising, offering for sale or selling their said products, were and are calculated to, and

¹As alleged by the complaint, "the words 'engraving' or 'engraved,' when used in connection with, or as descriptive of, business or social stationery, mean, and the trade and purchasing public understand them to mean, that the stationery products, so being referred to or described, contain letters, words, or designs which are raised from the general plane of the stationery surface, and are in relief, and are the result of the application, under pressure, of metal plates which have been especially engraved, incised, cut or carved for, and are used in, the production of such stationery."

had and have the capacity and tendency to, and/or did and do mislead and deceive the purchasing public into the erroneous belief that Griffiths Engraving Co. is an engraving company, and that respondents are engaged in the business of producing and selling engraved stationery, and that the letters, words, or designs contained upon the stationery produced by respondents and offered for sale and sold by them were and are engraved, and are manufactured by the process of producing upon stationery an impression from inked plates on which have been cut, incised, carved, or etched letters, words, or designs from which reproductions are made known as engraving."

Said acts and things, done by respondents, as charged, "are to the prejudice of the public and respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of section 5."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 719), the Federal Trade Commission, on the 1st day of October, 1929, issued and served its complaint against the respondents, Frank W. Black, Walter Howton, and Max Leonhart, individually and as partners doing business under the firm names of Frank W. Black & Co. and Griffiths Engraving Co., charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent Frank W. Black was the owner of a business formerly conducted under the trade name of Frank W. Black & Co., which business was sold to the respondents Walter

Howton and Max Leonhart in November, 1927, and respondent Black does not now have, nor has he had since November, 1927, any connection with said business. The said Walter Howton and Max Leonhart, hereinafter referred to as the respondents, are now and have been since November, 1927, engaged in the printing business at Chicago, Ill., under the firm names of Frank W. Black & Co. and Griffiths Engraving Co., and, as part of said business, in the production and sale of visiting and business cards, Christmas cards, wedding invitations and announcements and other like articles, orders for which are solicited by the respondents by means of letters, leaflets, circulars, samples, and other advertising literature sent directly to prospective customers in various States of the United States, or shown to such prospective customers by agents of the respondents; and when orders are received in response to such solicitation, respondents cause the article or articles so ordered to be transported from Chicago, in the State of Illinois, by mail or otherwise, in interstate commerce, to customers at their various points of location in States of the United States other than the State of Illinois. In the course and conduct of their said business respondents have been and are in active competition with other individuals, partnerships, and corporations also engaged in the production and sale, or in the sale, of like commodities in interstate commerce among the several States of the United States.

PAR. 2. Upon the letterheads of the respondents, used in the solicitation of business as mentioned in paragraph 1 hereof, and in their advertising literature, respondents represent their business conducted under both of the said firm names used by them, to be that of "Commercial printers and copperplate engravers," and as "Designers, printers, and engravers," and represent that the cards, invitations, announcements, and other articles mentioned in paragraph 1 hereof are in whole or in part engraved. For example, in the circular addressed to their agents, respondents state:

THE NU-PROCESS METHOD

It would be to your advantage, however, and enable you to secure more orders, if you would point out to your prospective customers the more reasonable cost of having cards made with the Nu-Process. This Nu-Process eliminates the necessity of having a plate made up, which means a saving to your customers. The Nu-Process way also saves your customers money on running time. In other words, securing orders for Nu-Process will cost your customers less money and result in more business for you. Cards shown in this portfolio are matched with type and engraved by the Nu-Process method.

PAR. 3. The word "engraving," or "engraved," as the case may be, as descriptive of business or social stationery means, and the

trade and purchasing public understand such words to mean, that the products of which the words are descriptive, contain letters, words, figures, or designs which are raised from the general plane of the stationery surface and are in relief, and that they are produced by the application under pressure of metal plates which have been especially engraved, incised, cut, or carved for the production of such stationery. The respondent's so-called "Nu-Process Method" is not a method of engraving, but is a method of printing. It does not require any engraving, incision, or cuts upon metal plates. The raised letters resulting from such method are produced by the application to type printing, while the ink is wet, of a powdered chemical, which chemical, by the application of heat is caused to melt and fuse, producing a raised letter effect simulating engraving so closely that even experts can not easily detect the difference. The use by respondents of the words "engraving" and "engraved" in their advertising, offering for sale and selling said products, has the capacity and tendency to mislead and deceive the purchasing public into the erroneous belief that the letters, words, figures, or designs appearing upon the articles produced by respondents and purchased by the public are engraved, after the manner of engraving hereinabove mentioned, and thereby to divert trade to the said respondents, Walter Howton and Max Leonhart, from their competitors.

PAR. 4. The respondents have no machinery or tools in their establishment such as are used for the purpose of engraving, and while they do sell products which are in whole or in part really engraved, they procure such products from those conducting an engraving establishment and who may be properly called engravers. The use by respondents of the word "engraving" in the firm name "Griffitts Engraving Co." is misleading and has the capacity and tendency to mislead and deceive the purchasing public into the erroneous belief that the respondents are engravers, whereas they are printers, and thereby to divert trade to the said respondents, Walter Howton and Max Leonhart, from their competitors.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, the testimony and evidence introduced, and brief of counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondents, Walter Howton and Max Leonhart, individually and as partners, their officers, agents, and employees, in connection with the selling or offering for sale of printed matter in interstate commerce between and among the several States of the United States and in the District of Columbia, do cease and desist from—

(a) Representing by means of a firm or partnership name, or otherwise, that respondents are engravers, unless and until such respondents actually do an engraving business.

(b) From using the word "engraved," or "engraving," as descriptive of the products offered for sale or sold by respondents, when all of the words, letters, figures, and designs upon such products have not been produced from metal plates into which such words, letters, figures, and designs have been cut.

It is further ordered, That the respondents shall file with the Federal Trade Commission, within 30 days from the date of the service of this order, their report in writing, stating the manner and form in which this order has been complied with, and shall attach to such report copies of all circulars, advertising, devices, or labels distributed or displayed to the public in connection with the sale of their product in interstate commerce subsequent to the date of this order.

It is further ordered, That this proceeding as to the respondent Frank W. Black be, and the same is hereby, dismissed.

IN THE MATTER OF
CURTISS CANDY COMPANY

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

Docket 1699. Complaint, Oct. 2, 1929—Decision, Feb. 10, 1931

Where a corporation engaged in the manufacture and sale of candy; in pursuance of a merchandising system directed to the fixing and maintaining of certain specified uniform prices at which jobbers should sell its "Baby Ruth" bar,

- (a) Fixed uniform minimum prices for resale by them to retailers and made it generally known to the trade that it expected and required all jobbers handling its said product to resell same at such fixed prices;
- (b) Entered into contracts, agreements, and understandings with jobbers for maintenance by them of its said resale prices as a condition of opening accounts, or continuing their supply of said product;
- (c) Procured and induced groups of jobbers in given localities to agree among themselves and with it to observe said resale prices; and
- (d) Sought and secured from its dealers information concerning and evidence of price cutting and secured from price cutters promises and assurances of future price maintenance or declined to supply them further;

With result of suppressing competition among jobbers in distribution and sale of its aforesaid product, restraining them to sell same at prices fixed by it and preventing them from selling same at such lower prices as they might desire, and of depriving purchasers of the product of the advantage in price which they would have otherwise obtained from a natural and unobstructed flow of commerce in said candy bar under methods of free competition:

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

Mr. Alfred M. Craven for the Commission.

Mr. Irwin N. Walker, of Chicago, Ill., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Illinois corporation engaged in the manufacture of candy and confectionery, and in the sale and distribution thereof from its factory at Chicago, to jobbers in other States, with maintaining resale prices, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, in connection with the sale of one of its said products, to wit, a combination nut and candy bar, by it designated as "Baby Ruth" and long manufactured and sold and extensively so advertised, and very popular

and in great demand throughout the United States, has enforced and enforces a "merchandising system adopted by it fixing and maintaining certain specified uniform prices at which said 'Baby Ruth' shall be sold by jobbers handling the same, and respondent enlists and secures and has enlisted and secured the support and cooperation of said jobbers, and of its officers, agents, and employees in enforcing said system.

"In order to carry out said system, respondent has employed and still employs the following means whereby it and those cooperating with it have undertaken to prevent and have prevented jobbers from selling same to the retail trade at prices less than the aforesaid retail prices established by respondent," namely:

(a) Fixing uniform minimum prices at which jobbers shall resell said product to retailers and making it generally known to the trade that it expects and requires all jobbers to resell same at such prices.

(b) Entering into contracts, agreements, and understandings with said jobbers for the maintenance by them of its said resale prices, as a condition of opening accounts with them or continuing their supply thereof.

(c) Procuring and inducing groups of jobbers in given localities to agree among themselves and with it to observe and maintain its said prices.

(d) Seeking and securing from the aforesaid jobbers information concerning and evidence of price cutting by other jobbers and employing its own salesmen, agents, and employees to investigate and secure information relative to said matter.

(e) Using information as set out in paragraph (d) above and otherwise to induce and coerce price-cutting dealers to observe its prices in the future by (1) exacting promises and assurances from them that they will so do, and (2) exacting promises and assurances from jobbers that they will not in the future supply price cutters.

(f) Refusing to supply further said products to price-cutting jobbers unless and until they have given it satisfactory promises and assurances of future price maintenance.

(g) Keeping records, with the aid and assistance of others cooperating with it, for the purpose of enforcing its price-maintenance plan, upon which are entered names of price cutting dealers, "which said record respondent and those cooperating with it use in and about the enforcement of said system of price maintenance."

As a result of such acts and practices, as alleged, "said resale prices have been generally maintained" and "the direct effect and result" thereof have been and now are "to suppress competition among jobbers in the distribution and sale of respondent's said

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product, Baby Ruth; to constrain jobbers to sell said product at the prices fixed by respondent, and to prevent them from selling the product at such less prices as they may desire, and to deprive the purchasers of said product of the advantage in price which otherwise they would obtain from a natural and unobstructed flow of commerce of said candy under methods of free competition. Wherefore, said acts and practices of respondent are all to the prejudice of the public, and constitute unfair methods of competition in commerce within the intent and meaning of section 5."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 719), the Federal Trade Commission, on the 2d day of October, 1929, issued and served its complaint against the respondent Curtiss Candy Co., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Curtiss Candy Co., is a corporation organized and existing under the laws of the State of Illinois, with its principal place of business and factory in the city of Chicago, in said State. It is engaged in the manufacture of candy and confectionery and in the sale and distribution thereof, from its factory at Chicago, Ill., to jobbers of such products throughout the United States. It causes its products, when sold, to be transported from its principal place of business and factory in the city of Chicago, Ill., in interstate commerce, into and through States of the United States other than the State of Illinois, to the purchasers thereof at their respective points of location. In the course and conduct of its said business respondent is in competition with other individuals, partnerships, and corporations engaged in the manufacture and/or sale and transportation of candy and confectionery in interstate commerce between and among the various States of the United States.

Included in respondent's said products is a certain candy bar, or combination of nut and candy bar, designated by the respondent as "Baby Ruth," which product the respondent has manufactured and sold for many years and which has been very extensively advertised and become very popular and in great demand throughout the United States.

PAR. 2. The respondent has, for many years last past, in the course and conduct of its said business, enforced and now enforces a merchandising system adopted by it, of fixing and maintaining certain specified uniform prices at which said "Baby Ruth" shall be sold by jobbers handling the same, and respondent enlists and secures and has enlisted and secured the support and cooperation of said jobbers in enforcing said system. In order to carry out said system, the respondent has employed and still employs the following means whereby it and those cooperating with it have undertaken to prevent and have prevented jobbers from selling same to the retail trade at prices less than the aforesaid resale prices established by the respondent:

(a) Respondent fixes uniform minimum prices at which jobbers shall resell said product to retail dealers, and makes it generally known to the trade that it expects and requires all jobbers handling said product to resell same at such fixed prices.

(b) Respondent enters into contracts, agreements, and understandings with jobbers for the maintenance by them of said resale prices, as a condition of opening accounts with such jobbers, or continuing their supply of said products.

(c) Respondent also procures and induces groups of jobbers in given localities to agree among themselves and with respondent to observe and maintain the resale prices specified by respondent.

(d) Respondent seeks and secures from its dealers information concerning, and evidence of, the failure of other dealers to observe and maintain said resale prices, and by reason of the information thus secured makes investigations and secures from such reported dealers who are found or believed by respondent to have not maintained the specified prices, promises, and assurances that they will, in the future, maintain same. Failing to obtain such promises and assurances, respondent declines to further supply such dealers.

PAR. 3. The direct effect and result of the above acts and practices of respondent have been, and now are, to suppress competition among jobbers in the distribution and sale of respondent's said product, "Baby Ruth"; to constrain jobbers to sell said product at the prices fixed by respondent and to prevent them from selling the product at such less prices as they may desire, and to deprive the purchasers of said product of the advantage in price which they would otherwise obtain from a natural and unobstructed flow of commerce in said candy under methods of free competition.

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CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is now ordered, That the respondent, Curtiss Candy Co., its officers, agents, and employees, in connection with the sale or offering for sale of its products in interstate commerce between and among the various States of the United States and in the District of Columbia, cease and desist from:

(1) Entering into or procuring from its dealers contracts, agreements, understandings, promises or assurances that respondent's products, or any of them, are to be resold by such dealers at prices specified or fixed by respondent.

(2) Inducing or procuring jobbers in any given locality to agree among themselves to observe and maintain resale prices for respondent's products.

(3) Requesting its dealers to report the names of other dealers who fail to maintain the resale price specified or fixed by respondent.

(4) Seeking by any method the cooperation of dealers in making effective any policy adopted by respondent for the maintenance of prices.

It is further ordered, That the said respondent shall, within 30 days after the service upon it of a copy of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set forth.

Complaint

IN THE MATTER OF

D. G. REDMOND, DOING BUSINESS UNDER THE TRADE
NAME OF MILO BAR BELL COMPANY

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

Docket 1714. Complaint, Oct. 28, 1929—Decision, Feb. 10, 1931

Where an individual engaged in the manufacture and sale of adjustable dumb-bells or bar bells, together with instructions, lessons, and a course in physical culture, invited comparison of before and after pictures of a certain person, in advertising said bar bells and course in said individual's pamphlet "Health, strength, and development, How to obtain them", and stated therein that said person progressed so rapidly through their use that he "increased his chest measurement 12 inches and put 5 inches on his biceps", while growing 8 inches in height, and could not praise the system too highly, facts being that the first picture represented the subject at 14, with a height of 5 feet 3, and the second at 18, with height of 5 feet 11; with capacity and tendency to deceive prospective pupils and buyers into believing the marvelous physical development portrayed and represented due to use of said bar bells and instructions, and thereby divert trade to him from competitors:

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

Mr. Alfred M. Craven for the Commission.

Mr. Charles G. Gartling, of Philadelphia, Pa., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, engaged at Philadelphia in the manufacture of adjustable dumb-bells or so-called bar bells for physical exercise and training, and in the sale thereof together with instructions and mimeographed or printed lessons or courses in physical culture, to purchasers throughout the United States, with advertising falsely or misleadingly as to results attained and attainable, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, in his advertisements in magazines of national circulation and in catalogues, leaflets, circulars, circular letters, and other trade literature, depicts before and after pictures of one Al Manger, inviting the beholder to contemplate the melancholy picture first presented and "the unbelievable transformation" accomplished in the second, facts being

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that the pictures either are not "of the same man, or, if so, the difference in physical development shown by said pictures can not reasonably and truthfully be represented to be the result of the physical training described,"¹ and in a pamphlet and captioned "Health, strength, and development and how to obtain them", and in other pamphlets and advertisements inserted pictures purporting to be those of persons (designated by him "Milo-built men" and "Milo graduates"), who had taken his course and used his bar bells, together with the claim that said person's superb muscular and physical development as there portrayed had been attained by them through the use of his appliances according to his courses of instruction, facts being that said development was not the result thereof and was not thereby possible of attainment, and before and after pictures of one of said persons, one John Sloan, were taken at or near the same time, difference in appearance "being due to change in dress, varying lights, difference in retouching, and other means used in the photographic art, and said person did not by reason of respondent's training increase his height to any extent, nor his chest or biceps measurements to the extent stated."²

Each of the aforesaid false and misleading representations, as alleged, "has the capacity and tendency, and has caused many persons residing in various States of the United States, to purchase respondent's appliances and courses of instruction in and on account of the belief in the truth of such representation", and respondent's said acts and practices, as charged, "are all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5."

Upon the foregoing complaint, the Commission made the following

¹ Statements made in connection with pictures referred to, by respondent, as set forth in the complaint, follow:

"Look at the picture of Al Manger below and gasp with horror at the skinny figure and sunken cheeks. Then look at the picture of the same man, on the right, and gasp again at the unbelievable transformation.

"And now he's as strong as he looks. Mr. Manger arose from a physical condition, as shown on the left, to the coveted position of light heavyweight champion lifter of America. But even that does not seem so remarkable as his improvement in physical build.

"We do not claim he did it with a Milo Bar Bell in a couple of months' time. It takes longer than that to make such a marvelous change. Nevertheless, Mr. Manger made rapid gains and was not many months getting the physique and strength he now so proudly possesses.

"Milo has rebuilt more physical wrecks than you would think possible."

² Statements relating to the Sloan pictures, as set forth in the complaint, are quoted in "Findings," *infra*, at p. 408.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 719), the Federal Trade Commission, on the 28th day of October, 1929, issued and served its complaint against the respondent, D. G. Redmond, charging him with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, D. G. Redmond, is now and for several years last past been engaged, under the trade name of the Milo Bar Bell Co., at Philadelphia, Pa., in the manufacture of adjustable dumb-bells, or, as called by him, bar bells, for exercise and training in physical culture, and in the sale thereof together with instructions for their use and certain mimeographed or printed lessons and courses in physical culture, to purchasers throughout the United States. He causes said merchandise, courses of instruction and lessons, when sold, to be transported by mail, express, and otherwise, from his principal place of business in the State of Pennsylvania, into and through other States of the United States in interstate commerce to the purchasers thereof at their respective points of location in the various States. In the course and conduct of his said business, respondent is and has been in competition with other individuals, partnerships, and corporations located in the United States, engaged in the business of selling courses of instruction in physical culture and apparatus and appliances to be used in physical culture, and the transportation of same in interstate commerce between and among the various States of the United States.

PAR. 2. Respondent solicits patronage by advertising in magazines of national circulation, and also by the circulation by mail and otherwise of catalogues, leaflets, pamphlets, and other trade litera-

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ture, all descriptive of the bar bells handled by respondent and also descriptive of the course of instruction and the claims made for said course of instruction by the respondent. Included in respondent's advertising matter and circulated generally throughout the United States is a pamphlet entitled "Health, strength, and development, How to obtain them", which pamphlet contains pictures of persons said to have taken respondent's course of instruction and views of respondent's bar bells, said persons being described by respondent in connection with said pictures as "Milo-built men" and "Milo graduates".

Among other pictures, said pamphlet contains two pictures, said by respondent to have been taken of one John Sloan, together with a statement in reference to said Sloan, as follows:

Compare the two photos of this pupil, the one taken at the time of his enrollment, and the other a short time after.

Mr. Sloan progressed so rapidly under our instructions, using bar bells, that he actually increased his chest measurement 12 inches and put 5 inches on his biceps. What is most astonishing is his growth in height, which increased 8 inches.

Surely this is sufficient testimony to verify the value of Milo methods. Mr. Sloan feels he can not praise the Milo system too highly and the valuable advice and attention he received from our expert in charge.

The first of said two pictures in point of time was taken when the subject was 14 years of age and 5 feet 3 inches in height. The last picture in point of time was taken when the subject was 18 years of age and 5 feet 11 inches in height. The statements made by respondent in reference to these two pictures omits any reference to these facts, and the said statements attribute the difference in height and other body measurements to the use of respondent's bar bells and respondent's course of instructions. Said representation is misleading and deceptive and has the capacity and tendency to deceive prospective pupils of respondent's course and prospective buyers of respondent's appliances into the belief that the marvelous physical development portrayed and represented by said pictures and the statements in reference thereto, was due to the use of respondent's bar bells and course of instructions, and thereby to divert trade to respondent D. G. Redmond from his competitors.

CONCLUSION

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and of respondent's competitors, and constitute a violation of an act of Congress approved September 26, 1914, entitled "An

act to create a Federal Trade Commission, to define its powers and duties, and for other purposes.”

ORDER TO CEASE AND DESIST

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

It is now ordered, That respondent, D. G. Redmond, in connection with the sale or offering to sell in interstate commerce between and among the various States of the United States and in the District of Columbia, courses of instruction and accessories thereto, or other commodities, do cease and desist from in any manner:

Representing by pictures, statements, or otherwise that physical development reasonably attributable to natural growth has been brought about by the use of respondent's bar bell or other appliance or course of instruction.

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

IN THE MATTER OF
EARLE E. LIEDERMAN

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

Docket 1771. Complaint, Mar. 10, 1930—Decision, Feb. 10, 1931

Where an individual engaged in sale of courses in physical culture, together with books, pamphlets, and appliances, in describing his said course, etc., in follow-up letters sent to prospective customers in response to advertisements in newspapers, magazines, and other periodicals,

- (a) Represented that course was offered to particular prospect at \$19 instead of the \$37 theretofore demanded, fact being that such pretended special offer was made to all who had not theretofore subscribed at \$37, in response to solicitation in a regularly planned and arranged series of follow-up letters; with capacity and tendency to mislead and deceive prospective pupil into believing a special, personal, and confidential price of \$19 had been offered him;
- (b) Represented aforesaid pretended reduced prices, and inclusion of books or handgrips as offered for limited time only, and called upon prospect to take advantage thereof before date specified, to be sure letter of acceptance postmarked on or before such date, to "avoid the rush and get a jump on the next fellow", as offer was "a special offer", so huge and sensational, and so "sure to be snapped up by hundreds of men", that he "could not hold it open indefinitely," and after date named could not include any of aforesaid articles, facts being he accepted offers to enroll or purchase regardless of aforesaid wholly fictitious time limitations; and
- (c) Represented and promised that individual case of each pupil was and would be given his careful consideration and that course was prepared as special course to meet needs of individual pupil, facts being that said courses consisted of printed and mimeographed lessons and other matter prepared by him for general and uniform use and circulation in the giving of instructions and were not adapted to and prepared for needs and requirements of individual pupil;

With capacity and tendency to deceive purchasing public and induce prospective pupils to enroll or purchase said merchandise believing in truth of aforesaid representations and thereby divert trade from competitors to himself:

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

Mr. Alfred M. Craven for the Commission.

Reeves, Todd, Ely, Price & Beaty, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

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

spondent individual, engaged in New York City in the sale by correspondence of courses in physical culture and health restoration, together with certain articles incidental and accessory thereto, such as booklets, exercisers, grips, etc., with advertising falsely or misleadingly as to prices, free products, and nature of service in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged, as above set forth, in his advertisements of his aforesaid courses, etc., in newspapers, magazines, periodicals, and other publications of general circulation and in enrollment and other blanks, catalogues, pamphlets, letters, circulars, and other matter, makes many false and misleading statements and representations, namely, that—

(1) The ordinary regular price is a certain sum, as specified, but respondent is offering the courses, etc., at a certain substantially smaller sum, as specified, or is so offering said courses, etc., for a limited time as specifically set forth, facts being that the pretended reduced price is respondent's regular price for the courses and accessories, and the pretended time limit is fictitious;

(2) Individual case of each pupil will be given careful consideration and respondent's course is prepared as a special course to meet individual needs of the pupil, facts being lessons and other matter are not adapted to or prepared for individual needs; and

(3) Certain accessory appliances including exercisers, grips, books, and other articles are given to the pupil without cost to him or compensation to respondent, facts being the price of such articles or compensation therefor is at all times included in the tuition charge exacted.

Each of such statements and representations, as alleged, has the capacity and tendency to mislead prospective pupils and cause them to enroll and pay or agree to pay the tuition specified, relying on the truth thereof, and such acts and practices, as charged, are all to the prejudice of the public and of competitors and constitute unfair methods of competition in violation of the aforesaid section.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 719), the Federal Trade Commission, on the 10th day of March, 1930, issued and served its complaint against the respondent, Earle E. Liederman, charging him with the use of unfair methods

of competition in commerce, in violation of the provisions of said act.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Earle E. Liederman, is now and has been for many years last past engaged at New York City, N. Y., in the conduct of a correspondence school for physical culture, in the conduct of which school he offers to sell and sells to persons resident in various States of the United States other than the State of New York certain lessons or courses in physical culture. Along with such lessons or courses of instruction, respondent, as a part of the transaction of the sale of lessons and courses, furnishes and sells to such pupils books and pamphlets on physical culture and health and also certain appliances to be used in following out the instructions contained in said lessons.

PAR. 2. Said respondent, when a prospective pupil enters into a contract with him and enrolls as a pupil, in consideration of the cash tuition agreed to be paid by such pupil, undertakes to sell and deliver to such pupil the course of instructions specified in the enrollment blank or contract, together with such books and accessories as may be included in such contract. Thereafter, and in pursuance of such contract, respondent causes to be transported from his said place of business in the City and State of New York, into and through the several States of the United States, and to be delivered to such several pupils at their respective places of residence, the courses of instruction, accessories and books above referred to.

In the course and conduct of his said business, respondent is in competition with other persons, partnerships, and corporations likewise engaged in conducting correspondence schools and selling courses and lessons in physical culture, together with the necessary accessories, in interstate commerce, to persons located at various points throughout the United States.

PAR. 3. In the promotion of his said business and to secure pupils, respondent causes advertisements of said course of instructions, coupled with an invitation to send for a free booklet describing

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said course, to be inserted in newspapers, magazines, and other periodicals in general circulation in the United States, and to persons who answer said advertisements respondent sends the free booklet promised, and thereafter circularizes the mailing list comprising those who answer the advertisements by a series of form letters sent at intervals of varying lengths of time to all those whose names appear upon the mailing list and who have not theretofore enrolled as pupils, and inclosing leaflets, circulars, and other advertising matter. The free booklet above referred to describes respondent's regular course of instruction as being a course consisting of 12 lessons to be sent to the pupil at the rate of one lesson per week. The price of this course, as stated in the first letter, which accompanies the booklet, is \$37. This price of \$37 is stated to be the price of the course in the various letters comprising the series up to and including the sixth. The seventh letter in the series, being Commission's Exhibit No. 8,¹ reads, in part, as follows:

DEAR FRIEND:

HERE IS A CHANCE FOR YOU TO SAVE \$18 COLD CASH

All I want you to do is to fill out the questions on the other side and mail to me. I want to prove to you what wonderful results you can obtain by following my instructions. If you will give me the chance to guide you for the next few months, you will not only have a splendid development and excellent strength, but you will be filled to the brim with the pep and energy that only a real well-trained athlete knows. You will just thrill with vitality. You just have to get strong—that is all there is to it.

If I could meet you face to face, I know I could convince you in a few minutes, and you would be so impressed that your desire for a better body would be greater than ever.

I want you to feel that I am doing all in my power to help you to obtain robust health and a splendidly developed body and I want to meet you halfway and expect you to meet me halfway. So allow me to offer you the following inducement. As you remember, I formerly asked you \$37 for my complete muscle-building course. Now, I have arranged things so that for one-half of the price—\$19, you can obtain the same results—the same massive chest, the same broad shoulders, the same powerful legs and the same vitality, health and strength, as if you paid me my regular price of \$37.

The representations and statements contained in said letter are misleading and deceptive and have the capacity and tendency to mislead and deceive the prospective pupil into the belief that a special, unusual, personal and confidential price has been made to him. Whereas the price of \$19 stated in said letter was the ordinary and usual price of the course, offered equally to all prospective pupils who had not theretofore become enrolled at the price of \$37 set out in the prior letters of the series.

¹ Exhibits not published.

PAR. 4. In the various form letters comprising the series mentioned in paragraph 3, respondent makes other statements and representations as follows:

(1) That prices represented as reduced or special prices are offered to the public for a certain limited time, and that the offers of books are made for a limited time only. For example:

(a) In Commission's Exhibit 8, above referred to, respondent states:

As this is a special offer, I must insist that you take advantage of it and enroll with me on or before August 19, 1929, for I can not hold it open indefinitely. So be sure your letter is postmarked on or before August 19.

(b) In Commission's Exhibit 6-A, which is the fifth letter of the series above referred to, respondent states:

As this offer is so huge and sensational and it is sure to be snapped up by hundreds of men, I can not hold it open indefinitely; therefore, I must insist that you accept it on or before Monday, August 19, 1929, for after that date I can not include any of my books or handgrips.

(c) In respondent's Exhibit No. 2, respondent, in reference to what is stated to be a reduced price, says:

All things have an ending and this won't last forever. Why not enroll before, say May 19, 1930, for after that date I expect hundreds of enrollments and if you will take advantage of it before then, you will avoid the rush and get a jump on the next fellow.

In truth and in fact, the respondent accepts offers to enroll or to purchase, regardless of such time limitations and such limitations are wholly fictitious.

(2) Respondent represents and promises that the individual case of each pupil is given and will be given careful consideration by him, and that the course of instruction offered is prepared as a special course to meet the individual needs of the pupil. In truth and in fact, the course or courses thus represented are general courses, consisting of printed and mimeographed lessons and other matter prepared by respondent for general and uniform use and circulation in the giving of instructions, and are not courses adapted to and prepared for the needs and requirements of the individual pupil.

PAR. 5. The representations mentioned in paragraphs 3 and 4 hereof, and each of them, are misleading and deceptive and have the capacity and tendency to deceive the purchasing public and to induce prospective pupils to enroll as pupils or to purchase respondent's merchandise in and on account of the belief that such representations are true, and thereby to divert trade to respondent, Earle E. Liederman, from his competitors.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is now ordered, That respondent, Earle E. Liederman, in connection with the sale or offering to sell in interstate commerce between and among the various States of the United States and in the District of Columbia, courses of instruction and accessories thereto, or other commodities, do cease and desist from—

(1) Representing that any price at which any course of instruction or commodity is offered for sale is a special or reduced price, or is lower than the price ordinarily and usually received therefor, when such is not the fact.

(2) Representing that offers to sell courses of instruction or other commodities are made for a limited time only, when such is not the fact.

(3) Representing that any course of instruction offered for sale by respondent, which is in fact prepared for general and uniform use, is prepared for or adapted to the individual needs and requirements of the pupil.

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

IN THE MATTER OF

EDWARD L. JENKINS AND MYRTLE E. AUTEN, PART-
NERS DOING BUSINESS UNDER THE FIRM NAME AND
STYLE OF CHERI

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

Docket 1850. Complaint, June 20, 1930—Decision, Feb. 10, 1931

Where partners engaged in preparation and sale of toilet articles and similar products to agents for resale to purchasing public and individuals,

- (a) Represented themselves as manufacturers in circular letters sent to customers and prospective customers, selling direct, facts being that they had not at all times since starting business manufactured or compounded a substantial part of products dealt in, originally made only a few of such products, had never made 16 items on their price list, and had only meager facilities and equipment for manufacture;
- (b) Represented that they had a beauty expert or "cosmetician" named "Edmyr Jenaut" or "Miss Jenaut," and also a chemist of wide experience, facts being that partner referred to under aforesaid fictitious name had no preparation for or practical experience in beauty culture and had a training therein consisting chiefly in answering correspondence from customers as former employee of a toilet goods house, together with a little private instruction in facial treatments, and familiarity with literature and instructions furnished customers by said company, and that other partner had never studied or trained in chemistry and there was no chemist connected with firm; and
- (c) Represented their business as an old established one and of world wide extent, facts being that their place of business consisted of basement apartment of four rooms employed in part as sleeping and living quarters of one of partners, they had other occupations requiring all their working days, gave only incidental attention to business in question, and had no working force, business was first started in 1929, their products had not been marketed under the trade name employed or otherwise prior thereto, business was confined to United States and no sales had been made direct to any foreign country;

With capacity and tendency to mislead and deceive members of purchasing public in respect of operations, extent, duration and nature of their business and advantages of dealing therewith, and with effect of unfairly diverting business from competitors who do not in anywise thus misrepresent their businesses, or qualifications or professional status of those connected therewith, and with capacity and tendency so to do, to injury and prejudice of said competitors;

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

Mr. Harry D. Michael for the Commission.

Mr. Henry L. Blinn of Chicago, Ill., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individuals, Edward L. Jenkins and Myrtle E. Auten, engaged as partners in Chicago in the sale of toilet articles and similar products to members of the public, and/or in the sale thereof to retailers, agents, and distributors, located in the various States, in competition with other individuals and concerns similarly engaged, with misrepresenting business status, advantages, personnel and connections, and advertising falsely or misleadingly in said respects, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged as above set forth since about February, 1929, in soliciting the sale of and in selling aforesaid products make false and misleading statements in circular letters and circulars sent to respective customers in the various States implying or setting forth in substance—

That they manufacture products sold by them in a plant or factory which they own or control, that customers purchasing from them are buying direct from the manufacturer and that the business conducted by them is an old established one in which they have been engaged for years and in the conduct of which they have for a corresponding period of time sold, used and tested their products and that the business is world-wide in extent; facts being that the products so dealt in are purchased by them from the manufacturers and re-sold to their customers, they have only been in business for a year or so, and the business is only a small one and of limited extent and their products accordingly have not been sold, used and tested as above set forth:

That they have as a member of their firm or in their employ or available for personal individual service of customers, a beauty expert or cosmetician named "Edmyr Jenaut" or "Miss Jenaut," and that they similarly have associated with them a chemist of wide experience; facts being that aforesaid Edmyr Jenaut or Miss Jenaut is a fictitious person with no existence in fact, neither of the respondents is a beauty cosmetician or beauty expert, or qualified to give expert advice in such matters, they have no such person associated with them nor have they associated with them a chemist of wide experience.

Aforesaid representations, as alleged, "have had and do have the tendency and capacity to mislead and deceive members of the public

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into the belief that respondents are manufacturers of products which they sell; that purchases are made direct from the manufacturer; that the customers of respondents are served by a beauty expert who gives and is qualified to give expert advice in individual cases in regard to the selection and use of the various toilet preparations sold by respondents; that the business of respondents is long established and that its products have been used and tested by respondents for years; that the business of respondents is large and world wide in extent; and that respondents have as a member of said firm or in their employ a chemist of wide experience," and also have the further capacity and tendency "to induce members of the public to purchase the products of respondents because of the erroneous beliefs engendered thereby that respondents' firm is sound, substantial, and reliable by reason of it being long established, and that its products are superior to those of competitors for the same reason and also because of extensive patronage and long use and extended tests, and that they as customers are recipients of the superior services of a beauty expert and a chemist of wide experience."

Aforesaid acts and things done by respondent, as charged, "Are all to the injury and prejudice of the public and of respondent's competitors."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served its complaint upon the respondents, Edward L. Jenkins and Myrtle E. Auten, partners doing business under the firm name and style of Cheri, charging them with the use of unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

Respondents having entered their appearance and filed their answer to said complaint, hearings were had and evidence was introduced in support of the allegations of said complaint and in opposition thereto before a trial examiner of the Federal Trade Commission theretofore duly appointed. A brief was filed on behalf of the Commission. No brief was filed by respondents although opportunity for filing the same was duly given and the time therefor expired November 14, 1930.

Thereafter this proceeding came on for final hearing upon the record and the brief of counsel for the Commission, and the Commis-

sion having duly considered the matter and being fully advised in the premises makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Edward L. Jenkins and Myrtle E. Auten, are partners doing business under the firm name and style of Cheri, with their principal place of business at 745 North Lincoln Street, in the City of Chicago, State of Illinois, having conducted said business since about the month of February, 1929. The business of said respondents is the preparation and sale of toilet articles and similar products, which said products are sold to agents for resale to the purchasing public, and to individuals, in the various States of the United States. Respondents, in the sale of said products as aforesaid, have caused and do now cause the same to be transported in interstate commerce from their said place of business in the City of Chicago, State of Illinois, to purchasers thereof as aforesaid located in States other than the State of Illinois. In the course and conduct of their said business, respondents have been, and are now, in competition with other individuals, partnerships and corporations engaged in the preparation of toilet articles and similar products and in the sale thereof in interstate commerce.

PAR. 2. In the conduct of their said business respondents have caused to be printed and distributed in interstate commerce, certain mimeographed circular letters which were sent to customers and prospective customers in various States of the United States, and which contained, among others, representations which state or imply that they are manufacturers of the products which they sell, and that customers in buying their products buy direct from the manufacturers thereof; that they have in connection with said firm a beauty expert or "cosmetician" by the name of "Edmyr Jenaut" or "Miss Jenaut"; that they are conducting an old established business; that their business is world-wide in extent and that they have, connected with said business, a chemist of wide experience.

PAR. 3. Respondent's place of business at the address above given consists of a basement apartment of four rooms, part of which is used as the sleeping and living quarters of the respondent Myrtle E. Auten. Respondents have not at all times since starting in business manufactured or compounded a substantial part of the toilet products which they have offered for sale. In the beginning, only a few of the products offered for sale were compounded by them. There are sixteen items on their price list which they have never compounded or made. At the time of the hearing, both respondents

were engaged in other lines of work which required all their working days, and attention to said business is merely incidental. No working force has been or is employed by said respondents in said business. Their facilities and equipment for manufacturing are meager. "Edmyr Jenaut", or "Miss Jenaut" is a nom de plume of the respondent Myrtle E. Auten, who has never taken a course in beauty culture or had any extended practical experience in such work, or as a "cosmetician." Her training in such work consisted chiefly in answering correspondence from customers of another toilet goods house for which she worked for a number of years. She further had a little private instruction in facial treatments and became familiar with the literature and instructions furnished customers by the toilet goods company for which she formerly worked. Respondents' business was started in the month of February 1929, and had not been in existence before that time; neither had their products been marketed under the name "Cheri" by them or any one else prior to that time. The business of respondents has been confined to the United States. No sales have been made by them direct to any foreign country. Respondents have not had, as a member of said firm or in their employ, a chemist of wide experience. The respondent Edward L. Jenkins, to whom said term applied, is not a chemist and has never pursued any course of study or taken any training in such subject.

PAR. 4. The use by respondents in their circular letters and advertising matter of statements which represent or imply that they are the manufacturers of the products which they sell and that purchasers buy direct from the manufacturer thereof; that they have, connected with said firm, a beauty expert or "cosmetician," referring to Miss Auten by name or by any nom de plume; that said business is an old established one; that it is world-wide in extent, or that its business extends into foreign countries; or that they have, connected therewith, a chemist of wide experience, are misleading and deceptive, and have the capacity and tendency to mislead and deceive members of the purchasing public into the belief that respondents are manufacturers of substantially all of the products which they offer for sale, and that customers buy direct from the manufacturers thereof; that respondents have, connected with said business, a beauty expert or "cosmetician"; that said business is an old established one; that it is world-wide in extent or extends into foreign countries, and that said respondents have, connected with such business, a chemist of wide experience,

PAR. 5. There are among the competitors of respondents those who in no wise misrepresent the nature and character of the business con-

ducted by them, the time they have been in business, the qualifications or professional status of those connected therewith, or the extent of their business; and respondents' acts and practices as above set forth tend to and do unfairly divert business to respondents from their competitors, to the injury and prejudice of said competitors.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, the testimony in support of the charges of said complaint and in opposition thereto, and the brief of counsel for the Commission and his statement in support thereof, and the Commission having made its findings as to the facts with its conclusion that the respondents have been and are violating the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is ordered, that the respondents, Edward L. Jenkins and Myrtle E. Auten, or either of them their representatives, agents, servants and employees, in connection with the advertising, offering for sale or sale of toilet articles and similar products in interstate commerce, cease and desist from:

(1) Representing by statements which state or imply that they are manufacturers of the products which they sell, and that customers buy direct from the manufacturers thereof, unless and until they manufacture a substantial part of the products which they offer for sale.

(2) Representing that they have as a member of said firm, or in their employ, a beauty expert or "cosmetician," unless or until they have a person as a member of or connected with said firm who has pursued a course in, or received adequate training in beauty culture or cosmetics.

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(3) Representing by statements which state or imply that their business is an old established one, unless or until it has been in existence for such a period of time as to warrant such representations.

(4) Representing by statements which state or imply that their business is world-wide in extent, or that they ship orders direct to foreign countries, unless and until they do in fact ship orders direct to foreign countries.

(5) Representing that said respondents have as a member of said firm, or in their employ, a chemist or a chemist of wide experience, unless and until a person of qualifications as such is connected with said firm as a member thereof, or in its employ.

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

Complaint

14 F. T. C.

IN THE MATTER OF

H. ERNSTBERGER AND CARL ROSENKRANZ, COPART-
NERS TRADING AS H. ERNSTBERGER & CO.COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1888. Complaint, Dec. 22, 1930—Order Feb. 16, 1931*

Consent order requiring respondents to cease and desist from the use of the trade name "Squirrelpelt" or like words or phrases, or depictions of squirrels, in connection with the sale of materials not made from the pelts of squirrels, as in such order set forth.

Mr. E. J. Hornibrook for the Commission.

Mr. Hanns P. Kniepkamp, of New York City, for respondents.

COMPLAINT

Acting in the public interest, pursuant to the provisions of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that H. Ernstberger and Carl Rosenkranz, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent H. Ernstberger and Carl Rosenkranz are copartners doing business under the trade name and style of H. Ernstberger & Company in the City of New York, State of New York. As such copartners they are now and have been for several years last past engaged in the business of selling cloth. Among the products sold by respondents is one which is designated and named by them "Squirrelpelt". This is a fabric made entirely from cotton and wool, having a pile surface and constructed in a manner so as to resemble a material made by sewing together a number of pelts of squirrels. This fabric is used by respondents' customers in the making of wearing apparel, principally ladies' overcoats.

PAR. 2. Respondents sell the product "Squirrelpelt" to makers of wearing apparel who have their factories in the State of New York and other States of the United States, and when so sold, respondents cause the same to be shipped from its principal place of business in said City of New York to the purchasers thereof in the State of New York and into and through other States of the United States to purchasers who reside outside of the State of New York.

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PAR. 3. In the course and conduct of said business, respondents are in competition with other individuals and corporations engaged in the sale of cloth, furs and other materials from which wearing apparel is made, which corporations and individuals sell and ship said commodities to customers residing in States other than the States in which such corporations and individuals reside.

PAR. 4. Respondents in soliciting the sale of their aforesaid product advertise the same in periodicals having circulation in several States of the United States, and in such advertisements designate and describe said fabric as "Squirrelpelt" and cause the following to appear:

Squirrelpelt is the genuine and original importation of the squirrel effect in fabrics;

This is accompanied by a picture of a squirrel and a picture of the label of respondents, underneath which is printed the language: "This label identifies the genuine."

For the purpose of attaching them to the garments made from said "Squirrelpelt", respondents deliver to their said customers with shipments of said fabric labels which bear the legend "Hyerco Imported Squirrelpelt". These labels are attached by such customers to such garments in such manner as to reach their retail customers with said label attached and eventually the ultimate purchasers of such garments buy the same with said label attached thereto.

PAR. 5. Said advertising and the use of said labels as aforesaid have the capacity and tendency to induce the public to purchase garments made from said "Squirrelpelt" in the belief that the same are made from the pelts of squirrels, and to divert trade to respondents from competitors engaged in the sale, in interstate commerce, of cloth, furs, and other materials from which wearing apparel is made.

PAR. 6. The above alleged acts and practices of respondents are all to the prejudice of the public and respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of said act of Congress.

ORDER TO CEASE AND DESIST

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission on the 22nd day of December 1930, issued its complaint against H. Ernstberger and Carl Rosenkranz, copartners trading as H. Ernstberger & Company, respondents herein, and caused the same to be served upon said respondents as

required by law, in which complaint it is charged that respondents have been and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act. On January 31, 1931, the said respondents filed herein a written answer to said complaint wherein they and each of them expressly elected to refrain from making a defense to the complaint herein and consented that the Commission might make, enter, and serve upon respondents an order to cease and desist from the alleged violations of the law set forth in said complaint; and the Commission having accepted and considered such pleading, and being fully advised in the premises,

It is now ordered, That respondents, H. Ernstberger and Carl Rosenkranz, copartners trading as H. Ernstberger & Company, their agents, representatives, employes or successors do cease and desist from doing directly or indirectly any and all of the acts hereinafter designated and set forth in connection with the offering for sale, or sales, in interstate commerce, or in the District of Columbia, of materials not made from the pelts of squirrels, as follows:

PAR. 1. (1) From using the trade name "Squirrelpelt" or other words or phrases of like import with which to brand, label, represent, advertise or describe such materials;

(2) From using a picturization of a squirrel or squirrels in advertisements, upon brands, or labels of such materials;

(3) From furnishing purchasers of such materials or others with labels which bear the trade name "Squirrelpelt" or other word or words of like import;

(4) From using any word or words or pictorial device or characterization in advertising or otherwise which import that said materials are made from the pelts or skins of squirrels.

PAR. 2. *It is further ordered,* That respondents, within 60 days from and after the date of the service upon them of this order shall file with the Commission a report, or reports, in writing, setting forth in detail the manner and form in which they are complying with the order to cease and desist herein above set forth.

Complaint

14 F. T. C.

IN THE MATTER OF
AMERICAN POULTRY SCHOOL AND T. E. QUISENBERRY
COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 1508. Complaint, Apr. 3, 1928—Decision, Feb. 17, 1931

Where a corporation engaged in conducting correspondence course in poultry raising and in sale of books, poultry feed and remedies, and its president and manager; in its advertisements in poultry and farm journals and other magazines, and in enrollment blanks, circular letters and other matter,

- (a) Stated and represented certain things including baby chicks, books, life scholarships and bulletins were furnished free, fact being that compensation therefor was at all times included in price charged and received for said course; and
- (b) Stated and represented that said course was offered at a special and lower price than that usually received, to a representative poultry raiser in each community (to be appointed as its local representative), through elimination of usual large advertising appropriation and the passing on of such saving or benefit, facts being that such pretended special offer was made to all prospective pupils indiscriminately and supposed special price was its usual and ordinary price;

With capacity and tendency to deceive public and induce persons to enroll as students and pay tuition specified in reliance upon truth and accuracy of such representations and thus to divert trade from competitors to them:

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

Mr. Alfred M. Craven for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent American Poultry School, a Missouri corporation engaged in the sale of courses of instruction by correspondence in poultry culture to persons in various States, and also of articles incidental and accessory thereto, together with baby chicks, and with principal place of business in Kansas City, Mo., and respondent T. E. Quisenberry, president of said corporation and actively engaged in the management and control of the business activities thereof, with advertising falsely or misleadingly as to free products or things, and prices, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent corporation, as charged, engaged as above set forth and under the active management and control of respondent Quisenberry, in advertising its aforesaid courses, etc., in newspapers, magazines, periodicals and other publications of general circulation and in enrollment and other blanks, catalogues, letters, circulars, and other forms of written, mimeographed or printed nature makes false and misleading statements to the effect that—

The usual full cash or selling price for the course, etc., is a certain sum, specified, but it is offering the same, together with aforesaid incidentals, etc., at a reduced and special price substantially lower than the other, the pretended reduced price is offered only for a limited time as specifically set out, and aforesaid baby chicks are given to the pupils free and without compensation to it or cost or expense to the pupils, facts being that the pretended reduced price is its regular full tuition or selling price for the whole course, together with the articles and accessories involved, the so-called regular price and pretended time limit are fictitious, and the price of or compensation for the baby chicks is at all times included in and constitutes a part of the ordinary selling price or tuition.

Use by respondent school, so under the control of respondent Quisenberry, of such "trade practice and method of competition, to wit, the making of said false statements and representations as above set forth, has the tendency and capacity to mislead and deceive the public and prospective pupils, and will probably mislead and deceive the public and prospective pupils, into the erroneous belief" that aforesaid statements and representations are true, and that respondent school is offering to sell and deliver to prospective pupils the course and incidentals and accessories at a substantially lower selling price, as specified, than the regular price, with a resulting financial saving and advantage to each prospective pupil to the amount of the pretended reduction, that such reduction is offered only for a limited time, as set forth, that the school offers to give and gives baby chicks to its pupils without compensation to it and without cost or expense to the pupils and that, therefore, respondent school "for the limited time so specified, and because of such pretended reduced or special tuition or selling price, and because such pupils receive such 'baby chicks' without price or compensation to said respondent, and without cost or expense to such pupils, offers the best available opportunity to procure the education represented by said course of instruction and information and to procure such articles and things above referred to" and said acts and practices of re-

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spondents, as charged, are all to the prejudice of the public and of their competitors and constitute unfair methods of competition in commerce.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress, approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on the 3d day of April, 1928, issued and thereafter served upon the respondents American Poultry School and T. E. Quisenberry a complaint, charging them with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act of Congress. The respondents having entered their appearance and filed their answer herein, a hearing was had and evidence was thereupon introduced on behalf of both the Commission and the respondents before an examiner of the Commission theretofore duly appointed. Thereafter, this proceeding came on for final hearing upon the record, briefs and oral argument, and the Commission having duly considered the matter and being fully advised in the premises, now makes this its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent American Poultry School is a corporation organized and existing under the laws of the State of Missouri with its principal place of business at Kansas City in said State. Respondent T. E. Quisenberry is its president and is in charge of the management of the business carried on by such corporation, which is that of conducting a correspondence school, giving instruction in the raising of poultry, and also in selling books and poultry feed and remedies for poultry diseases. The course of instruction furnished by respondents consists of 38 lessons printed in pamphlets, each containing two lessons. Said lessons together with other printed matter are furnished to all students enrolling for the course of instruction.

PAR. 2. In the course and conduct of the said business respondents upon the enrollment of pupils cause to be transported by mail and otherwise the course of instruction and such articles of merchandise as are furnished as a part of such course of instruction into and through States other than Missouri, in interstate commerce, to the

several students at their respective points of location in the various States of the United States. Said respondent school has pupils in nearly every State of the United States. In the course and conduct of its business respondent school is in competition with other schools, corporations and individuals in the United States, engaged in furnishing instructions in poultry raising and in sending and transporting lessons and other printed matter into and through the various States of the United States in interstate commerce.

PAR. 3. As a means of securing persons to enroll as pupils and to pay the tuition specified the respondents advertise extensively in poultry and farm journals and other magazines having a general circulation in the United States and send to persons answering such advertisements enrollment blanks, circular letters and other forms of printed or mimeographed matter containing descriptions, statements and representations in regard to the course of instruction and the terms upon which pupils may enroll as such.

PAR. 4. In such advertisements, enrollment blanks, circular letters and other forms of advertising mentioned in paragraph 3 hereof, respondents, among other things, have stated and represented and do now state and represent that certain articles including baby chicks, books, life scholarships and bulletins were furnished free and without cost or expense to the pupils enrolling for the course. Such representations were and are false and misleading in that the price of, or compensation to the respondents for, said articles are at all times included in, and constitute a part of, the price charged and received by the respondents as the price of the course of instruction:

PAR. 5. Respondents also in their advertising mentioned in paragraph 3 hereof have stated and represented and now state and represent that the course is being offered to the public at a special price and at a lesser price than the price usually and ordinarily received by respondents; whereas in truth and in fact such purported special price is not a special price, but the ordinary and usual price. For example, in an enrollment blank which has been used by respondents since December 15, 1927, and is still in use and has been sent during said period of time to every person answering the journal and magazine advertisements, respondents state and represent as follows:

I want to appoint you as our representative in your locality. This will not take up any of your time but will give you special privileges and give you the benefit of a special offer such as has never before been made in the history of the poultry business.

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LIFE SCHOLARSHIP IN THE AMERICAN POULTRY SCHOOL

* * * * *

You ask how we can afford to make such an offer. Well, it is like this. We spend nearly \$100,000 a year in advertising and circulars. We have decided this year to cut our appropriation in half and give our students the benefit of this big saving. I have, therefore, decided to select at least one representative poultry raiser in each community and make him an offer of our Complete Practical, Commercial and Breeding Course, which is the most complete and thorough course offered by this school for *only* \$12.50 (and which has never been sold for less than \$30 to \$35 cash).

Said statements and representations are false and misleading in that the offer of appointment as a representative is not a special offer, but is made to all prospective pupils indiscriminately, and the price specified as the price of the course is not a special price or special privilege to the prospective pupil for the reason that said purported special price of \$12.50 has been the usual and ordinary price received by said respondents for said course since December 15, 1927.

PAR. 6. The false and misleading representations set forth in paragraphs 4 and 5 hereof, severally have the capacity and tendency to deceive the public and to induce persons to enroll as students in respondent's school and pay the specified tuition in reliance upon the truth and accuracy of such representations, and thus divert trade to respondents from their competitors.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of the respondents, the evidence introduced on behalf of the Commission and said respondents and briefs filed, and the Commission having made its findings as to the facts and its conclusion that said respondents, American Poultry School and T. E. Quisenberry, have violated the

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

It is now ordered, That respondent, American Poultry School, its officers, agents and employees, and respondent T. E. Quisenberry, in connection with selling or offering for sale course of instruction or articles of merchandise in interstate commerce between and among the several States of the United States and in the District of Columbia, do cease and desist from:

(1) Representing to prospective students or to the public that the usual or regular selling price of any course of instruction is greater than the price at which such course of instruction is usually offered for sale.

(2) Representing that the price of any course of instruction offered is a special price or reduced price, or a price that is lower than the price ordinarily and usually received when such is not the fact.

(3) Representing that any article of merchandise or other thing is furnished free to pupils or prospective pupils when the price or value of such article of merchandise or other thing is included in the price specified as the price of the course of instruction.

It is further ordered, That the said respondents, American Poultry School and T. E. Quisenberry, shall within 60 days after the service upon them of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

IN THE MATTER OF
DOMINO HOUSE, INCORPORATED, AND MARGARET
SULLIVAN

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

Docket 1718. Complaint, Oct. 31, 1929—Decision, Feb. 17, 1931

Where a corporation engaged under the trade name "Beauty Arts Society" in the sale of a course in permanent and marcel waving and hair cutting, together with a curling iron, as a part thereof, and an individual, its president, in direct charge and control thereof; in soliciting sale of said course and iron through circular letters, advertising circulars, pamphlets, and application blanks, and in other advertising literature,

- (a) Represented said supposed society as a national organization composed of beauty specialists, experts, and a faculty, and with openings for new members and purported to offer the prospective purchaser or pupil membership in such supposed organization, through aforesaid application blanks, with advantage of becoming one of its resident marcel waving specialists, privilege of permanent consultation with society's experts, a membership certificate, right to use of name "Beauty Arts Society" as a member in full standing, and active backing of said society, and placed on the title page of the course in marcel waving the words, "Prepared by the faculty of the Beauty Arts Society" and represented the lessons as so prepared that they proceeded logically through the art and technique of said trade or occupation, and that lists of answers sent in by pupils were examined carefully by the teachers and returned with corrections, facts being that the supposed society was fictitious and nothing more than a trade name employed as above set forth, and aforesaid offers, promises, statements and representations were false and misleading; and
- (b) Represented in circular letters, etc., that the regular price of the membership fee including said course in marcel waving was \$10, but that for a limited time and as part of a special offer said membership was being sold for the reduced price of \$9.85 and each person would be given free the complete \$10 course in hair cutting and a professional waving iron, making such statements as "You actually save half the regular fee by becoming a member now", "Professional waving iron absolutely free", "Free course in hair cutting for ten days only—regular price \$10", "This letter can be worth \$19.15 to you", facts being that \$9.85 was the regular price for everything and the so-called special offer was not limited nor in fact a special offer, but open for acceptance at any time by sending in the application blanks and \$9.85, and said statements and representations were false, deceptive and misleading;

With tendency and capacity to mislead the public and prospective purchasers and induce the purchase of said course and article in reliance upon the truth of aforesaid offers, promises, statements and representations and thereby divert trade to said corporation and individual from competitors, and with effect of so misleading and deceiving such public and purchasers:

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

Mr. G. Ed. Rowland for the Commission.

Felix & Felix of Philadelphia, Pa., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Domino House, Inc., a Pennsylvania corporation, engaged under the trade name Standard Specialty Co., in the sale of perfumes, face powders, facial preparations, toilet preparations, patent medicines and other merchandise, and under the trade name "Beauty Arts Society" in the sale of curling irons for marcel waving, together with certain beauty culture courses relating to permanent waving, marcel waving, and hair cutting, and with principal place of business in Philadelphia, and respondent Margaret Sullivan, its president, principal stockholder and manager, with advertising falsely or misleadingly as to business status, nature of product or service offered, prices and pretended free goods or services, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent corporation, as charged, engaged as above set forth, in the leaflets, price lists, circular letters and other trade literature used by it in connection with the offer and sale of its waving or curling iron, and course, as above set forth, "offers to the public and its prospective customers a membership in the 'Beauty Arts Society', which respondent represents to be a national organization with a membership composed of beauty specialists and experts and with a faculty, which faculty it represents prepared the courses of instruction. Such membership, including a pamphlet comprising all of the courses of instruction, is offered for a so-called membership fee of \$9.85, which amount is represented to be a reduced price from the regular price of \$19. Such offer includes a 'Professional waving iron', or curling iron, which is represented to be 'absolutely free' to the customer, and a 'complete hair cutting course' which is represented to be, in case the offer be promptly accepted, absolutely free to the customer, and to be of the regular price of \$10."

Said offer, as alleged, "is sham and fraudulent, and the representations therein made are false and misleading in that there is no such society as the Beauty Arts Society, as represented by respondent, and that the amount of \$9.85 represented to be a fee is actually

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the price of all the courses of instruction sold by respondent, and the so-called professional waving iron. Said price of \$9.85 is and has been since the incorporation of respondent, Domino House, Inc., the regular and standard and inclusive price charged and received by said respondent for all of said articles," and said false and misleading offers and representations "have the capacity and tendency, and have caused many persons residing in various States of the United States, to purchase respondents' said courses and waving iron in and on account of a belief in the truth of such representations."

Said alleged acts and practices of respondents, as charged, "are all to the prejudice of the public and respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5."

Upon the foregoing complaints the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondents above named, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having entered their appearance, and having filed their answers herein, hearings were had and evidence was thereupon introduced before an examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon this proceeding came on for final hearing, and counsel for the Commission having submitted a brief and having argued the case before the Commission, counsel for respondents failing to file brief or appear for argument, and the Commission having duly considered the record, and being now fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Domino House, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business at 317 North Seventh Street, in the city of Philadelphia, in said State.

Respondent, Margaret Sullivan, is president of respondent, Domino House, Inc., and is in direct charge and control of the business

of said corporation. The only other officer of said respondent corporation is Jacob Slavin, secretary-treasurer.

PAR. 2. Respondent, Domino House, Inc., was incorporated in September, 1927, and is engaged and has been engaged since that time in the sale of poultry remedies, cosmetics, books, and household supplies, by means of agents located in various parts of the United States, and also through the United States mails. Said respondent, Domino House, Inc., has been at all times since its incorporation in 1927, also engaged in the sale in interstate commerce, under the trade name and style of "Beauty Arts Society," of a course of instruction in beauty culture, relating to permanent waving and Marcel waving, and a course of instruction in hair cutting, and a curling iron for use in connection with said course in Marcel waving.

Said correspondence courses sold by respondents under the trade name and style of "Beauty Arts Society," together with the curling iron supplied with said courses, are transported by respondent, Domino House, Inc., when sold, by mail, express or otherwise, from its principal place of business in the city of Philadelphia, State of Pennsylvania, into and through States other than Pennsylvania, in interstate commerce to the purchasers thereof at their respective points of location in the various States of the United States. In the course and conduct of its said business respondent corporation is and has been in competition with other individuals, firms, and corporations, some of whom are engaged in the business of selling courses in beauty culture, including Marcel waving and hair cutting, and others engaged in the business of selling the same kind of merchandise as those sold by respondents, all of such competitors being also engaged in the transportation of the merchandise sold by them in interstate commerce between and among the various States of the United States.

PAR. 3. Respondent, Margaret Sullivan, was connected with E. J. Reefer for several years prior to 1926, in connection with the operation of certain mail order businesses by said E. J. Reefer. At that time the said Reefer's business was located at 269 South Ninth Street, in the city of Philadelphia. In 1926 respondent, Margaret Sullivan, left the employ of said Reefer, and in the summer of 1927, the said Reefer went into bankruptcy and his business was bought by Russell Hughes. Respondent, Margaret Sullivan, purchased the said business from the said Russell Hughes in 1927, and incorporated respondent, Domino House, Inc., for the purpose of conducting the said business, and remained at 269 South Ninth Street, in the city of Philadelphia, until September 1928, when respondent's business was removed to its present location, 317 North Seventh Street, in the city

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of Philadelphia, State of Pennsylvania. Among the assets acquired by respondent, Margaret Sullivan, when the aforesaid purchase of the business was made was the correspondence courses of study in Marcel waving and hair cutting.

PAR. 4. Respondents solicit the sale of the said correspondence courses in Marcel waving and hair cutting, together with the curling iron accessory thereto, by means of circular letters, advertising circulars, pamphlets, and application for membership blanks, and other advertising literature, under the name "Beauty Arts Society." Said circular letters and advertising literature is sent by respondents through the United States mail to prospective purchasers located in various States of the United States. In all of such circular letters, advertising circulars, pamphlets, application for membership blanks, and other advertising literature, respondents make many offers, promises, statements and representations regarding the said correspondence courses in Marcel waving and hair cutting. Among said offers, promises, statements and representations are the following:

(1) That the said Beauty Arts Society is a national organization with a membership composed of beauty specialists and experts, and with a faculty, which faculty prepared the courses of instruction sold by said respondents under said trade name. In said circular letters sent to prospective purchasers of said correspondence course in Marcel waving respondents, under the trade name "Beauty Arts Society," state:

All over the country, the Beauty Arts Society now has openings for new members—to fill places in its national organization of home specialists in Marcel Waving.

The regular membership fee in the Beauty Arts Society (a fee that is necessary solely to cover the cost of your instruction in the work) is \$19.

This fee covers the entire cost of your training by mail * * *. It entitles you to a Certificate of Membership—the privilege of using the name of the Beauty Arts Society (this alone should be worth many dollars to you).

But, in order to become an accredited member, with the prestige and backing of this great organization as a guarantee of your success, you must be prompt.

In the application for membership blank appears the following:

I hereby apply for Membership in the Beauty Arts Society and Appointment to a place in your organization as one of your resident Marcel Wave specialists. I understand that you will provide me with everything necessary for Marcel Waving, including the following:

* * * * *

(3) Full Services and Privileges of Membership, including

(A) Permanent Consultation Privilege with the experts of the Society on any question in connection with the work;

(B) Membership Certificate of the Society;

(C) Right to the use of the name Beauty Arts Society, as a member in full standing.

In an advertising pamphlet distributed by said respondents under the name "Beauty Arts Society," it is said:

The Beauty Arts Society does much more for its Members than simply give them a course of instruction and An Outfit and then leave them to their own resources to earn money as best they can.

Once you join the Society, you become part of its organization. You are a Member of its staff, carrying on its work in your own particular community.

On the title page of the course of instruction in Marcel waving sold by said respondents under the name "Beauty Arts Society," appears the following statement:

Prepared by the faculty of
THE BEAUTY ARTS SOCIETY

In the first lesson of said course of instruction appears the following:

Our teachers here at the Beauty Arts Society have so prepared the lessons that they proceed logically step by step through the art and technique of Marcel Waving, * * *.

In said lesson 1 also is the following:

We want you to know that all students of the Beauty Arts Society are requested and urged to get in touch with their teachers at any time they like for advice, suggestions, help, information. We have here at the Society a competent staff of teachers and advisers who are ready and eager to help you. If at any time you feel that you would like personal help and suggestions, do not hesitate to write. Every list of answers sent in by you (examination papers are sent to you throughout the course for instance) is examined carefully by the teachers and returned to you with corrections.

All of the above offers, promises, statements and representations are false and misleading, because in truth and in fact there is no such "society" as said "Beauty Arts Society," said name being a trade name used by respondents, and a purchaser of the course of instruction in Marcel waving does not become a member of any national organization; respondents do not maintain a staff of teachers and advisers to answer questions sent in by purchasers of the said course of instruction, and the lessons included in said course of instruction were not prepared by the faculty of the said Beauty Arts Society, because there is no such society in existence.

(2) Respondents in aforesaid circular letters, advertising circulars, pamphlets, application for membership blanks, and other advertising literature, represent that the regular price of the membership fee which includes the said course in Marcel waving, is \$19, but

that for a limited time, and as part of a special offer, said membership is being sold for the reduced price of \$9.85, and that as part of the said special limited offer respondents, under the name "Beauty Arts Society," will give each person who enrolls as a member in the so-called "Beauty Arts Society" absolutely free a complete course in hair cutting, the regular price of which is \$10, and a professional waving iron.

In a circular letter sent out by respondents, under the trade name "Beauty Arts Society," they state as follows:

The regular membership fee in the Beauty Arts Society (the fee that is necessary solely to cover the cost of your instruction in the work) is \$19. *But now, for a very short time, we are going to enroll new members for only \$9.85—no further payments to be made at any time!* * * * And then you will receive, absolutely free, a professional Marcel Waving Iron—just the kind in use in the best beauty parlors everywhere. * * *

But, * * * you must be prompt. Because of this special low price, in effect for a short time only, we expect to be flooded with applications.

Simply fill in your name and address and get it in the mail at once. When it arrives, your instructions and free *Marcel Waving* iron and your Certificate of Membership will go forward to you immediately. You can pay the postman the special reduced price of only \$9.85 * * *.

As a postscript to this circular letter appears the following:

SPECIAL FOR TEN DAYS ONLY—Complete Course in Hair Cutting FREE. To supplement your course in Marcel Waving, to add to your profits, we make you this amazing FREE offer of a professional Course in Hair Cutting. This complete, simplified course of lessons has always sold for \$10 * * *.

In the application for membership blank sent out by respondents to prospective purchasers, it is stated:

Special Offer if you are prompt: \$10 Course in Hair Cutting FREE.

I hereby apply for Membership in the Beauty Arts Society and for Appointment to a place in your organization as one of your resident Marcel Wave specialists. I understand that you will provide me with everything necessary for Marcel Waving, including the following:

- (1) Complete \$19 course of instruction in marcel waving * * *
- (2) One Professional Waving Iron absolutely FREE.
- (4) Your complete Hair Cutting Course—regular Price \$10.—Absolutely FREE.

It is also agreed that you are to send as an appreciation of my prompt acceptance of this offer, your complete course in Hair Cutting (Regular Price \$10) without additional cost. I enclose no money, but will pay to postman the special low fee of only \$9.85 plus postage on delivery for *both* courses (instead of the regular fee of \$19). * * *

Then appears, printed in red ink:

(NOTE.—This extra special reduction from the regular price is for a short time only. To take advantage of it you must mail this Application at once.)

In an advertising circular sent out and distributed by respondents, it is stated:

Was \$19.00 Now Only \$9.85.

The regular price of the course in Marcel Waving is \$19.00. This is the first time it has ever been offered at the sensationally low price of \$9.85.

* * * * *

Save one-half.

You actually SAVE HALF the regular fee by becoming a member NOW.

And on the back of the said advertising circular appears:

FREE! Course in Hair Cutting For 10 days only.—Regular Price \$10.00.

In another circular letter sent out by said respondents, under the trade name "Beauty Arts Society," they state:

This letter can be worth \$19.15 to you!

For the application blank attached entitles you to a FREE course in Hair Cutting (regular price \$10.00) as well as a reduction of \$9.15 on the complete Marcel Waving course of the Beauty Arts Society.

The statements and representations quoted above are false, deceptive and misleading, because in truth and in fact the said course of instruction in Marcel waving never was sold by respondents for \$19, and the price of \$9.85 is not a special, reduced price, but is the regular price at which said course of instruction has been at all times sold by said respondents; said course in hair cutting which respondents, under the trade name "Beauty Arts Society," offer to give free to purchasers of the course in Marcel waving, was never sold by said respondents separately from the said course of instruction in Marcel waving and was never sold at a price of \$10, or any other price, but has always been included as part of the course of instruction in Marcel waving at the regular price of said course of \$9.85; the professional waving iron which respondents, under the trade name "Beauty Arts Society," offer free to purchasers of the said course of instruction in Marcel waving is not in fact given free, but the price of the said waving iron is included in the said price of \$9.85, which is and has been at all times, since the incorporation of respondent, Domino House, Inc., the regular standard and inclusive price charged by respondents, under the trade name "Beauty Arts Society," for all of the items referred to heretofore; and the so-called special offer, limited in time, is not in fact a special offer, but is open for acceptance by purchasers at any time that they send in the application for membership blanks, and pay the said regular price of

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\$9.85, for the several courses of instruction, and the professional waving iron.

The records of the United States Post Office of the City of Philadelphia, State of Pennsylvania, show that respondents, under the trade name "Beauty Arts Society," during the period from September, 1927, to October, 1928, sold and distributed by United States parcel post the aforesaid courses of instruction, and waving iron, to purchasers in the States of Kentucky, South Dakota, Texas, Ohio, Arkansas, California, and other States of the United States, and that on or about March 1, 1929, said respondents advised the U. S. Post Office, in the City of Philadelphia, that the name "Beauty Arts Society" was in use by them at that time.

PAR. 5. The offers, promises, statements and representations set forth in paragraph 4 herein are false, deceptive, and misleading, and the use of said offers, promises, statements and representations by respondents, Domino House, Inc., and Margaret Sullivan, in the manner and form above alleged has a tendency and capacity to and does mislead and deceive the public and prospective purchasers into the erroneous belief that said offers, promises, statements, and representations, are true, and to induce persons to purchase the course of instruction in Marcel waving and hair cutting, and the professional waving iron, in reliance upon and by reason of their belief in the truth and accuracy of said respondents' offers, promises, statements, and representations, and thereby to divert trade to respondents, Domino House, Inc., and Margaret Sullivan, from competitors of said respondents engaged in the sale of courses of instruction in Marcel waving and hair cutting.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answers of respondents, the testimony taken, and brief filed and oral argument by counsel for the Commission, and the Commission having made its

findings as to the facts and conclusion that respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That respondent, Dominio House, Inc., its officers, agents, representatives and employees, and respondent, Margaret Sullivan, an individual, her agents, representatives and employees, cease and desist from making statements and representations in circular letters, advertising circulars, pamphlets, booklets, and other advertising literature, circulated and distributed in connection with the offering for sale and sale in interstate commerce of a course or courses of instruction in Marcel waving and hair cutting, under the trade name "Beauty Arts Society," or any other name, as follows:

(1) That the regular and usual price of said course of instruction in Marcel waving is \$19, or any other price, when such is not the fact;

(2) That the regular and usual price of said course of instruction in hair cutting is \$10, or any other price, when such is not the fact;

(3) That prospective purchasers are being offered the said course of instruction in Marcel waving at a specially reduced price for a limited period of time, unless said offer is actually limited in point of time for acceptance at such reduced price, and unless said alleged specially reduced price is in fact a lower price than the regular and usual selling price of said course of instruction;

(4) That the said course of instruction in hair cutting, and the professional waving iron, or any other article of merchandise or course of instruction, is furnished free to purchasers, when the price or value of such article of merchandise or course of instruction is included in the price specified as the price of the course of instruction being sold;

(5) That a purchaser of the said course of instruction in Marcel waving becomes a member of a national society or organization of hair waving experts, or any other society or organization, when such is not the fact.

And it is further ordered, That respondents shall, within 30 (30) days after the service upon them of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which this order has been complied with and conformed to.

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IN THE MATTER OF
TARBELL SYSTEM, INCORPORATED, AND T. G. COOKE

COMPLAINT (SYNOPSIS), FINDINGS AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 23, 1914

Docket 1721. Complaint, Nov. 12, 1929—Decision, Feb. 17, 1931

Where a corporation engaged in the sale of a course in magic, together with supplies and accessories thereto, and an individual, treasurer and general manager thereof, owner of the majority of its stock, in direct and active charge of its business, and responsible for its policy and advertising literature; in advertising circulars and circular letters sent in response to inquiries from periodical advertisements, and to mailing list names,

- (a) Represented that it was making a special offer of \$69.50 to prospective pupils in place of its regular and full price of \$90 and drew a red line through figures setting forth the larger price and payments and substituted or added the lower figures and urged prompt action before closing of offer, facts being that price of \$69.50 was its regular, permanent, and full price for the course and accessories included therewith;
- (b) Represented that its diploma was so highly prized that graduates could secure big bookings and enjoy handsome incomes and earned from \$250 to \$1,000 a month, and informed the prospective pupil through said circulars, etc., and magazine advertising that he would be in demand at his club, lodge and social functions and would soon be a semi-professional, making big money "on the side", facts being that during most of the time concerned said corporation had issued no diplomas, the art or profession was only seasonal, those engaged therein did not give performances majority of nights during the year, and amateurs and semi-professionals devoting their attention to exhibitions at church socials, lodges and similar gatherings received from \$15 to \$100 for exhibitions, depending upon nature thereof, and no graduate averaged from \$250 to \$1,000 a month as a result of having completed its said course; and
- (c) Represented that it would make pupils proficient and expert magicians almost immediately through such statements as "You can become an amazing magician not in a year or six months but almost at once," "* * * inside of a week you can have friends standing around you with their mouths open and their eyes bulging with amazement at your apparently supernatural powers," and guaranteed that "Dr. Tarbell can make you a master magician," facts being that to become expert in such art or profession requires continuous practice, many enrolling for the course in reliance upon such statements and representations are naturally awkward or otherwise unable to become proficient therein, and it is impossible to guarantee even so much, since natural aptitude for the art can not be known nor whether instructions given have been followed;

With tendency and capacity to mislead and deceive the public and prospective pupils into enrolling in reliance upon the erroneous belief that such statements, etc., were true and thereby divert trade to said corporation or individual, from competitors and with effect of so doing;

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

Mr. G. Ed. Rowland for the Commission.

Mr. Gustav E. Beerly, of Chicago, Ill., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Tarbell System, Inc., an Illinois corporation engaged in the sale of courses of instruction in the art or profession of magic, to pupils at various places in the several states, and of certain supplies, accessories, and articles as incidental and accessory to such instruction, and with principal place of business in Chicago, and respondent T. G. Cooke, treasurer of said corporation and owner of the majority of the stock thereof and in direct control of its business, with advertising falsely or misleadingly as to prices and results of product or service, advertised, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent corporation, as charged, engaged as above set forth, in selling a course of printed instructions in the art or profession of performing tricks and illusions of various kinds, commonly referred to as magic, together with a number of articles regarded as accessories and aids to the acquirements of the "knowledge of, and to the use and practice, of said art or profession," in advertising its said courses and articles in newspapers, magazines, periodicals and other publications of general circulation throughout the United States and in the several States and in pamphlets, letters, circulars and other forms of printed, written or mimeographed matter, falsely and misleadingly represents that—

It is making a special extraordinary offer to prospective pupils who enroll immediately before the offer closes, to wit, the sale of its full course of instruction and the articles and things incidental and accessory thereto at the temporarily reduced price of \$69.50, instead of the regular, full price of \$90, fact being said pretended reduced and special price is its regular price for said course and articles;

Its diploma is so highly prized that its graduates can secure big bookings, enjoy handsome incomes, and earn from \$250 to \$1,000 a month, fact being it has had no graduates from its said course, its diploma has no value in enabling a pupil completing same to secure bookings and enjoy handsome earnings, no pupils have completed

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the course, and none of them have earned or are earning sums referred to as a result of taking said course.

A pupil taking the course will become an amazing magician "not in a year or six months, but almost at once," fact being that in order to become proficient in the art in question it is necessary for a pupil to study and practice for months and not all persons are capable of becoming proficient therein and there have not been any pupils who have completed the course in question.

The use by respondent Tarbell System, Inc., controlled by respondent Cooke, of the methods and practices alleged, as above set forth, and the statements and representations made as above set forth, "have the tendency and capacity to mislead and deceive the public and prospective pupils, and will probably mislead and deceive the public and prospective pupils, into the erroneous belief that said statements and representations are true, and that pupils of respondent, Tarbell System, Inc., will in fact receive its course of instruction at a price less than the permanent, regular price of said course if they enroll immediately; that they will be able to become expert and proficient in the art or profession of magic in a short time; and that when they graduate from said course of instruction they will earn large sums by the practice of the art or profession of magic because of their proficiency and because of the prestige attaching to a diploma from respondent, Tarbell System, Inc.," and said acts and practices of respondents are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondents above named, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having entered their appearance, and having filed their answers herein, hearings were had and evidence was thereupon introduced before an examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon this proceeding came on for final hearing, and counsel for the Federal Trade Commission and counsel for respondents having submitted briefs, and counsel for the Commission having argued the case before the Commission (counsel for respondents

failing to appear), and the Commission having duly considered the record, and being now fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Tarbell System, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business at 1926 Sunnyside Avenue, in the city of Chicago, in said State.

Respondent, T. G. Cooke, is treasurer of respondent, Tarbell System, Inc., and owns the majority of the stock in said corporation. The business of said respondent corporation is under the direct control of respondent, T. G. Cooke. The other officers of respondent corporation are Harlan Tarbell, president, and E. L. Frey, secretary.

PAR. 2. Respondent, Tarbell System, Inc., at its said place of business, is engaged in the business of offering for sale and selling and furnishing courses of instruction by correspondence in the art or profession of magic, as hereinafter defined, to persons hereinafter referred to as pupils, such pupils residing and being and remaining at various places in the several States of the United States, and in selling and furnishing to such pupils severally, as incidental and accessory to such instruction, the certain supplies, accessories and articles hereinafter enumerated.

PAR. 3. Respondent, Tarbell System, Inc., when a prospective pupil enters into a contract with it and enrolls as such pupil, in consideration of the agreed tuition price paid and agreed to be paid by such pupil, undertakes to sell and deliver to such pupil, through the United States mail or otherwise, a complete course of printed instructions in the art or profession of magic, as hereinafter defined, together with a number of articles regarded as accessories and aids to the acquirement of the knowledge of, and to the use and practice of, said art or profession.

The art or profession of magic, as taught by respondents in the course of instructions sold and distributed by them, and as referred to in these findings, means the performing of tricks and illusions of various kinds, including sleight of hand, and is commonly referred to among the exponents thereof as "magic", and the person or persons engaged in such art or profession are commonly referred to as "magicians".

Thereafter, and in pursuance of said contract with such pupils, said respondent, Tarbell System, Inc., furnishes and causes to be transported from its said place of business into and through the

several States of the United States, and delivered to such several pupils at their respective places of residence, the several items of printed matter and other articles and things above enumerated.

PAR. 4. In all of its said business, and in the several parts thereof, and in the procurement of pupils to enroll as such and to purchase said course of instruction and said articles and things above enumerated and to pay therefor, respondents are in competition with other persons, firms or corporations, who are likewise engaged in the same or similar lines of business activity, and who are seeking to procure prospective pupils in and throughout the several States of the United States to enroll as such and to purchase, receive and pay for courses of instruction by correspondence as above set forth and for printed matter and other articles and things to be sold, furnished and delivered to such pupils as incidental or accessory to the learning and practice of such arts, sciences, professions or trades.

PAR. 5. The course of instruction sold by respondent consists of 60 printed lessons, in which the method of performing various tricks and illusions are set forth in detail, together with diagrams and illustrations intended to aid the pupil in understanding and perfecting himself in the performance of said tricks and illusions. Various and sundry accessories are necessary for use in the course and these are all included in the course as supplied to their pupils by respondents, without extra charge. The president of respondent, Tarbell System, Inc., is Harlan Tarbell, who is a professional performer of tricks and illusions, and who has devoted practically his entire active life to that profession, and who has had many years experience in giving public performances on the stage and in private entertainments.

The lessons comprising the course of instruction sold by respondents was prepared and written by Harlan Tarbell, and originally was intended to consist of only 50 lessons, but during the development of said course it was increased to 60 lessons, and for the past three years the complete course has comprised 60 lessons. Harlan Tarbell devotes about one-half of his time to the business of respondent, Tarbell System, Inc., his work consisting of answering inquiries received from pupils relative to the tricks and illusions contained in the course, and in a few instances giving personal instruction to pupils who come to see him. He is the only person connected with respondent, Tarbell System, Inc., who knows anything about magic.

Respondent, T. G. Cooke, is treasurer and general manager of respondent, Tarbell System, Inc., and owns the majority of the capital stock of said respondent. He is in direct, active charge of the

business of respondent, Tarbell System, Inc., and is responsible for the policies of said respondent, and the advertising literature prepared and distributed by it.

PAR. 6. In the course and conduct of their aforesaid business, and for the purpose of inducing prospective pupils to enter into contracts with respondent, Tarbell System, Inc., and to enroll as pupils with it, and to purchase the courses of instruction sold by it and to pay the purchase price therefor, respondents cause advertisements of its said course of instruction to be inserted in magazines having general circulation throughout the United States and the several States thereof, and prepare and distribute to said prospective pupils pamphlets, letters, circulars and other forms of printed and mimeographed matter advertising and describing their said course of instruction.

Respondent, Tarbell System, Inc., secures its pupils by means of such advertisements, and by means of mailing lists which it buys or obtains by other means. To any inquiries received from any of its aforesaid advertisements, and to the names upon its mailing lists, respondent, Tarbell System, Inc., at the instance, and by direction of respondent T. G. Cooke, sends one of the aforesaid advertising circulars, together with a circular letter and application for enrollment blank. If no reply is received to this letter, respondent sends a number of other circular letters, in regular order, at intervals averaging about two weeks, and other advertising circulars.

In the advertising circulars and circular letters sent by respondents to prospective pupils appear the following statements and representations:

(1) That respondent, Tarbell System, Inc., is making a special, extraordinary offer to prospective pupils who will enroll as pupils immediately before such offer closes, by which said offer it will sell to such prospective pupils its full course of instruction in magic, and such articles and things incidental and accessory thereto, for which the regular and full price is the sum of ninety (\$90) dollars, at the temporarily reduced and special price of sixty-nine (\$69.50) dollars and fifty cents. In a circular sent out by respondent to prospective pupils until a short time before the commencement of this proceeding, respondent stated, among other things:

Extraordinary Offer—ACT NOW Before this offer closes—Right Now—if you act quickly—you have the remarkable opportunity to enroll in the world-famous Tarbell Course in Magic, endorsed by the world's greatest magicians, at the phenomenally low price of ONLY \$69.50. * * *

But remember—you must act quick! * * *

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Fill in and mail the enclosed Enrollment Blank Today. Do it NOW—*Quick*—before our Extraordinary Offer and Easy Terms Offer outlined above CLOSE! Enroll NOW—Before Offer Closes!

The application for enrollment blank sent by respondents to each prospective pupil, accompanying aforesaid circular, contained the following:

6. That I promise to pay my tuition fees regularly as stated below:

Then followed the words:

\$10 Cash with enrollment and \$10 per month for 8 months, total cost \$90.

through which a red line was drawn, and immediately thereunder were the words:

Cash Price \$69.50.

under which, in facsimile handwriting, written in red ink, was the following:

Convenient terms only \$5 down and \$5 per month for 13 months, total cost only \$69.50.

In an application for enrollment blank used by respondents for some months after Tarbell System, Inc., began business, in 1926, but discontinued sometime in 1927, the price of the course was represented as \$120, with a red line drawn through that price, and "\$60" written in red alongside of it.

In truth and in fact, the course of instruction sold by respondents was never sold at a price of \$90, or of \$120, and the said price of \$69.50, at which the said course of instruction was offered to prospective pupils by respondents, was not a special, reduced price, or an extraordinary offer, but was in fact the regular, permanent and full price of said course of instruction, together with all articles and things incidental and accessory thereto at all times during which said circulars, circular letters and application for enrollment blanks were being used.

Sometime during the year 1929 the price of the said course of instruction was raised by respondents to \$79.50, and said course of instruction was being sold by respondents, together with all articles and things incidental and accessory thereto, at the said price of \$79.50 at the time testimony was taken in this proceeding.

(2) That a diploma from respondent, Tarbell System, Inc., is so highly prized that graduates of said respondent's course of instruction can secure big bookings and enjoy handsome incomes, and that graduates earn from \$250 to \$1,000 a month. In a circular letter sent by respondents to prospective pupils, appears the following:

I wish it were possible for you to call at our school so that I could talk to you personally about this. Then you would know why the Tarbell diploma

is so highly prized and why Tarbell graduates secure big bookings and enjoy handsome incomes.

In advertisements in magazines, advertising circulars, and circular letters sent to prospective pupils, respondents have made the following statements and representations:

You will be in demand at your Club, your Lodge, and social functions. This reputation will grow—soon you will be a "semi-professional" and will be making big money.

Earn Big Money "On the Side" as a Semi-Professional.

You do not, however, have to give up your business or your job and join professional ranks to make big money as a Magician. You can do it "on the side" as a semi-professional.

In truth and in fact, during most of the time in which the aforesaid circular letters were used no pupils had completed the full course of instruction sold by said respondents, and respondent, Tarbell System, Inc., had not issued any diplomas. The first diploma issued by said Tarbell System, Inc., to any of its pupils was some time during the year 1929, respondents being unable to furnish the exact date. Since that time other diplomas have been issued to pupils completing the full course of instruction.

The art or profession of magic is a seasonal one, and those individuals engaged in it, including the professional magicians, are not occupied with the giving of performances every night during the year, nor the majority of nights during the year. An amateur magician does not average one performance a week. The professional magicians giving entertainments on the professional stage receive comparatively large sums of money for their services, but the amateur and semi-professional magicians devote their time to exhibitions at church socials, lodges, and gatherings of a similar character, and receive from \$15 to \$100 for an exhibition, depending upon how elaborate the exhibition is. Harlan Tarbell, president of respondent, Tarbell System, Inc., who is a professional magician, averages from \$75 to \$150 a performance, and on one occasion has received \$1,000 for a single night's exhibition. In a number of instances, depending on the nature of the gathering before which he exhibited and depending upon the paraphernalia necessary for the giving of the performance, Harlan Tarbell has received \$250 for a single performance. Many amateur and semi-professional magicians use the art or profession of magic as an additional means of making money aside from their regular employment, and many of them use it for the purpose of home entertainment exclusively, without giving paid exhibitions. No graduates of respondent, Tarbell System, Inc., average from \$250 to \$1,000 a month in earnings as a

result of completing the course of instruction in magic sold by respondents.

(3) That respondent, Tarbell System, Inc., will make pupils proficient and expert magicians almost immediately. In a circular letter sent to prospective pupils enclosing the application for enrollment blank, it is stated:

You can become an amazing magician!

Not in a year or six months. But almost at once!

Enroll today and inside of a week you can have your friends standing around you with their mouths open and their eyes bulging with amazement at your apparently supernatural powers.

In another circular letter sent to prospective pupils as a follow-up letter, it is stated:

We guarantee that Dr. Tarbell can make you a Master Magician.

In truth and in fact, respondent, Tarbell System, Inc., does not make a pupil an expert magician or a master magician in a very short period of time, as represented in the above-quoted circular letters. The course of instruction sold by aforesaid respondent consists of 60 lessons, which are sent to the pupils as they are ready for them, the average time for completing said course being two years and a half. In order to become an expert magician it is necessary for the individual to practice continuously, as the art or profession of magic is based upon the ability of its exponent to deceive spectators by expert manipulations of various kinds. Many persons enrolling for respondents' course, relying on the statements and representations made by respondent, Tarbell System, Inc., in its advertising circulars, circular letters, and other advertising material, are naturally awkward or otherwise unable to become proficient in the profession. The president of respondent, Tarbell System, Inc., Harlan Tarbell, testified that after the tenth lesson a pupil would have quite a number of tricks and could begin giving shows, and that it would take about three months before he would have completed a sufficient number of lessons to enable him to do this. It is impossible for respondents to guarantee that every pupil who completes the course of instruction sold by said Tarbell System, Inc., will become even proficient in the art of magic, because it is impossible for said respondent to know whether or not its pupils are naturally adapted to the course of instruction or have followed the instructions given to them in the said course.

PAR. 7. Subsequent to the investigation of this case and prior to the taking of testimony, respondents made certain changes in the advertising circulars, circular letters, and application for enroll-

ment blank used by them, and since that time have been sending said advertising circulars and circular letters to prospective pupils, in place of those referred to and quoted in paragraph 6 herein. Respondents have eliminated from the application for enrollment blank the price of \$90 for the course, with a special price of \$69.50, as set forth in paragraph 6 herein, and the only price at which the course sells is printed on the blank, namely, \$79.50 on the instalment basis, and \$69.50 for cash, respondents have also eliminated from the circular letters and advertising literature used by respondent, Tarbell System, Inc., any reference to said price being a special, extraordinary offer. Respondents have also eliminated from the circular letters used by respondent, Tarbell System, Inc., the statement:

Not in a year or six months. But almost at once!

PAR. 8. The statements and representations set forth in paragraph 6 herein are false and misleading and the use of said statements and representations by respondents, Tarbell System, Inc., and T. G. Cooke, in the manner and form above alleged has the tendency and capacity to and does mislead and deceive the public and prospective pupils into the erroneous belief that said statements and representations are true and to induce persons to enroll as pupils of respondents in reliance upon and by reason of their belief in the truth and accuracy of said statements and representations and thereby to divert trade to respondents, Tarbell System, Inc., and T. G. Cooke, from competitors.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answers of respondents, the testimony taken and briefs filed herein and oral argument by counsel for the Commission and the Commission having made its findings as to the facts and conclusion that respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

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It is now ordered, That respondent, Tarbell System, Inc., its officers, agents, representatives and employees, and respondent, T. G. Cooke, an individual, cease and desist from making statements and representations in advertisements in magazines, periodicals, and newspapers, and in circular letters, pamphlets, booklets and other advertising literature, circulated and distributed in connection with the offering for sale and sale in interstate commerce of a course of instruction in the art or profession of magic, as defined in the findings of fact and conclusion herewith, as follows:

(1) That the regular and usual price of said course of instruction is \$90, or any other price, when such is not the fact;

(2) That prospective pupils are being offered the said course of instruction at a specially reduced price for a limited period of time, unless said offer is actually limited in point of time for acceptance at such reduced price;

(3) That a diploma from respondent, Tarbell System, Inc., will enable a pupil to obtain engagements to give exhibitions of magic, and earn a large income, when such is not the fact;

(4) That a graduate of the said course of instruction sold by respondent, Tarbell System, Inc., will earn from \$250 to \$1,000 a month, when such is not the fact;

(5) That a pupil taking the said course of instruction sold by respondent, Tarbell System, Inc., will become a proficient magician almost immediately after beginning the study of said course.

And it is further ordered, That respondents shall, within 60 days after the service upon them of a copy of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which this order has been complied with and conformed to.

Syllabus

IN THE MATTER OF

DR. RODNEY MADISON LABORATORIES, INC., AND DR. RODNEY MADISON, AN INDIVIDUAL AND AS PRESIDENT OF THE DR. RODNEY MADISON LABORATORIES, INC.

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

Docket 1507. Complaint, Mar. 24, 1928—Decision, Feb. 24, 1931

Where a corporation engaged in the manufacture and sale of an electric belt for attachment to the ordinary house current, and for treatment of human diseases and ailments, and an individual, its president, organizer, majority stockholder, and an active promoter of the sale of said device, whose name, with prefix Dr. was, with his consent, included in that of said corporation; in describing said device in leaflets, sales contracts, and directions for use,

- (a) Represented that said article was based upon and made practical application of biological, electrical and chemical discoveries and theories of well known scientists and created a magnetic field, with therapeutic value and effect, and that said device applied to the body cured and benefited through magnetism the diseases, ailments and defects thereof, including high blood pressure, rheumatism, neuritis, kidney trouble, stomach trouble, pulmonary tuberculosis, and numerous others specified, facts being that such device was based upon no such discoveries and theories and made no practical application thereof, was incapable of transmitting sufficient energy in any form to the body to be of therapeutic value or effect, and was not a proper treatment for nor of assistance in, the cure of, any disease through magnetism or otherwise, and the so-called "control box" attached to the belt was merely a subterfuge to induce purchase by the public; and
- (b) Falsely represented that said individual was a graduate of a college of medicine, a noted inventor, an experienced, skillful and distinguished physician, and descendant of the family of James Madison, fourth President of the United States;

With capacity and tendency to divert trade from competitors to said corporation and to mislead and deceive the purchasing public in respect to the qualities possessed by the aforesaid device and results from the use thereof, and into believing the indorsement and recommendation of such device by said individual to be those of a skilled and distinguished physician, etc., as above indicated:

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

Mr. E. J. Hornibrook for the Commission.

Mr. John W. Kern and *Mr. W. D. Fitzpatrick* of Indianapolis, Ind., for William F. Taylor, receiver; the former also appearing for Rodney Madison, individually and as president of Rodney Madison Laboratories, Inc.

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SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, the Dr. Rodney Madison Laboratories, Inc., an Indiana corporation engaged in the manufacture or assembling of electro magnetic devices purporting to have curative and therapeutic value and action, and in the sale thereof under the name "Vitrona" to purchasers at different points in different States, and with principal office and place of business in Indianapolis, and respondent Rodney Madison, an individual and president thereof and similarly engaged, with misrepresenting product, misrepresenting business status or advantages as to professional training, achievements or identity, and advertising falsely or misleadingly in said respects, and as to nature of product, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged as above set forth, in their advertising, correspondence, circulars, booklets and other literature, and through employees, agents and solicitors make many false, misleading, and deceptive statements and representations, including the following:

That the device in question, applied to the body, will cure and benefit diseases, ailments and defects thereof, a great number of which are specified by name, and is based upon and makes practical application of biological and chemical discoveries and theories of well known scientists, facts being it has no curative or therapeutic value, action or effect whatsoever and is neither based on nor makes practical application of any scientific discovery or theory whatsoever.

That respondent Rodney Madison is a graduate of a college of medicine and surgery, holder of a degree of doctor of medicine and an experienced, skillful and distinguished physician of long and honorable career and is also a noted inventor and descendant of the family of James Madison, the fourth President of the United States, facts being aforesaid statements are false in every respect and said individual is neither qualified nor authorized to practice medicine or surgery.

Respondents, further, as charged, in their aforesaid advertisements and other literature set forth letters purporting to be testimonials from disinterested persons who had been cured by or benefited from respondents' said device, facts being said testimonials in most cases were "from interested persons either connected with respondent corporation as employees, agents, solicitors or stockholders or related

by marriage or blood to said employees, agents, solicitors or stockholders."

Aforesaid false, misleading and deceptive representations, as charged, "used by respondents in advertising and other literature and by agents, solicitors and employees, all as in this complaint before set out, have the capacity and tendency to and do cause the public to purchase and use respondents' device in the belief that said statements and representations are true," and said acts and practices of respondents, as alleged "are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon the respondents, Dr. Rodney Madison Laboratories, Inc., and Dr. Rodney Madison, an individual and as president of the Dr. Rodney Madison Laboratories, Inc., charging them with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act.

The respondent, Dr. Rodney Madison, having entered his appearance and filed his answer to the complaint herein and the respondent, Dr. Rodney Madison Laboratories, Inc., although having been duly and legally served with a copy of the complaint herein, appearing not and no one appearing for it, hearings were had before a trial examiner duly appointed and testimony was heard and evidence received in support of the charges stated in the complaint and in opposition thereto. Thereafter this matter came on regularly for final hearing on the briefs of counsel and oral argument, and the Commission having duly considered the record and being now fully advised in the premises makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Dr. Rodney Madison Laboratories, Inc., is a corporation organized and existing under the laws of the State of Indiana. Its principal office and place of business was at 830 State Life Building, in the city of Indianapolis, of said State.

PAR. 2. The respondent, Dr. Rodney Madison Laboratories, Inc., was engaged in the business of manufacturing and assembling a device which it claims has curative and therapeutic values and action when used as a treatment for the diseases and ailments of the human body and in the sale of said device under the name "Vitrona" to purchasers located in the State of Indiana and in the States of Connecticut, Michigan and New Jersey and respondents caused such of its devices as were sold to such purchasers in said States of Connecticut, Michigan and New Jersey to be packed in the city of Indianapolis, State of Indiana, and shipped therefrom to such purchasers in the States of Connecticut, Michigan and New Jersey. Such purchasers ordered the same from respondents through the U. S. mails and paid for the same by check at the time of purchase. They were called by respondents "representatives" but received no commission or other compensation from respondents as such representatives.

PAR. 3. The respondent, Dr. Rodney Madison, is one of the organizers of respondent corporation and was and still is its president. He owns the majority of the voting stock. He permitted and authorized the respondent corporation to use the name "Dr. Rodney Madison" as a part of its corporate name and permitted and authorized the claims and representations in the advertisements hereinafter described. In the aid of the sale of the said product of respondent corporation, he lectured in the States of Indiana and Connecticut.

PAR. 4. Respondents in the sale of said "Vitrona" device were in competition with other individuals and corporations engaged in interstate commerce between and among various States of the United States in the sale of sundry medical and surgical devices and many electrical appliances made for the purpose of treating and curing human ailments and diseases.

PAR. 5. In the course and conduct of said business the respondents advertised said device in newspapers published in the city of Indianapolis, Indiana, and also through a four-page leaflet styled the "Vitrona Herald", of which two editions were published, each of which numbered about seventy thousand copies; one edition of said "Vitrona Herald" was published in May, 1927, and was circulated largely in Indianapolis and immediate vicinities. The second edition, known as the "Autumn 1927 Edition", was circulated in the State of Indiana and was sent by respondents to their said customers in Connecticut, Michigan and New Jersey with each shipment of the "Vitrona" device for the purpose of circulating them among purchasers and prospective purchasers in said States. Respondents caused to be shipped with each of said orders of the said purchasers

a number of sales contracts to be used by said purchasers in the sale and promotion of the sale of the said "Vitrona". The respondents packed with each of the said devices when so shipped to said purchasers in Connecticut, Michigan and New Jersey, a booklet styled "Vitrona the Vitalizer The Secret of Life and the Basis of Physical Existence", also a card containing directions for using "Vitrona". In said "Vitrona Herald" and in said sales contract and in said directions for use and in said "Vitrona the Vitalizer The Secret of Life" respondents made the following false, misleading and deceptive statements and representations:

(a) That said device when applied to the human body will cure and benefit by magnetism its diseases, ailments and defects, among which are high blood pressure, rheumatism, neuritis, goiter, constipation, varicose veins, kidney trouble, eczema, nervous disorders, asthma, stomach trouble, insomnia, neuralgia, ulcers, bronchitis, tumors, prostrate troubles, pulmonary tuberculosis;

(b) That said device is based upon and makes practical application of biological, electrical and chemical discoveries and theories of well known scientists; that it creates a magnetic field which has therapeutic value and effect;

(c) That respondent, Rodney Madison, is a graduate of a college of medicine and an experienced and skillful physician;

(d) That respondent, Rodney Madison, is a noted inventor and distinguished physician of long and honorable career and a descendent of the family of James Madison, the fourth President of the United States.

PAR. 6. (a) The device "Vitrona" consists of a belt, circular in form and about 3 inches in diameter, covered with leather or rubber, and containing some six hundred turns of insulated copper wire; attached to this belt is a cord which connects with what respondents designate, a control box and then with the ordinary house lighting, 110 volts, 60-cycle alternating current of electricity. Respondents represent that the control box regulates the strength of the magnetic field created by "Vitrona" device. It does not control the strength of this magnetic field, but is merely a subterfuge to induce the public to buy the "Vitrona" device. The device "Vitrona" when used as directed or otherwise is incapable of transmitting sufficient energy in any form to the human body which is or can be of therapeutic value or effect and will not cure by magnetism or other forces or benefit or aid in the cure, nor is it proper treatment for any of the diseases, afflictions or ailments of the human body mentioned in subdivision (a) of paragraph 5, or any other diseases or ailment of the human body.

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(b) In truth and fact said device is not based upon biological, electrical or chemical discoveries and theories of well known or other scientists and makes no practical application of any scientific discovery or theory whatever.

(c) and (d) Respondent, Rodney Madison, is not a graduate of a medical or surgical college, is not an experienced or skilled physician, is not a physician, is not qualified or authorized to practice medicine or surgery in any State of the United States, is not a noted inventor and is not a descendent of the family of the late James Madison, fourth President of the United States.

PAR. 7. The use by respondents of the representations in their advertising as set forth in subdivisions (a), (b), (c), and (d) of paragraph 5 had and have the capacity and tendency to divert trade from said competitors to respondent corporation and to mislead and deceive the purchasing public into the belief that said device when applied to the human body will cure and benefit its diseases, ailments and defects; that said device is based upon and makes practical application of biological, electrical and chemical discoveries and theories of well known scientists; that respondent, Rodney Madison, is a graduate of a college of medicine and surgery and is a skilled, distinguished physician of long and honorable career and is authorized by law to practice medicine and surgery and that he is a noted inventor and a descendent of the family of the said late James Madison, and that he endorses and recommends the use of "Vitrona" apparatus as such personage.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent Dr. Rodney Madison, the testimony and evidence submitted, the trial examiner's report upon the facts and the exceptions of the Commission's attorney and the exceptions of respondent Dr. Rodney Madison's attorney thereto, and the Commission having

made its findings as to the facts and its conclusions that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That respondent Dr. Rodney Madison Laboratories, Inc., its officers, directors, agents, employees and successors, and respondent Dr. Rodney Madison cease and desist from advertising, representing, claiming or otherwise stating in connection with the sale of the device "Vitrona" in commerce between and among the various States of the United States, or between any State and the District of Columbia, or in the District of Columbia;

(a) That said device when applied to the human body will cure or aid in the cure or benefit any of its diseases, ailments or defects or that when so applied or otherwise it has any curative or therapeutic value, action or effect whatsoever;

(b) That the magnetic field of said device magnetizes any part of the body or sets up electric currents in any part of the body;

(c) That said device is based upon, and makes practical application of biological, chemical or electrical discoveries and theories of well known or other scientists or that it makes any practical application of any scientific discovery or theory whatsoever for treatment, cure or prevention of the diseases or ailments of the human body;

(d) That respondent Dr. Rodney Madison is a graduate of a college of medicine and surgery or that he is a holder of a degree of doctor of medicine or that he is an experienced or skillful physician or that he is a distinguished physician or that he has had a long or honorable career as a physician or that he is a noted inventor or that he is a descendent of the family of the late James Madison, the fourth President of the United States;

It is further ordered, That the respondents Dr. Rodney Madison Laboratories, Inc., and Dr. Rodney Madison shall within 30 days after the service upon them of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

IN THE MATTER OF
**AMERICAN BUSINESS BUILDERS, INC., W. M. OSTRAN-
 DER, AN INDIVIDUAL AND AS PRESIDENT, AND SETH
 MOYLE, AN INDIVIDUAL**

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

Docket 1680. Complaint, Mar. 22, 1930¹—Decision, Feb. 24, 1931

Where a corporation engaged in the sale of its so-called "Ostrander System for Becoming a Real Estate Specialist," with about 35,000 students and doing business in competition with some 185 resident schools in colleges and institutions teaching courses in real estate, and also with the home study courses of the American Real Estate Institute of the National Ass'n of Real Estate Boards; and two individuals, its president and vice president; in advertising and describing said course and service in newspapers, popular magazines, booklets bearing such captions as "How to Become a Real Estate Specialist" and "Success Stories," letters, circulars, bulletins, mass meetings for avowed purpose of building sales organizations for development projects, lantern slides, and otherwise,

- (a) Represented that said president, operating under said "System," with little education, no experience nor influence, and only \$5 capital had made \$100,000 in less than five years as a real estate specialist, and described the course as affording "complete instruction for becoming a real estate specialist," and expert, and as "the most complete * * * ever prepared," " * * * complete course in real estate education, training and service. Nothing * * * overlooked. Nothing * * * omitted," making such statements as "My practical proved-out time-tested methods make it easy for you to get started in a profitable business * * * such clear * * * instruction that you can not go wrong," a money-back bond eliminated risk to the subscriber, and it would give \$1,000 for proof of any other course or service which had helped as many people make as much in as short a time, facts being that aforesaid individual's success, described in glowing terms in its advertisements along with similar opportunities allegedly open to people in all walks of life, irrespective of age or training, was accomplished long prior to publication of such statements, through use of said system, based on long distance selling, group advertising and the unusual and disapproved practice of charging advance fees on sale of property, that following official investigation such practice was abandoned by said individual, who had not been actively engaged in real estate business for many years preceding statements here in question, course would not fit beginner to be a successful real estate specialist, giving a comprehensive knowledge of real estate salesmanship, was not complete as advertised, and would not establish a person in business and was objectionable in advocating "ballyhoo" methods of selling

¹ Amended complaint.

development property, and alleged bond was merely said president's promise to return the subscriber's money if not entirely satisfied, the course was returned and the claim made within 30 days after final payment, with statement in writing of reasons;

- (b) Represented that said System was used by Ostrander students to enable them to make "big" money—not less than \$5,000 a year—and in their own home and spare time, with little education, influence or business experience, and set forth alleged testimonials from successful students purporting to describe the making of "wonderful profits," ranging from \$5,000 to \$25,000 a year and over, and with single transactions yielding profits amounting to many thousands of dollars, using such captions as "If you were down and out," "From Failure to Success," "New Lives for Old," "Amazing Profits," "Learn to make money from a money-maker," facts being that earnings set forth had not been realized, instances related were isolated, and not representative, or profits or earnings were received as a result of speculation in "boom" times, and that some of the letters were written in response to the corporation's offer of a monthly cash prize for the best letter and were sometimes published without the writer's permission and without the corporation's knowledge as to truth or falsity of the statements contained, and the corporation regularly solicited and published students' testimonials and prize letters in its "National Real Estate Review"; and
- (c) Featured an alleged "nation-wide clamor for Ostrander trained specialists" with price of its course reduced in response thereto, to "prepare 1,000 men and women for these opportunities in this million dollar field," and represented that numerous well known real estate firms in various cities demanded Ostrander trained men and women and that students would be placed with such firms by the corporation's employment bureau, after completing the course, and be given an opportunity to earn from \$1,000 to \$2,000 a month under the guidance of established experienced real estate men without a penny of extra cost, facts being there was no such demand, said president had advertised and circularized real estate development companies in various sections soliciting business for Ostrander students in the territory concerned and calling attention to their alleged success as set forth in aforesaid testimonial letters, and published, without permission, responsive letters of inquiry thus elicited, in said circulars, and that large numbers of students were placed with real estate development concerns under secret arrangements, through which said corporation received commissions on all sales made by and in some instances to such students, the vast majority of whose resulting earnings were only nominal and much less than advertised;

With capacity and tendency to mislead and deceive the public, students and prospective students into believing that aforesaid president had recently used said "System" in building up a successful real estate business, earning as much as \$40,000 a year, without capital, education or previous experience, and that anyone without education, etc., could, through study of the course, earn large profits, in his own home and spare time, that others, similarly situated, taking said course and using such system had been eminently successful, that students were in demand by large real estate firms throughout the country because of their training under said system, and that the corporation would obtain positions for its students with such

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firms where they could earn from \$5,000 to \$25,000 a year, without cost to the students and without profit to the corporation, its officers or employees, and into subscribing for said corporation's course in preference to the courses of competitors, in reliance upon such beliefs, and thereby diverting students and prospective students from competitors who do not make such false, exaggerated and deceptive statements and representations:

Held, That such acts and practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Everett F. Haycraft for the Commission.

Mr. Walter L. Bryant, of New York City, for respondents.

SYNOPSIS OF COMPLAINT²

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, American Business Builders, Inc., a New York corporation engaged in the sale, by correspondence of its so-called "Ostrander System for becoming a real estate specialist," and with principal place of business in New York City, respondent W. M. Ostrander, its president and owner of a majority of its stock, and respondent Seth Moyle, its former vice president, with advertising falsely or misleadingly, and making misrepresentations as to results and nature of, and demand for, product or service offered, indorsements or testimonials used, and "money-back bond," in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent corporation, as charged, in advertising its course in newspapers and otherwise makes use of the classification "Wanted—Your Services," thereby appealing to prospective applicants or subscribers as a prospective or possible employer, when such is not the case, and respondent, further, in advertising its said course in magazines and newspapers published throughout the United States, in printed circulars and form letters and otherwise makes false, exaggerated and misleading and deceptive statements and "representations concerning said course of instruction and service; the amounts of money capable of being earned in real estate selling and general salesmanship; the giving free to applicants and subscribers for said course of instruction of a certain consultation service; and a subscription to the National Real Estate Review; a course of 24 lectures on practical real estate methods by leading real estate experts; and a Money-Back Bond insuring applicants and subscribers complete satisfaction with the said course or the refund of their tuition fees, to the effect that persons completing respond-

² As amended.

ent's said course of instruction become real estate specialists and experts and enjoy yearly incomes of not less than \$5,000; that a subscription to the magazine known as the National Real Estate Review is given free to students taking respondent's said course; that respondent's course of instruction fits a student for every department of the real estate business; that respondent has a standing offer of \$1,000 in gold for proof of any business course, training or system that is helping as many men and women make as much money in as short a time as respondent's successful real estate system; that respondent's Money-Back Bond protects a student from loss if said student is not fully satisfied with respondent's methods of instruction and feels that he has not received full value for his money."

The facts are that the value of the educational literature included in respondents' course sold for \$60 or \$65 depending on the installment arrangements made, is about \$12, said course is not reasonably adequate or sufficient for purposes for which offered and sold, average person completing same does not secure for his services thereafter sums of money represented, consultation service and subscription referred to are not given free but are included in price charged for course as a whole, lectures referred to are not delivered by persons associated with respondent, but consist of chapters of a book called "Practical Real Estate Methods", printed and sold in pamphlet form by the publishers, and "money-back bond" is not that of respondent corporation, secured by a third party, but the individual and unsecured promise of respondent Ostrander to return tuition fees paid in, under certain conditions, to dissatisfied students.

Aforesaid acts and things done by respondent corporation as alleged, "have the tendency and capacity to mislead and deceive the public, applicants, and subscribers aforesaid, into the belief that the said course of instruction is adequate and sufficient for the purposes for which it is offered and sold by respondent; that respondent's advertisements, letters, and other literature, are free from overstatements, or misrepresentations relating to actual or probable earnings of subscribers to its said course of instruction; that certain services, and a subscription to the National Real Estate Review is given without extra charge to subscribers for said course of instruction; and that said money-back bond is the bond of the respondent secured and guaranteed by a third party.

"The advertising matter issued by respondent corporation under the classification 'Wanted—Your Services' has the tendency and capacity to mislead and deceive the public into an exaggerated or

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unreasonable belief of successful results from subscribing to the said course of instruction by proposing to be from an employer or one who controls more or less the employment of others.

“The said acts and things done by respondent corporation have the further capacity and tendency to cause members of the public to apply for and subscribe for respondent's said course of instruction in preference to the courses of instruction offered by respondent's competitors.”

Respondent corporation, furthermore, as charged, in cooperation with respondent individuals, “has sought to induce prospective students to enroll with respondent and take up its said course of instruction by representing in its advertising matter, heretofore described herein, that the said respondent W. M. Ostrander had made a net profit of \$100,000 in less than five years as a ‘real estate specialist,’ operating under the so-called ‘Ostrander System’ with little education, no experience, no influence and only \$5 capital, and that the said Ostrander System was being used to-day by Ostrander students to enable them to make big money in their own home, in their spare time, with little education, or influence or business experience, and reference is made to numerous so-called testimonial letters, alleged to have been received from successful Ostrander students, and purporting to describe the manner in which said students had succeeded in ‘making wonderful profits,’ ranging from \$8,000 a year to as high as \$14,000 in six months.”

The facts are said Ostrander had not been actively engaged in the real estate business since about 1910, the “system” in question consisted of listing advertising real estate in various towns and communities in the daily papers and charging the owners an advance or retainer fee, in addition to regular commission in event of sale. “System” was and is disapproved by real estate boards, trade publications and Government officials, and has not been used by said Ostrander since about 1905 when he promised Post Office officials to discontinue the practice, his profits from real estate business were derived principally from such advance or retainer fees and not from commissions from actual sales (it appearing that from 1903 to 1905 he sold about 1,800 properties of some 17,000 listed), the testimonials contain many false and misleading statements, frequently referring to isolated instances resulting from speculation and extraordinary profits in boom times and in others having been made without basis of fact in response to respondent's offer of prizes for best letters as to writer's use of \$200 to start or build up a business, and published by respondent without permission of the writer's knowledge of the truth or falsity of the statements therein contained.

Respondent corporation, further, as charged, has sought to induce enrollments through representing in its advertising that there was "A nation-wide clamor for Ostrander-trained specialists", and that numerous "well-known real estate firms located in various cities of the United States are demanding 'Ostrander-trained men and women', 'Ostrander-trained specialists', 'Ostrander Realty Experts' and that after students completed their course of instruction they would be placed with said real estate firms by respondent's employment bureau, where they would be given an opportunity to make large salaries ranging from \$1,000 to \$2,000 a month, under the guidance of established and experienced real estate men 'without a penny of extra cost'".

The facts are that respondents had solicited said firms and particularly subdivision development companies, for the placing of students, citing alleged instances of such students' success and using letters of inquiry in response to such solicitation without the writer's permission, and that respondent corporation either directly or through respondent Moyle made "and entered into secret agreements with certain subdivision development companies in various cities of the United States, particularly in New York City and Buffalo, in the State of New York, Detroit and Flint, in the State of Michigan, and Chicago in the State of Illinois, whereby said respondent corporation furnished said real estate development companies with students and prospective students residing in the territory contiguous to the respective cities named, and the real estate development companies gave full and part-time employment to said students and prospective students, and in some instances sold students and prospective students plots of ground located in their subdivisions, paying to said respondent corporation either directly or through respondent Seth Moyle, who has direct charge of this phase of said respondent corporation's activities, certain fixed commissions on all sales of real estate made to or by Ostrander students, or prospective students furnished by said respondent corporation to the said real estate development companies, or a flat commission on all sales made by said real estate development companies; and the fabulous salaries or income alleged to have been received by Ostrander students as represented by said respondent corporation in its advertising matter were grossly exaggerated or erroneously described, or are isolated instances of sales made by Ostrander students under the arrangement with said real estate development companies, described herein, during 'boom' times."

Aforesaid acts and things done and representations made by respondents, as alleged, "have the capacity and tendency to mislead

and deceive the public and prospective students into the belief that the said respondent W. M. Ostrander had successfully used the so-called 'Ostrander System,' which he was offering to prospective students in the real estate business without experience, or education, and only nominal capital, and that any one without education and experience and capital by the use of said respondent's system, could make big money in their own home, in their spare time, and that others who had taken respondent's course of instruction and had used the so-called 'Ostrander System' had been successful, although they had little education, no business experience and no capital; and further, that Ostrander students were in demand by large real estate firms throughout the country because of their training under the Ostrander System, and that said respondent corporation would obtain positions for students with said real estate firms, paying large salaries, without cost to the students and without profit to the said respondent corporation, its officers and employees," and said acts and things "have further capacity and tendency to cause members of the public to apply for and subscribe to respondent corporation's said course of instruction in preference to the courses of instruction offered by the said respondent corporation's competitors," and are all to the injury and prejudice of the public and respondents' competitors and constitute unfair methods of competition.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 717), the Federal Trade Commission on June 29, 1929, issued and served its complaint upon the respondent, American Business Builders, Inc., and on March 22, 1930, issued and served its amended complaint upon American Business Builders, Inc., W. M. Ostrander, and Seth Moyle, respondents above named in which said complaint and amended complaint it is charged that respondents have been and now are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act. The said respondent, American Business Builders, Inc., having filed its answer to the original complaint and all the said respondents having filed their answers to the amended complaint hearings were held and evidence was introduced on behalf of the Commission and respondents before an examiner of the Federal Trade Commission duly appointed.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, American Business Builders, Inc., hereinafter referred to as the respondent corporation, is a corporation organized in May, 1921, under the laws of the State of New York with its principal office and place of business in the City of New York in that State. Respondent W. M. Ostrander is president and Respondent Seth Moyle was, prior to October, 1929, vice president of said corporation, which since the date of its incorporation, has been under the direct management and control of said individual respondents.

PAR. 2. Since its organization the respondent corporation has been and now is engaged in selling a certain course of instruction and service under the designation or title "Ostrander System for Becoming a Real Estate Specialist" to persons located in the various States of the United States and in foreign countries and has caused and still causes said course of instruction and service consisting of written lessons, textbooks, and pamphlets, when sold by it, to be transported by United States mail from its said place of business to, into and through other States of the United States, to said persons who purchased the same from respondent corporation located in various States of the United States and in the District of Columbia. Said respondent corporation in the course and conduct of its said business is in competition with other corporations, associations, and individuals engaged in the sale and distribution of courses of instruction sent by them through the United States mail in interstate commerce to persons located in various States of the United States and in the District of Columbia. Respondent corporation obtains students or subscribers for its course of instruction by means of advertisements placed in newspapers and popular magazines in general circulation throughout the United States and booklets, letters, circulars, and bulletins sent through the United States mail to persons and individuals replying to said advertisements, and also by certain sales promotion work in connection with its employment service which will hereinafter be more particularly described. Respondent sells between

8,000 and 9,000 courses of instruction each year at prices ranging from \$60 to \$65 each, and has had during the past five years and now has about 35,000 students receiving said courses of instruction located in nearly every State of the United States and in the District of Columbia.

PAR. 3. Respondent corporation in the course and conduct of its said business, described herein, has sought to induce prospective students to subscribe for its said course of instruction by representing in its advertising matter, hereinbefore described, that the respondent W. M. Ostrander had made a net profit of \$100,000 in less than five years (without indicating dates) as "A Real Estate Specialist" operating under the so-called "Ostrander System" with little education, no experience, no influence, and only \$5 capital; and that the said Ostrander System was being used to-day by Ostrander students to enable them to make big money in their own home in their spare time with little education, influence, or business experience, quoting from testimonial letters alleged to have been received from successful Ostrander students and purporting to describe the manner in which said students had succeeded in "making wonderful profits" ranging from \$8,000 a year to as high as \$14,000 in six months. The following representations contained in said advertisements during 1928, 1929 and 1930 are typical.

IF YOU WERE DOWN AND OUT

And I agreed to start you in a big, new money-making business of your own—**WITHOUT CAPITAL OR EXPERIENCE**—a business in which I have helped other ambitious men and women double, triple and **QUADRUPLE** their earnings, would you jump at it? You **BET YOU WOULD!**

Well, you may not be down and out. But if you are earning a **CENT LESS** than \$100 a week—\$5,000 a year—here is your chance to break into real estate **MY WAY**—build a big-profit business of your own—right at home—in your spare time—without capital or experience. My free book tells the whole story. **Get it now!**

FROM FAILURE TO SUCCESS

I like to get hold of the down-hearted—the discouraged—the "has beens" and the "also rans." It gives me a big "kick"—a real thrill—every time I help a man or woman who felt they were failures. It's easy enough to make successful men more successful. But give me the man who is struggling along—trying to make both ends meet—who has never had a real "look-in" on business success. The most fun I get out of life is turning such men into happy, contented, prosperous, independent business men. And I'm doing it right along! There's E. G. Baum, past 50, lost his job as bookkeeper, sick, discouraged, down-hearted. I got Baum started and he cleaned up \$8,000 his first year. And J. M. Patterson. He'd just landed in Texas with a baby, a sick wife and only \$10.20 in his pocket. He started to use my Successful Real Estate System, and writes me that he will clean up \$20,000 in profits this year. Send for my free book. Learn how I am helping others—and how I can help you—win big business success.

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NEW LIVES FOR OLD

I teach ambitious men and women my way of making big money in the Real Estate Business, without capital or previous experience. I give them new lives for old. I transform them from low-salaried employees to successful employers—in business for themselves—Independent—prosperous—contented—men and women from 21 to 79—from all walks of life—former mill-hands, clerks, railroad men, barbers, hotel employees, grocers, salesmen, bookkeepers, teachers, ministers, printers, musicians, insurance solicitors, etc., etc. Take "Bill" Dakin for example. He worked for 50 years in a New York steel plant. Never had any schooling to speak of. Never had any real estate experience. Bill jumped at my offer. Writes me that last month he earned \$1,125 my way. Write for a free copy of my book to-day. Learn how wide-awake men and women are changing their jobs—trading old lives for new—with my System for Becoming a Real Estate Specialist. Address President, American Business Builders, Inc., Dept. J-55, 205 East 42 St., New York.

AMAZING PROFITS—\$17,000 IN ONE DEAL

Eugene Walfrath, formerly in the clothing business. Got my scientific System for making money in real estate. Cleaned up \$17,000 in one deal. Free book tells how he did it.

* * * * *

\$8,500 IN 17 WEEKS

That's the big money Chas. F. Worthen, Massachusetts, made with my successful Real Estate System. Free book tells you how I helped him to do it!

* * * * *

I STARTED WITH \$5.00 AND MADE \$100,000 IN 5 YEARS IN THIS BILLION DOLLAR BUSINESS

I was down and out, but averaged \$20,000 a year profit with a "fool idea." Since then I have showed hundreds how to make big money as Real Estate Specialists. Write for my free book. It tells my story and their story and points the way for you.

Some years ago I found myself broke. I was sick, tired and discouraged. But I had an idea.

I told some friends my idea. They laughed at me. I had no capital to invest. I had a little job—but could not afford to leave it. So I had to work my idea in my spare time. I had no office, so used my own room.

With my "fool" idea, in a few months I was making a nice living. Within two years I averaged \$1,000 a month. Five years later I had made \$100,000.

I had little education, no experience, no influence. My idea was to conduct a real estate business on a different plan. I reasoned this way: even with the haphazard methods used by real estate men they were making big money. My plan was new and different and so much better that I could not help succeeding.

Since then I have written down all the secrets I learned in the Real Estate business and I have taught these secrets to hundreds in all walks of life.

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READ MY STORY—AND OTHERS

My story, and the stories of many following in my footsteps, is told in my amazing free book. Write for it. That's the first step to take. Mail me the coupon. Read how W. E. Shoop, former weaver, made \$6,000 on his first sale; how Mrs. Evalynn Balster, widowed school-teacher, made \$5,500 commission on her first sale; how Eugene Walfrath, former clothier, cleared \$17,000 on one deal; how Thomas C. Mone, Jr., former insurance man, made \$28,000 in 6 months. How H. G. Stewart earned \$14,400 in commissions in 6 months. How Earl Beam earned \$910 in his spare time after supper. How Anthony C. Maurell made \$4,100 in 3 months. How Al West made \$3,200 in 15 days. How A. D. Perkins, former furniture dealer, made \$2,556 in 2½ months. How F. D. Bennett made \$435 on his first day. They all did it using my methods. * * *

HOW I MADE A FORTUNE WITH A "FOOL" IDEA

Learn my money-making secret—Be a Real Estate Specialist—
Start at home, in your spare time—Use my successful system—free
book shows how

"IT'S a fool idea!"

That's what my friends said, when I told them about my idea for starting a real estate business "on the side."

But with that "fool" idea I made more than one hundred thousand dollars net profit.

No matter who you are, where you are, or what your sex or present occupation, if you want to do what I did—if you want to get out of the \$25-a-week crowd and build up a high-class money-making business of your own—right at home—in your spare time—send at once for my free book, which opens wide the door of the biggest and best money-making business opportunity you ever heard of in your whole life.

USE MY SUCCESSFUL SYSTEM

When I started in real estate, I tossed overboard all the hit-or-miss, haphazard, rule-of-thumb methods of the past, and put into operation a system of my own which is as superior to the old way as the modern mazda lamp is superior to the tallow candle of our forefathers.

With little education—no experience—no influence—and less than five dollars capital—I started in my spare time and met with instant success.

If you want to follow in my footsteps—if you want to use my amazingly successful system—send for my free book now. It tells how I succeeded—how I have helped other men and women win big success—how you, too, can succeed—how you can have a splendid business of your own and make more money than you ever made before.

In a booklet entitled "How to Become a Real Estate Specialist" which is sent to every person answering newspaper and magazine advertisements hereinbefore described, a detailed statement of what purports to be the history of W. M. Ostrander is set forth under the following caption:

HOW I MADE OVER \$100,000 IN LESS THAN 5 YEARS

From the 8-hour-day grind to independence!
 From daily drudgery to joyous work!
 From a few dollars a week to \$40,000 in a single year!
 That is my history as a real estate specialist.

Some of the typical statements contained therein are as follows:

I had neither money nor experience when I started work in the Real Estate field. I had something that is always more than either of those two things; namely, *an original idea, which was also practical.*

My idea was to get away from the mixing in every and all branches of Real Estate, and to specialize in the *advertising and sales* end of the business. I aimed to persuade as many owners as possible to spend some money in the *right kind* of advertising—and I planned, also to list as many properties as possible.

The success that I was able to attain was due to my laying aside the "cut and dried" methods of the average Real Estate business and by carefully developing a really new—and highly practical—system of my own. Results proved its worth beyond any possibility of question.

That, in brief, is the history of how I started as a Real Estate Specialist.

And how *my history* now becomes *your opportunity* is fully set forth in the following pages of this book.

On another page in this same booklet the following representations are made as to respondent Ostrander's experience, without indicating when it was done:

I'VE SOLD OVER 5,000 PROPERTIES IN THE 48 STATES

The only man who can show you how to sell real estate is the man who has sold it, and that is what I have done—sold it in every section of this country. In fact, considering the great variety of the properties and the many locations in which I have made sales, I don't believe the real estate sales record of any man can match mine.

No other man in America, that I ever heard of, has sold as many different kinds of property in so many different locations, as I have.

The man whose real estate experience has been confined to one town—one country—or, even one state—has had a limited and restricted experience compared with me, for I have sold property in *every* state, in the District of Columbia and in Canada.

LEARN TO MAKE MONEY FROM A MONEY MAKER

You want to make money. So does every normal man and woman. And it is a worthy ambition. To desire the good things of life for yourself and your loved ones is only right and proper. But you can't learn how to swim from a man who has never been in the water. Neither can you expect to learn how to make money from a man who never made any.

In teaching you how to make money as a Real Estate Specialist, I am only teaching you to do *what I have already done.*

I have had years of experience in the real estate business.

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I have sold thousands of properties, of various sizes and kinds, throughout the entire length and breadth of this country.

And I have made net profits running as high as \$40,000 in a single year.

Not only have I made big money myself, I've shown hundreds of others how to make big money. My methods can be used by anyone. You'll read stories in this book that will astound you—stories of widows, of boys, of men past 50 who were broken down in health and spirit, yes ready to die; grocers, clerks—all kinds of people, from all walks of life. They've all made big money using my successful Real Estate system.

I showed *them* how—and I can, and will show *you* how.

In truth and in fact respondent W. M. Ostrander had not been actively engaged in the real estate business for many years prior to the publication of the foregoing statements and when he was engaged in that business, operating under the so-called Ostrander system, he advertised extensively in publications, such as the Rural New Yorker, that he could sell property wherever it was located and listed thousands of properties charging the owner of the properties an advance or retainer fee to cover the expenses of advertising in newspapers in various sections and communities, the amount of such fee to be included in the commission if the property was sold. In April, 1905, respondent Ostrander in a report to the United States Post Office inspector in Philadelphia, Pa., in the course of an investigation being conducted by that Department with respect to the activities of said respondent, stated that from January 1, 1903, to January 1, 1905, he had listed 17,000 pieces of property and had made 727 sales; that he had received as advertising or retainer fees in his real estate department from owners of property \$322,449.29 and as commissions realized from the sale of property \$83,243.60; that during that period of time he had expended in advertising real estate \$161,928.54, salaries \$97,843.90 and had realized a net profit of \$187,905.79 from his entire business. At that time respondent Ostrander promised the United States Post Office inspector he would discontinue charging retainer or advance fee when property was listed for sale and that after that date any such fees received would be returned. The practice on the part of real estate agents or brokers of charging advance fees in the sale of property is one which is not customary and is not approved by the Realty Boards of New York City, composed of the leading real estate firms.

Furthermore, the testimonial letters published by the respondent corporation as described herein contained many false and misleading statements with respect to the earnings of the individuals named in respondent's advertising matter, said earnings not having been realized to the amount stated or the instances related were isolated and not typical and the profits or earnings were received as a result of speculation in the purchase and sale of real estate in "boom" times; and

some of the letters were written by students or subscribers to respondent corporation's course of instruction in response to respondent corporation's offer to pay prizes for the best letter of not more than 500 words describing how the student would use \$200 to start in business or to improve a business already begun and said letters were written and submitted to the respondent corporation in response to such offer and in some instances were published without the permission of the writers thereof and without knowledge on the part of respondent corporation as to the truth or falsity of the statements contained therein. Specific findings as to such a practice are hereinafter set forth in paragraph 5.

PAR. 4. Respondent corporation in the course and conduct of its said business described herein in cooperation with respondent Ostrander has sought to induce prospective students to subscribe for its said course of instruction by making statements in its advertising matter hereinbefore described with respect to the so-called "Ostrander System," of which the following are typical:

Fits you for every department of business;

A complete instruction for becoming a real estate specialist;

The most complete course of training in the real estate business ever prepared;

My Successful System. In the Ostrander System for becoming a real estate specialist you get a complete course in real estate education, training, and service. Nothing has been overlooked. Nothing has been omitted;

My practical, proved-out, time-tested methods make it easy for you to get started in a profitable business * * *. My lessons give such clear, concise, straightaway instructions that you can not go wrong;

My system covers the entire field of real estate in a complete and interesting way. In fact it is the most thorough, complete, simple, successful, money-making real estate system ever prepared.

In truth and in fact respondent corporation's course of instruction consists of 36 lessons which were mimeographed and sent to the students in groups of 3, covering in a general way the whole real estate field but emphasizing in certain "lessons" the so-called "Ostrander-System" of selling property. For instance, in the fourth lesson "How to List Property" reference is made to three methods, namely, (1) the ordinary old time system; (2) the exclusive listing; and (3) the Ostrander way, which is as follows:

I am going to summarize for you, now, what LISTING under THE OSTRANDER SYSTEM really means, in contrast to the other two methods. And NOTE THIS WELL: *What I tell you here will serve you as the best possible selling argument when you are building up a list of clients!*

Under the OSTRANDER SYSTEM the entering of properties in card-index files, where they can be instantly referred to, is only an incidental "first step"—and yet that is about all that the ordinary Real Estate agent does for a client. But under my system the property doesn't remain merely "listed." It doesn't stay "buried," waiting for some one to ask about it, before it is resurrected.

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EACH PROPERTY IS ADVERTISED—by an attractive, strong advertisement—in those “mediums” most likely to reach THE PROSPECTIVE BUYERS WHO WILL WANT THAT PROPERTY. Also, from the many INQUIRIES received, regarding various properties, the names of all persons who might be interested in that property in question are selected, and a DETAILED DESCRIPTION IS SENT to each of them. REFERENCE BOOKS (like R. G. Dun's), DIRECTORIES, CLIPPINGS, and other sources, also, furnish names of persons to whom to send such descriptions.

It is a part of THE OSTRANDER SYSTEM TO ADVERTISE PROPERTIES, EXTENSIVELY, and thus INQUIRIES are received from people who want almost EVERY IMAGINABLE KIND OF REAL ESTATE in localities ALL OVER THE COUNTRY. Unless a property is very large, or very unusual in some respect, *many of these inquiries will apply in regard to it, at least in a general way.*

It is also a characteristic part of THE OSTRANDER SYSTEM to KEEP IN TOUCH with representative REAL ESTATE BROKERS THROUGHOUT THE COUNTRY, and when one of these brokers writes in that he knows of some one who wants a property like one of those in your files, then A DESCRIPTION OF SUCH PROPERTY IS SENT TO THAT BROKER.

When INQUIRIES are received AS A RESULT OF THE INDIVIDUAL ADVERTISEMENTS of a property, those inquiries are vigorously FOLLOWED UP, until the person who has inquired makes a purchase, or else definitely states that *he is no longer interested.*

And ALWAYS, ALL THE TIME, it is an important point to KEEP AFTER EACH and every person who has become INTERESTED AS A RESULT OF THE CORRESPONDENCE carried on—CAREFUL COMPARISON being made of all fresh inquiries that develop.

Properties are listed, not just to stay in the files until some one “happens along” who wants them. Properties are listed to BE SOLD—and EVERY POSSIBLE EFFORT IS MADE TO SELL THEM!

When a Property Owner lists *with the average Real Estate Agent* using the old-time methods (or *lack of methods*) that *owner doesn't get any real SERVICE.* Under THE OSTRANDER SYSTEM, a fair ADVERTISING FEE is charged to cover the expense of THE OSTRANDER KIND OF LISTING. It is clear that THE OSTRANDER SERVICE could not possibly be rendered unless AN ADVERTISING FEE were paid, and it is also obvious that it would be entirely unfair for anyone to expect to receive such service without paying a reasonable fee.

THAT SERVICE IS HIGHLY VALUABLE, and means BIG RETURNS FOR THE CLIENT. And since there is considerable expense connected with “pushing” an individual property, that expenditure would be a dead loss to THE OSTRANDER REAL ESTATE SPECIALIST under the following circumstances, unless a fee were charged by way of protection—

When a client finds a buyer, himself.

When a client, for one reason or another, withdraws his property from the market.

When a sale is lost on account of a faulty title.

When a death “ties up” an estate.

When a property is listed at a “fancy” price.

When a client finds a buyer through the services of some other agent.

When a sale is lost as a result of a client's exaggerated (too "flowery") description.

When a property is destroyed by fire.

When a sale is prevented because of some unforeseen disturbing condition over which the OSTRANDER SPECIALIST has no control.

I am giving you below, as a guide, a list of the usual ADVERTISING FEES to be charged for THE OSTRANDER WAY of listing properties. It is to be remembered, of course, that these fees are not unchangeably *fixed*. THEY MAY BE VARIED to meet particular conditions or to special desires of individual OSTRANDER SPECIALISTS:

Property priced at—

\$1,000 or less charge Adv. Fee of.....	\$5
\$1,000 to \$3,000 charge Adv. Fee of.....	10
\$3,000 to \$10,000 charge Adv. Fee of.....	15
\$10,000 to \$20,000 charge Adv. Fee of.....	20
\$20,000 to \$30,000 charge Adv. Fee of.....	25
\$30,000 to \$50,000 charge Adv. Fee of.....	30
\$50,000 to \$75,000 charge Adv. Fee of.....	40
\$100,000 and up charge Adv. Fee of.....	50

Be careful not to misunderstand the term "ADVERTISING FEE." Realize, thoroughly, that if you accept an advertising fee from a Client, you *must* spend that money for advertising his property. Be sure to keep a clear record of this money—when received and also when and how spent.

When you advertise a client's property, get from the publication or the publication's agent, a receipted bill for the advertisement and paste a COPY OF THE ADVERTISEMENT thereon. You should of course keep on advertising that client's property until the amount of money he had paid you as an advertising fee has been used up.

In a later Lesson, I explain how to prepare your advertising, and my SCRAP-BOOK OF ADVERTISEMENTS GIVES TO YOU A SPLENDID COLLECTION OF EFFECTIVE ADS.

What you have studied in this Lesson has shown you, that the OSTRANDER SYSTEM, beyond any question or doubt is DISTINCTIVE, COMPREHENSIVE, EFFICIENT, and gets RESULTS. From what you have learned here, you know now what it means to list property the OSTRANDER WAY. You know the most effective way to handle the more purely MECHANICAL DETAILS of the lists; and you know, too, what is FAR MORE IMPORTANT—the HIGHLY VALUABLE SERVICE that the OSTRANDER REAL ESTATE SPECIALIST renders in LISTING PROPERTY for a client—and just how he is able to render that service. You know how to BUILD UP PROPERTY LISTS, how to KEEP ADDING TO THEM, and how to KEEP THEM REALLY ALIVE.

In my method, which I have described, of HOW TO LIST PROPERTY there are UNLIMITED POSSIBILITIES. In closing, however, I want to remind you once more of the extreme importance of the HUMAN FACTOR—that is, the importance of YOUR OWN INDIVIDUAL EFFORTS, which must be ceaseless, unremitting, persistent.

An eminent engineer has evolved an interesting formula which can be very appropriately quoted here. He says, "THE EFFICIENCY OF ANY PROCESS INVOLVING HUMAN BEINGS AND EQUIPMENT EQUALS THE

EFFICIENCY OF THE HUMAN BEING MULTIPLIED BY THE EFFICIENCY OF THE EQUIPMENT." In the present case THE OSTRANDER SYSTEM is the equipment that you have to work with—and IT IS 100 PER CENT EFFICIENT. Now what you should aim for is to DEVELOP 100 PER CENT EFFICIENCY IN YOURSELF AND THE RESULT WILL BE 100 PER CENT RESULTS. That, of course, is not to be accomplished in a day—but it is the ideal to be aimed at, and by KEEPING EVERLASTINGLY AT IT—as I said before—you will every day come nearer and nearer your goal.

The text of the course was actually prepared by respondent Ostrander and a text writer who had never had any experience in the real estate business.

Interspersed throughout the 36 "lessons" are numerous quotations from testimonial letters received from alleged successful students of the Ostrander System, most of which contain many false and misleading statements with respect to the earnings of the individuals named, said earnings not having been realized or the instances related were isolated and the earnings were received as a result of speculation in the purchase and sale of real estate in "boom" times and in no instance was the so-called Ostrander System of selling used by the testimonial writers. Supplementary to the course of instruction, and really made a part of it, many booklets and pamphlets containing suggestions and ideas of various real estate men, including particularly 24 lectures on "Practical Real Estate Methods" which were printed as a textbook in a Y. M. C. A. course of instruction in New York City approximately 15 years ago and the copyright of which is now owned by the respondent corporation. Each student is also entitled to receive and does receive copies of the "National Real Estate Review", a trade publication of the respondent corporation containing principally copies of testimonial letters and prize letters received from alleged successful students and pictures of such students and also so-called inspirational articles written to induce the students to continue the study of the respondent corporation's course of instruction, including a prize letter offer.

As to the value of the course, there is some conflict in the evidence. According to distinterested and impartial expert real estate educators called by the Commission respondent corporation's course of instruction contains a number of well-known and generally accepted principles presented in a forcible and attractive manner and also many pointers by a persuasive writer and salesman well acquainted with the principle of "selling psychology" making it interesting and suggestive to a real estate broker, but it is also ingeniously devised, overoptimistic in tone, with promises greater than its performance and a claim to originality where none exists; promising

complete scientific training and overemphasizing the value of the so-called course as against personal qualifications, such as ability, personality, etc., it is likely to attract the incapable, incompetent, and unfit and lead them to believe the elements of success in the real estate business is something that may be acquired and put on like a garment rather than the result of innate qualifications which may be associated and developed by proper study, the course, to a large extent, teaches selling tricks rather than a fundamental real estate knowledge and it makes claim to originality for the "Ostrander System" which consists solely of the idea of the advertising of listed properties and of requiring the owners to contribute toward the expense of such advertising which has been a known practice among some real estate men in New York and elsewhere; so far as the value of the course is concerned, more complete and valuable knowledge can be gotten by the study of a number of books on real estate; the course does not teach a prospective real estate salesman everything he needs to know, as advertised; it is not a practical proven-out, time-tested, workable system of instruction, as advertised; it is absolutely impossible for the uneducated, untrained man knowing nothing about real estate to establish himself in a high-class, independent real estate business simply by studying the "Ostrander System"; that part of the course which teaches salesmen in regard to selling lots and development properties is pernicious because it encourages clever talkers with no other qualifications, men of easy consciences with little, if any, knowledge of real estate principles to go on, with arguments that the course gives, based upon the fortunes made by outstanding examples in the past, and upon the sayings of famous men, regarding wise real estate investments, to go out among ignorant and uneducated people, often illiterate foreigners and sell lots in so-called "Developments" varying in merit from none at all to fair, and as to which the salesmen used to possess little, if any, judgment of his own to carry through transactions of that character with total disregard of the interests of the buyer, exemplified by page 5, lesson 17, of the said course of instruction which reads as follows in describing the success of one of respondent Ostrander's students:

A development recently opened by them makes its appeal particularly to foreigners, Italians, Ukrainians, Poles and Germans. He opened a store on the East side in the heart of the foreign district and a ballyhoo was carried on there which led the prospect to inspect and finally buy the property. Many sales were made right in the store from the map without property inspection at all.

That the Ostrander course is not the most complete course in real estate business that had ever been prepared; it is not the most

thoroughgoing, comprehensive or practical real estate course ever prepared and does not equip the student for success in any branch of the business; that much of it is superficial, misleading and inadequate and is rather a treatise on clever salesmanship applied to real estate than a course in real estate practice.

On the other hand, according to the educator called by the respondent who was an expert in subdivision and development properties but who had no experience in general real estate business, the respondent corporation's course of instruction is a very good course of fundamental instruction to meet the needs of the man of limited education who lacks the time or the money to attend a residence course, and in a simplified form it gives most of the material that is given in a college course. It was admitted by this witness, however, that the course would not fit the beginner to be a successful real estate specialist, that no theoretical training will establish a man in business; nor will the course give a comprehensive knowledge of the art and science of real estate salesmanship although it would give a general knowledge; an uneducated, untrained man could establish himself in a high class real estate office by means of the course provided he had the ability and adaptability; the main idea of the respondent corporation's course of instruction is respondent Ostrander's system of listing and advertising property as set forth in the first lesson; the course is not a complete course in real estate as advertised, although it is practical, and he does not approve of so-called "ballyhoo" method of selling development property which is advocated in the said course, to which objection was made by the other experts.

PAR. 5. Respondent corporation in the course and conduct of its said business described herein sought to induce prospective students to enroll with respondent corporation, or subscribe for its course of instruction by representing in advertising matter hereinbefore described, particularly in a booklet entitled "Success Stories" which is sent to all prospective students through the United States mail and also furnished to them at mass meetings called by respondents Moyle and Ostrander as hereinafter set forth, to the effect that persons completing respondent's course of instruction became real estate specialists and experts and earn incomes of not less than \$5,000 per year; and publishes testimonial letters purporting to set forth the experiences of successful students who have taken the Ostrander course of instruction and by the training thereby received were enabled to earn from \$5,000 to \$25,000 per year, when in truth and in fact the testimonial letters published by the respondent corporation as described herein contain many false and mis-

leading statements with respect to the earnings of the individuals named in respondent corporation's advertising matter, said earnings not having been realized, or the instances related were isolated and were not typical or representative examples of the experience of average earnings of Ostrander students and the profits or earnings were received as a result of speculation in the purchase and sale of real estate in "boom" times, and some of the letters were written by Ostrander students in response to respondent corporation's offer to pay a cash prize of \$200 each month for the best letter of not more than 500 words describing how the student would use \$200 to start in business or to improve a business already started, and said letters were written and submitted to the respondent corporation in response to such offer and were sometimes published without the permission of the writers thereof and without knowledge on the part of the respondent corporation as to the truth or falsity of the statements contained therein. Furthermore, respondent corporation regularly followed the practice of soliciting testimonial letters from its students and publishing said testimonial letters and prize letters in the "National Real Estate Review", a trade publication edited and published by the respondent corporation and circulated among the Ostrander students, as aforesaid. The following are typical illustrations:

Mr. Eugene Walfrath, whose testimonial letter is advertised by the respondent corporation under the caption "Amazing Profits, \$17,000 in one deal," was never engaged in the real estate business, had never realized the profits mentioned and the letter he wrote to respondent corporation in which reference was made to such profits was in response to an offer for a prize.

Mr. Charles F. Worthen of Massachusetts, who was alleged to have made \$8,500 in 17 weeks, realized this amount during a boom in real estate in his section of the country in the spring and summer of 1926; that he had not earned as much in subsequent years and had done nothing for a couple of years as the factories were closed up in the mill towns; that he had written the letter containing the statement quoted by the respondent corporation in response to a request for testimonial letters from the respondent corporation; and that he had subsequently received a prize of \$200 on another letter written in response to respondent corporation's offer.

Mr. W. E. Shoop from his testimonial letter, is quoted by respondent corporation as having made \$6,000 on his first sale, did not make that amount of money and as a matter of fact has not been engaged in the real estate business since completing respondent corporation's course of instruction.

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Mr. Thomas C. Mone, Jr., who is advertised by respondent corporation as having made \$28,000 in 6 months, realized these earnings, principally from profits from purchase and sale of real estate in boom times in 1926, and has not realized such profits since that time and at the time of the hearing in this case was not making any money in the real estate business and had only made nominal profits in the last year or two.

Likewise Mrs. Kate Luke, whose testimonial letter was extensively used by respondent corporation in its advertising matter as earning an average income of \$200 per week or \$10,000 per year, actually earned over a period of 18 months approximately \$6,000, although she had not received this amount because of cancellation of some of her sales.

Also Mr. A. W. Fosgreen, whose testimonial letter was used by respondent corporation many times in its advertising matter, particularly in the booklet entitled "Success Stories" under the caption "Made \$8,000 in Three Months," was never engaged in the real estate business but had studied respondent corporation's course of instruction in 1926 during a real estate "boom" and at that time he made \$8,000 profits on the purchase and sale of some real estate, and although he allowed respondent to use his picture in 1927 he had not given permission since that time.

Mr. H. D. VanHouten, whose testimonial letter was also used by respondent corporation in advertising matter and particularly in the booklet "Success Stories" under the caption "Sold Over \$100,000 Worth of Property the First Year Under Your Methods," denied that he had made sales amounting to that after taking respondent corporation's course of instruction but had done so in 1925, the year before he subscribed for the course. Although he had made sales amounting to \$80,000 in 1927 he had not been able to sell that amount since and had done very little real estate business in 1929.

Mr. August Roeder, whose testimonial letter was also used many times in respondent corporation's advertising matter described herein under the caption "Makes \$150,000 in Less Than Four Years," although he admitted writing a testimonial letter containing such a statement in 1926, explained that he had never been in the real estate business but was engaged in the restaurant business and also operated a gasoline station, although he had bought and sold some real estate from 1923 to 1926; and that he took Ostrander's course in 1924 and 1925 but had not made profits amounting to \$150,000 as stated in his testimonial letter, the explanation being that was the valuation on certain real estate which he purchased and which had enhanced during the time he was taking the course of instruction.

Mr. Harry Irving Andrews, whose prize letter was used by the respondent corporation as a testimonial letter many times in its advertising matter under the caption "Net Profits of \$12,000 in Two Months" had never sold any real estate and had never made profits of that amount, the explanation being that the letter which he wrote for the \$200 prize was a "visualizing" letter.

Mr. Irving F. Hunt, whose testimonial letter was used many times by respondent corporation in its advertising matter described herein in connection with the employment service of respondent corporation as having achieved success with respondent corporation's system and is becoming a \$25,000 a year man in less than 18 months, was never engaged in the general real estate business but had been general manager of the George J. Brown organization, a lot development organization in New York City, and later of the D. T. Richards Co. and previously assistant general manager of the B. W. Sangor Co.; that although he had never sold a piece of real estate himself he had acted in the capacity of sales manager and had earned about \$8,000 a year from overwriting commissions on sales made by salesmen including Ostrander students and prospective students who were employed as part time salesmen in the organizations with which he was associated; he had received a \$200 prize and although he stated on direct examination for the respondent that the prize letter which was published in the National Real Estate Review under the caption "From a Short Story Writer to a Real Estate Expert in Fourteen Weeks" was a true statement of his experience he admitted on cross examination that the caption used was exaggerated; that he could not consider himself an expert in 14 weeks; that he did not follow the practice mentioned in the letter with respect to the Ostrander System of long distance selling, nor the system of group advertising which the Ostrander System taught; that he did not know of any real estate firms that used that system; and that his firm did not, and when asked why he did not put the Ostrander System into effect in his firm he replied that he was too busy selling real estate. He also admitted that only one lesson in the course was on Subdivision Properties in which he was interested; and that the only thing he got out of the course to assist him was the "basic thoughts leading me to investigate."

Mrs. Aurora G. Altman, whose testimonial letter was used many times by respondent corporation under the caption "Makes \$1,000 Monthly" and with a statement to the effect that she made these earnings "the Ostrander Way", had been engaged in selling real estate before she took the Ostrander System and has since been employed as sales manager by the George J. Brown Co., a lot de-

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velopment company, for about three years during which time from May 1, 1928, to May 1, 1930, she earned less than \$15,000 according to the records of that company.

Mr. Anthony C. Maurell, whose testimonial letter was used many times by respondent corporation in its advertising matter as herebefore described under the caption "Earns \$4,133 in Three Months", earned this amount during the spring of 1927 during a real estate "Boom" in New Jersey and has never earned that amount in that length of time since. During the period from April, 1929, to April, 1930, he earned commissions amounting to approximately \$7,500; he also received a \$200 prize for a letter he wrote the respondent corporation in February, 1928, in response to its offer.

Mr. George Bischoff, whose testimonial letter was used by the respondent corporation in its advertising matter under the caption "From Dishes to Dollars. A Restaurant Waiter Becomes a Real Estate Specialist" and with the representation that he earned a commission of \$1,833.53 in less than three months, on direct examination when he testified for the respondent corporation, stated that he had earned the commissions stated in his letter and that his average income since he started in business was \$4,000 per year; that he had taken the Ostrander course of instruction in 1926. On cross examination he testified that he had been selling Long Island development properties with the Commonwealth Associates, where a number of Ostrander students and prospective students were employed as part-time salesmen. According to the records of that concern during the period of time from January 1, 1929, to October 1, 1929, he earned commissions amounting to \$2,659. He also admitted on cross examination that the so-called Ostrander System which he had learned in the course of instruction as to listing of properties, that is the charging in advance of fees for advertising, had not been used by him; that it was very hard to list properties that way; that it was not practical.

Mr. William Dakin, whose testimonial letters were often used by respondent corporation in advertising matter and in mass meetings where Ostrander students and prospective students were urged to join sales organizations of lot development companies, under the representation that after 50 years in the steel mills he started all over again as a real estate specialist, making a wonderful success and making \$1,325 a month in his spare time and earned \$25,000 a year after he had gone into business for himself, on direct examination for the respondent corporation gave credit for his alleged success to the Ostrander System which he studied in 1925 and 1926; that he had earned \$3,200 in working in part time and that he had made some profit in the sale of some development properties in New York

City and Buffalo, estimating an income of \$5,000 a year including the profit on the sale of two houses. During 1929 he estimated he had made \$3,500. On cross examination he admitted that he did not use the Ostrander System in listing properties, that is charging owners a fee for advertising, although he had tried it once; that he saw that the advertising fee would interfere with his business. He also admitted that he received a prize of \$200 in 1926 for writing a letter for the respondent corporation in response to its offer.

PAR. 6. Respondent corporation in the course and conduct of its said business described herein, in cooperation with the said individual respondents, W. M. Ostrander and Seth Moyle, has sought to induce prospective students to subscribe for respondent corporation's course of instruction by representing in advertising matter hereinbefore described that there was "Nation-Wide Clamor for Ostrander Trained Specialists" and that numerous well-known real estate firms located in various cities of the United States demanded "Ostrander-Trained Men and Women"; "Ostrander-Trained Specialists"; "Ostrander Realty Experts" and that after students had completed their course of instruction they would be placed with such real estate firms by respondent corporation's employment bureau where they would be given an opportunity to earn from \$1,000 to \$2,000 a month under the guidance of established and experienced real estate men without a penny of extra cost. In one circular or broadside which was mailed by respondent corporation to all prospective students in 1928 respondent Ostrander advertised under the caption—

HERE IS MY ANSWER TO THIS NATION-WIDE
CLAMOR FOR MORE OSTRANDER-TRAINED
SPECIALISTS

My System At A Reduction Of Almost 30%—In Order to Prepare
1,000 Men and Women At Once For These Opportunities In This
Million Dollar Field

accompanied by a picture of respondent Ostrander and a map of the United States graphically indicating the alleged demand for Ostrander students, specialists, and experts, in various cities and States of the United States, particularly New York City, Stamford, Conn., Philadelphia, Pa., Buffalo, N. Y., Detroit and other cities in Michigan; Cleveland, Ohio, Chicago, Ill., Peoria, Ill., Indianapolis, Ind., Alabama, Florida, Mississippi, and Texas. Excerpts from letters alleged to have been received from real estate concerns in these various localities were also set forth in the bulletin to show "The Nation-Wide Clamor." In the lower right-hand corner is a picture of "126 Ostrander students placed with one big company" referring

to a development company of New York City, George J. Brown organization. In this same circular pictures of approximately 80 alleged successful Ostrander students with short statements of their accomplishments are set forth with the following statement in large type:

Do You Want Earnings Like These?

followed by the following statement in small type—

My System Will Soon Put You Into This Big Money Class No Matter Where You Live, What You Are Doing Now, What Your Previous Education Has Been, How Old You Are, Whether or Not You Want To Operate Independently or Whether You Devote Spare or Full Time.

Respondent corporation also advertised in leading magazines as follows:

Wanted—Men, Women. Make \$5,000 to \$25,000 a year in Real Estate;

Wanted—Your Services as a Real Estate Specialist. Make Big Money!;

Wanted—100 Men with Cars. \$5,000, \$10,000, \$20,000 a year. Do What these Folks Did. Get My Free Book. Be a Real Estate Specialist. Start in Your Own Spare Time. Build a Permanent Business Of Your Own. Make More Money Than you Ever Made Before.

In truth and in fact there was no demand for Ostrander students as represented by respondent Ostrander in the foregoing described advertisements. During the year 1927 respondent Ostrander advertised in magazines and circularized real estate development companies in various sections of the United States and solicited business for Ostrander students located in the territory covered by such real estate firms. In doing so he called attention to the alleged success of these students in that type of work, enclosing a reprint of a page taken from the National Real Estate magazine featuring the alleged success of certain Ostrander students according to testimonial letters containing false and misleading statements with respect to the earnings of the individuals named, such earnings not having been realized or the instances were isolated and the earnings were received as a result of speculation in the purchase and sale of real estate in "boom" times. In respect to this circular letter and the advertisements referred to respondent corporation received inquiry from a number of real estate development companies during the year 1927, asking for full details, some of them stating that Ostrander students could be used in the sale of development properties, and such letters of inquiry were published in said circulars by respondents without the permission of the writers thereof.

Respondent Moyle, during the time he was vice president of the respondent corporation, had charge of its activities in placing Ostrander students and prospective students with real estate firms

which activities began in the fall of 1927 when he was instrumental in getting a number of Ostrander students and prospective students to join the sales force of the E. A. White organization in New York City, which concern was engaged in the sale of development property. Some of the students and prospective students made purchases from the White organization. In February, 1928, respondent Moyle, representing the respondent corporation, arranged a mass meeting of Ostrander students and prospective students in the Manhattan Opera House in New York City for the avowed purpose of building up a sales force for the George J. Brown organization, a newly organized lot development selling company. This meeting was attended by approximately 1,500 people and talks and speeches were made by alleged successful Ostrander students as well as respondents Ostrander and Moyle. As a result of that meeting a large number of Ostrander students and prospective students were employed as part time salesmen by the George J. Brown organization where they were placed under sales managers and were trained to sell development property. From time to time since that time similar meetings have been held and the sales force of the George J. Brown organization has thus been replenished as the unsuccessful salesmen would drop out. Respondent Moyle, representing the respondent corporation, assisted in this project by sending out circular letters urging students and prospective students to attend meetings of the George J. Brown organization and calling attention to the wonderful opportunities to be found in the sale of development properties. More than 13,000 prospective students and 2,500 students were solicited in this manner, in the metropolitan area surrounding New York City, in behalf of the George J. Brown organization and a smaller number in behalf of the Commonwealth Associates, another lot development organization in New York City.

Under a secret arrangement between respondent corporation and the George J. Brown organization, respondent corporation through respondent Seth Moyle received a commission of 2½ per cent on all sales made by Ostrander students or prospective students employed by the George J. Brown organization until October, 1928, when it was agreed that the respondent corporation was to receive 1 per cent on all sales made by the George J. Brown organization. A similar secret arrangement was made between the respondent corporation and Commonwealth Associates, except that the commission received by the respondent corporation was 3 per cent on all sales made by Ostrander students and prospective students employed by the Commonwealth Associates.

During the year 1929, respondent Moyle, representing the respondent corporation prior to October, 1929, and thereafter representing

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the Seltru Corporation, a subsidiary organized for that purpose by the respondent corporation, entered into secret agreements with the following-named real estate development companies whereby Ostrander students and prospective students were furnished such development companies as part-time salesmen with the understanding that respondent corporation was to receive a commission on all sales made by, and in some instances to, Ostrander students and prospective students:

Percy Wilson Co., Chicago, Ill.;

Liggett & Graul, Detroit and Flint, Mich.;

William Doerr, Buffalo, N. Y.;

Marentette Realties Corp., Detroit, Mich., development in Windsor, Canada.

The usual method followed by respondent Moyle in cooperation with the above-named real estate development companies to build up their sales forces with Ostrander students and prospective students was for him to mail to such students and prospective students in the vicinity of the real estate lot development company, circulars, bulletins, and form letters announcing a mass meeting to be held at a central point where Ostrander students would be given an opportunity to apply the knowledge they had been given by the Ostrander System in a practical remunerative way and citing a number of alleged successful Ostrander students who made thousands of dollars in a few months' time, such representations being false and misleading with respect to the earnings of the individuals named, said earnings not having been realized, or the instances related were isolated and the profits or earnings were received as a result of speculation in the purchase and sale of property in "boom" times and not as a result of any training received under the Ostrander System. Letters containing similar references to the alleged success of Ostrander students were sent to prospective students urging them to attend the meeting of the lot development company where they would be given a chance to earn while they learned. When the meetings were held they were usually addressed by respondents Moyle and Ostrander and lantern slides containing pictures of the alleged successful students in the Ostrander course and bulletins and circulars and verbal representations were made with respect to such individuals to the same general effect. Copies of "Success Stories," a pamphlet published by respondent corporation, featuring the alleged success of Ostrander students which has been hereinbefore described, were distributed at such meetings. During the years 1928 and 1929, respondent Moyle, representing the respondent corporation, circularized approximately 10,000 prospective students and 2,500 students outside of the metropolitan area of New York City in the manner just described.

The total amount of commissions earned and received during 1928 to 1930 by the respondent corporation from the respective development companies is as follows:

	Earned	Received
George J. Brown	\$28, 123. 61	\$12, 800. 16
Commonwealth Associates.....	4, 689. 15	2, 175. 20
Liggett & Graul.....	3, 452. 50	804. 57
Percy Wilson.....	243. 29	243. 29
Marentette Realties Corp.....	450. 00	450. 00

While a few of the Ostrander students became sales managers and were enabled to earn substantial commissions on sales made in lot development projects, the earnings of the vast majority of the cases of Ostrander students and prospective students in said projects were nominal and were not as large as advertised by respondent corporation in its advertising matter. For instance, in the Commonwealth Associates organization in New York City were 42 Ostrander students and prospective students were employed as salesmen during the period beginning July 1, 1929, to May 1, 1930, only 3 earned more than \$1,000 in gross commissions during that period of time, although one earned approximately \$2,600 during the period from January 1, 1929, to October 1, 1929, and the sales manager, who although not an Ostrander student claimed he had read the Ostrander course of instruction while employed in a printing office, earned \$12,300 during the 16 months' period from January 1, 1929, to May 1, 1930. The earnings of the other 37 ranged from \$31 to \$700, the great majority being less than \$100. In the George J. Brown organization which is prominently featured in respondents' advertising matter in this connection, the largest earnings were made by a sales manager from March, 1928, to May 1, 1930, and amounted to \$14,600.

PAR. 7. Respondent corporation in the course and conduct of its said business described herein represented in its advertising matter heretofore described that there was no risk to the subscriber "because of a money-back bond issued by the respondent corporation which would protect the subscriber", when in truth and in fact such alleged "bond" was merely a promise on the part of respondent Ostrander to return to the subscriber or student the amount paid in if he was not fully satisfied, "provided he returns the course and makes his claim within thirty days after final payment has been made and states in writing his reasons why such claim has been made." Respondent corporation also advertised and represented in its said advertising matter herein described that it would give \$1,000 in gold for proof of any other business course in service of any kind that has helped as many people make as much money in as short a time as respondent corporation's real estate course and service.

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PAR. 8. Said respondent corporation in the course and conduct of its said business described herein is in competition with approximately 185 resident schools in various colleges and other institutions of learning, located throughout the several States, teaching courses on real estate, and the American Real Estate Institute, sponsored by the National Association of Real Estate Boards, which, for a number of years, has been publishing and distributing home study courses on real estate and, which, in 1927 began the publication of specialized courses, including a course on real estate selling, such course being published and distributed in interstate commerce in substantial quantities to the members of real estate boards and their employees throughout the country. Said competitors in the course and conduct of their said business have not utilized the practices and methods followed and observed by said respondent corporation as heretofore set forth.

PAR. 9. The aforesaid acts and things done, and the representations made by the said respondent corporation and individual respondents W. M. Ostrander and Seth Moyle, have the capacity and tendency to mislead and deceive the public, students and prospective students, into the belief that the said respondent W. M. Ostrander had recently used the so-called Ostrander System in building up a successful real estate business, earning as high as \$40,000 per year with no capital and without education or previous experience, and that through the study of respondent corporation's course of instruction featuring the so-called "Ostrander System", anyone without education, experience, or capital by the use of said system could earn large profits in their own homes in their spare time, and that others who were taking respondent corporation's course of instruction, and had used the so-called "Ostrander System", had been eminently successful although they had had little education, experience and capital; and further that Ostrander students were in demand by large real estate firms throughout the country because of their training under the "Ostrander System", and that said respondent corporation would obtain positions for its students with such real estate firms, where such students could earn from \$5,000 to \$25,000 annually without cost to the students and without profit to the respondent corporation, officers, or employees; and in that belief and relying upon said representation to apply for, and subscribe to, respondent corporation's course of instruction in preference to the course of instruction offered by competitors of said respondent corporation, thereby diverting students and prospective students from said competitors that do not make such false, fictitious, exaggerated, misleading and deceptive statements and representations.

CONCLUSION

The acts and practices of respondent set forth in the foregoing findings as to the facts constitute, under the circumstances therein stated, unfair methods of competition in interstate commerce in violation of the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondents, and testimony having been taken and the Commission having made its findings as to the facts and its conclusion that the respondents have been and now are violating Section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondent corporation, American Business Builders, Inc., its officers, directors, agents, representatives, servants, and employees, and individual respondents, W. M. Ostrander and Seth Moyle, their agents, representatives, servants, and employees, do cease and desist directly or indirectly by advertisements in magazines and newspapers, or in circular letters, bulletins, pamphlets, broadsides, or by lantern slides, or films, or otherwise in connection with the sale of a course of instruction in interstate commerce between and among the several States of the United States, or between any State and the District of Columbia, or in the District of Columbia:

1. Representing in any way that the so-called Ostrander System for becoming a "Real Estate Specialist" is proved-out, time-tested, and covers the entire field of real estate; and is the most thorough, complete, successful, money-making real estate system ever prepared, or words to that effect.

2. Representing in any way whatsoever the earnings or experience of respondent Ostrander, while engaged in the real estate business, so as to make it appear that such earnings and experience resulted from the use of the so-called "Ostrander System" of selling real estate, and that the students to-day, with little capital and no experience, by the study of said Ostrander course and by the use of the so-called "Ostrander System" taught by said course, will be enabled thereby to earn as much in the real estate business as said respondent Ostrander.

3. Representing in any way whatsoever that upon the completion

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of, or by taking said course of instruction, a person will become a real estate "specialist" or "expert" and will be enabled to earn from \$5,000 to \$25,000 per year by the use of the so-called "Ostrander System" as taught in said course of instruction either in business for himself or with an established real estate firm.

4. Misrepresenting in any way whatsoever the earnings of students or persons who are taking or have completed said course of instruction, and particularly from representing that profits obtained from speculation in real estate constituted earnings or commissions received by such students or persons, as a result of the use of the so-called "Ostrander System" of selling real estate.

5. Publishing in any way whatsoever testimonial letters or excerpts therefrom or parts thereof received from students who are taking or have completed said course of instruction, purporting to set forth their success in the real estate business as a result of taking said course of instruction when respondents, or any of them, know or by the exercise of reasonable care should know that the statements in the testimonial letters quoted are untrue or misleading.

6. Publishing in any way whatsoever in whole or in part letters received from students taking, or having completed, said course of instruction, when the same are submitted in response to offers for cash prizes or other prizes of substantial value without disclosing the fact that said letters had been written by said students in response to offers for cash prizes or other prizes of substantial value.

7. Representing in any way whatsoever that there is at the present time a great demand among established real estate firms for "Ostrander-trained specialists," or men and women trained under the so-called "Ostrander System" or who have taken said course of instruction.

8. Representing in any way whatsoever that students taking and students having completed said course of instruction have been or will be placed by respondent corporation or by one of its representatives with real estate development companies so as to make it appear that said students would be given a preference over any other agents of said development companies, and without disclosing that said development companies paid commissions to said respondents directly or indirectly for all students and prospective students or other individuals not students or prospective students employed by said development companies upon the recommendation of the respondents, or any of them.

9. Publishing in any way whatsoever, in whole or in part, letters received from real estate development companies with respect to demand for employment of Ostrander students, when such letters are not current and are printed without their dates, or in such a man-

ner as to represent or imply that such a demand exists as of the time of their publication, when such is not the fact; and also when such letters are induced by misrepresentations of the respondents as to the experience or earnings of Ostrander students in the sale of real estate; and also without disclosing the fact, when it is a fact, that such development companies pay commissions directly or indirectly to respondents or some of them on all sales made by Ostrander students who may be employed by such development companies.

10. Representing in any way whatsoever that the promises, agreements, or obligations of respondents, or any of them, are under bond, unless and until respondent corporation executes a bond, or bonds, to cover said promises, agreements, and obligations, and in sufficient amount to indemnify against any default in said promises, agreements or obligations.

It is further ordered, That each of the said respondents within 60 days from and after the date of the service upon them of this order, shall file with the Commission a report or reports in writing, setting forth in detail the manner and form in which they are complying and have complied with the order to cease and desist hereinabove set forth.

Complaint

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IN THE MATTER OF

ISAAC SHAININ, BERNARD SHAININ, SOLOMON SHAININ
AND JESSE SHENSIN, A PARTNERSHIP TRADING
UNDER THE FIRM NAME AND STYLE OF I. SHAININ &
COMPANYCOMPLAINT (SYNOPSIS), FINDINGS AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1780. Complaint, Apr. 7, 1930—Decision, Mar. 10, 1931*

Where a firm engaged in sale of Chinese art goods, vases and semiprecious stones, imported and sold, described and invoiced as "rose quartz" beads, beads carved from rose quartz and artificially dyed to supply the distinctive natural rose tint lacked by such particular beads and long associated by trade and public with beads sold under aforesaid designation, without disclosing to wholesaler vendees the essential and material fact that said inferior and less costly beads had been so dyed or artificially colored or tinted; with capacity and tendency to mislead and deceive such vendees into believing said heads to be those possessing the natural rose color and in large demand for necklaces by reason thereof, and to induce their purchase in reliance on such belief, and put into the hands of dealers means of misleading their own dealer customers, prospective customers, or consumers, as the case might be, and thereby divert trade to said firm from competitors engaged in selling as rose quartz beads, beads possessing such natural rose color, without artificial heightening, deepening, dyeing or tinting:

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

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondents Isaac Shainin, Bernard Shainin, Solomon Shainin, and Jesse Shensin, partners, engaged in the importation and sale of Chinese art goods, vases, and semiprecious stones to wholesale jewelry dealers, with misrepresenting nature of product, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent partners, as charged, engaged as above set forth, import, offer and sell, and by invoice or otherwise describe and designate as and for rose quartz beads, beads cut or carved from so-called quartz, and so dyed as to acquire and have the deep rose color long and still identified by the public with genuine rose quartz beads carved from quartz in Germany, Switzerland and elsewhere,

without advising or disclosing that the color of their said beads has been and is imparted by dyeing same. Said beads, purchased by them at a cost substantially less than that of rose quartz beads with the genuine natural color of deep rose, are inferior in quality thereto, worth less, and sell for less than rose quartz beads as known to the public, and command no demand among the consuming public in their natural color.¹

Said offer for sale or sale by respondents, as alleged "as or for rose quartz beads, of beads cut or carved from quartz in China and dyed or colored to resemble or simulate the natural, deep rose color associated by the purchasing public with the name or designation rose quartz beads, without disclosing the essential and material fact that such beads have been dyed to resemble or simulate the deep rose color so associated by the public with the designation or name rose quartz beads, has had and has the capacity and tendency to mislead and deceive the public into the belief that such so-called rose quartz beads so offered for sale or sold by the respondents have the natural instead of artificial color, and to induce their purchase in reliance on such erroneous belief" and respondents' said practice, as further alleged, "has furnished and furnishes wholesale and retail dealers in jewelry the means by which they have been and are enabled to mislead and deceive their customers and prospective customers into the purchase of such so-called rose quartz beads in the belief that they have been and are the natural colored rose quartz beads known to the trade and the public as such.

"Wherefore, said acts and practices of respondents are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of section 5."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon respondents Isaac Shainin, Bernard Shainin,

¹As set forth in the complaint, "there are, and for many years last past have been, offered for sale and sold in commerce among and between the various States of the United States, beads cut or carved from quartz in Germany, Switzerland, and elsewhere, which, on account of their natural deep rose color, have been described, designated and known, and now are described, designated, and known as rose quartz beads. There has been and is a large demand for such beads for necklaces for women because of such deep rose color, and the designation rose quartz beads has come to signify and mean, and signifies and means to the trade and the public, beads cut or carved from quartz having the natural, deep rose color."

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Solomon Shainin and Jesse Shensin, trading under the firm name and style of I. Shainin & Company, charging them with the use of unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

Respondents having entered their appearance and filed their answers, hearings were duly held before an examiner of the Commission theretofore appointed for such purposes. Testimony and evidence were introduced in support of the complaint and on behalf of respondents. Thereupon it was stipulated and agreed in course of the hearing, subject to the approval of the Federal Trade Commission, by and between the attorney for the Commission and the attorney for respondents that introduction of further evidence either on behalf of the Commission or the respondents, report of the trial examiner, briefs and oral arguments, would be and were waived and that the Federal Trade Commission may proceed forthwith to file its report stating its findings as to the facts and conclusion drawn therefrom, and to dispose of this matter by an appropriate order to cease and desist, and this proceeding having come on for final decision and the Commission being fully advised in the premises hereby approves the said stipulation between the attorney for the Commission and the attorney for respondent, and files this its report in writing stating its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Isaac Shainin, Bernard Shainin, Solomon Shainin and Jesse Shensin, trading under the firm name and style of I. Shainin & Company, have been since 1907 and are now engaged in the sale in commerce among and between the various States of the United States of Chinese art goods, vases and semiprecious stones. In the course of such business they have imported and do import into the United States from foreign countries beads cut from rose quartz and used in necklaces for women. Respondents sell such product to wholesalers in such jewelry in the various States of the United States, in competition with individuals, partnerships and corporations similarly engaged in interstate commerce. Such wholesale dealers thereupon sell to retail dealers for resale to the consuming public.

PAR. 2. There are and for many years last past have been offered for sale and sold in commerce among and between the various States of the United States beads cut or carved from rose quartz in various foreign countries which have a natural rose color and there has been and is a large demand for them, for necklaces for women, because of

their natural rose color, and the designation "rose quartz beads" has come to signify and mean and signifies and means to the trade and to the public beads cut or carved from rose quartz having a natural rose color, which has not been heightened or deepened by dye or artificial means.

PAR. 3. Respondents have imported into the United States and sold in commerce among and between the various States of the United States beads cut or carved from quartz mineralogically or technically known as rose quartz, some of which have lacked and lack the distinctive rose color which has been and is associated by the trade and the purchasing public with the designation "rose quartz beads." Such beads have been and are dyed or artificially colored or tinted by respondents so that they have had or have the rose color by which the public as aforesaid has long identified and now identifies rose quartz beads. In the course and conduct of their business respondents have offered for sale and sold such artificially colored or tinted rose quartz beads described or designated as "rose quartz beads" by invoice, or otherwise, to wholesale dealers in the various States of the United States without disclosing in such invoices, or otherwise, to purchasers from them, the essential and material fact that such beads have been dyed or artificially colored or tinted. Such beads so dyed or artificially colored or tinted have been and are purchased by respondents at a cost substantially less than the original cost of rose quartz beads having the natural rose color. They are inferior in quality, worth less and have been and are sold by respondents for less than rose quartz beads with the natural rose color, which has not been heightened or deepened by artificial means.

Some time in December, 1929, respondents discontinued their said practice of describing or designating by invoice or otherwise beads offered for sale or sold by them, which had been cut or carved from rose quartz, and which had been colored or tinted, as "rose quartz beads" and adopted the practice which they are now following of describing or designating such beads by invoice and otherwise as "rose quartz beads artificially colored."

PAR. 4. The offering for sale or sale by respondents, described or designated as "rose quartz beads" of beads cut or carved from rose quartz lacking the distinctive rose color, and dyed or artificially colored or tinted so as to have a rose color, without disclosing to purchasers the essential and material fact that such beads have been dyed or artificially colored or tinted, has had and has the capacity and tendency to mislead and deceive purchasers into the belief that the beads offered for sale and sold by them described as "rose quartz beads" have the natural rose color, which has not been imparted,

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heightened, or deepened by dyes or any artificial means, and to induce their purchase in reliance on such erroneous belief.

The said practice of respondents has had the capacity and tendency to put into the hands of wholesale dealers the means to mislead their dealer customers or prospective customers into the belief that they were beads with a natural rose color which had not been heightened or deepened by dye or artificial means, and in turn such practice put into the hands of the dealer the means similarly to mislead and deceive the consuming public, and thereby to divert trade to respondents from competitors engaged in the sale in interstate commerce of beads designated or described as rose quartz beads, which had not been dyed or artificially colored or tinted but had a natural rose color.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondents, testimony and evidence, and it having been stipulated and agreed by and between the attorneys for the Commission and respondents that report of the trial examiner, briefs and oral arguments were and are waived, and that the Federal Trade Commission forthwith may proceed to file its report stating its findings as to the facts and its conclusion drawn therefrom, and to dispose of this matter by an appropriate order to cease and desist, and the Commission having approved such stipulation or agreement between the attorneys for the Commission and the respondents, and having filed its report stating its findings as to the facts and its conclusion drawn therefrom, that the respondents have violated the provisions of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That Isaac Shainin, Bernard Shainin, Solomon Shainin and Jesse Shensin, trading under the firm name and style

of I. Shainin & Company, cease and desist directly or indirectly from offering for sale or selling in interstate commerce rose quartz beads dyed or artificially colored or tinted, described or designated as "rose quartz beads," unless qualified by word or words in immediate conjunction with such designation "rose quartz beads," and equally as conspicuous, clearly showing that such beads have been or are dyed, or artificially colored or tinted.

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



ORDERS OF DISMISSAL

TIM'S CAP CORPORATION. Complaint, October 12, 1929. Order, May 6, 1930. (Docket 1701.)

Charge: Maintaining resale prices; in connection with the manufacture and sale of knitted caps.

Dismissed, after answer and trial, by the following order:

This matter having been heard by the Federal Trade Commission upon the pleadings, testimony, briefs and oral argument of counsel, and it appearing to the Commission that the practices charged in the complaint were abandoned long prior to investigation of the matter by the Commission,

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

Appearances: *Mr. Alfred M. Craven* for the Commission; *May & Jacobson*, of New York City, for respondent.

GENERAL SHALE PRODUCTS CORPORATION, JOHNSON CITY SHALE BRICK CORPORATION, AND KINGSFORD BRICK CORPORATION, Complaint, July 9, 1929. Order, May 13, 1930. (Docket 1682.)

Charge: Selling below cost to eliminate competition, cutting off or seeking to cut off competitors' source of supply and disparaging and misrepresenting competitors; in connection with the manufacture, sale, and distribution of bricks and building tile.

Dismissed, after answer and trial, for the reasons that the "evidence failed to sustain the allegations of the complaint".

Appearances: *Mr. Henry C. Lank* for the Commission; *Mr. James A. Fowler*, of Knoxville, Tenn., *Sells, Simmonds & Bowman*, of Johnson City, Tenn., and *Kelley & Penn*, of Kingsport, Tenn., for respondents.

PERSONAL STATIONARY CORPORATION OF NEW YORK, Complaint, July 10, 1929. Order, May 27, 1930. (Docket 1684.)

Charge: Advertising falsely or misleadingly; in connection with the manufacture and sale of greeting cards and stationery, including invitations, announcements, calling cards, letterheads, envelopes, and other similar products.

Dismissed, after answer and trial, by the following order:

The above-entitled proceeding coming on for consideration on the complaint of the Commission, answer of respondent, evidence and

brief of counsel for the Commission, and the Commission now being fully advised in the premises,

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

Commissioners Hunt and McCulloch dissented on the ground that the order of dismissal is in conflict with former decisions of the Commission to the effect that typographical printing, finished by means of application of chemicals and heat so as to give a raised-letter effect, is not "embossing" as known in the graphic art and by the public and should not be represented to the purchasing trade as embossed work.

Appearances: *Mr. Richard P. Whiteley* for the Commission; *Mr. George Seagrave Franklin*, of New York City, for respondent.

HESS LUMBER CO., ET AL. (Docket 1622); MICHIGAN-CALIFORNIA LUMBER CO., ET AL. (Docket 1634); SHASTA VIEW LUMBER & BOX CO., ET AL. (Docket 1653); KLAMATH PINE MANUFACTURING CO., ET AL. (Docket 1659); ARIZONA LUMBER & TIMBER CO., ET AL. (Docket 1660); SAGINAW & MANISTEE LUMBER CO., ET AL. (Docket 1661); HARRY HERR, ET AL. (Docket 1667); HENRY A. KUNS, ET AL. (Misnamed for Henry A. Kurns) (Docket 1668); and C. A. BERRY, ET AL., TRADING AS BERRY & SONS. (Docket 1669). Complaints, May 23, 1929. Orders, May 28, 1930.

Charge: Advertising falsely or misleadingly and otherwise misrepresenting product as to nature; in connection with the application of the words "White Pine," either with or without the prefixes "California", "Arizona", "Western", or "New Mexico", to a species of tree native to the mountainous regions of the Pacific slope, commonly known as "Western Yellow Pine", and botanically known as *Pinus ponderosa*.

Dismissed, after answer and trial, by the following order:

This matter having come before the Commission on motion of Robert E. Healy, chief counsel, and Eugene W. Burr, attorney, whereby recommendation was made for dismissal of the above-entitled proceedings upon grounds respectively set forth, and the Commission being fully advised in the premises,¹

¹ Motion referred to follows:

Come now Robert E. Healy, chief counsel of the Federal Trade Commission, and Eugene W. Burr, attorney for the same, and show to the Commission as follows:

That the above entitled [referring to cases in question as above set forth] are nine of a group of some fifty proceedings (Dockets 1620-1669) brought by the Commission under complaints identical in character and, except as to allegations descriptive of the respective respondents, verbatim in their terms. Hearings in the said group of 50 proceedings were conducted simultaneously in various parts of the country and have been completed, the trial examiner being engaged in the preparation of his report to the Commission thereon. Some nine of the said proceedings, named in the above title, in our judgment should be dismissed by the Commission, the situation as regards same being as follows:

(a) In the matter of Shasta View Lumber & Box Co. et al., and Klamath Pine Manufacturing Co. et al., no service of the complaints was made although the statutory steps

It is hereby ordered, That the proceedings against the following named respondents, to wit: Hess Lumber Co. et al., Docket 1622; Michigan-California Lumber Co. et al., Docket 1634; Shasta View Lumber & Box Co. et al., Docket 1653; Klamath Pine Manufacturing Co. et al., Docket 1659; Arizona Lumber & Timber Co. et al.

for service were taken. It is understood that these concerns are no longer in business in the manner alleged in the complaints.

(b) In the matter of the Hess Lumber Co. et al., Harry Horr et al., and Henry A. Kuns et al. (misnamed in the complaint Henry A. Kurns), there is failure of proof of commerce between the States in the ponderosa products in question.

(c) In the matter of Michigan-California Lumber Co. et al., there is failure of proof that when the complaint was issued this concern was designating its products made from *Pinus ponderosa* under a trade term containing the word "white" or that it sold or represented its said products as "white pine" the use of such trade name being the gravamen of the complaint herein. The evidence of record shows that this respondent was, at the time the complaint was issued and since July, 1927, selling its *Pinus ponderosa* products under the trade term "pondosa" (Tr. p. 591-2, 2433). The president of this company testified that he had some years before come to regard the trade term "California white pine", which at one time his company had been employing for ponderosa products, as misleading and contrary to the public interest (610-1, 646-7).

(d) In the matter of Arizona Lumber & Timber Co. et al., there is failure of proof that the respondent concerned has at any time regularly designated its *Pinus ponderosa* products as "white pine" or under a trade term including the word "white". The record shows that this respondent for 44 years has not advertised and sold its products as "white" pine in any general way (Tr. p. 3286). A sales agency for this respondent, however, did for a time so designate respondents' said products, but the operations of this agency were entirely in order to secure, and did secure, sales of respondents' Arizona lumber in the State of Arizona only (Tr. 3289-92). Accordingly, respondent placed of record a motion to dismiss the proceedings, Docket 1660 (Tr. 3298), and in support thereof made the following stipulation through its counsel, T. J. Byrne:

"Mr. BURN: After further consideration, it is stipulated that in event an order to dismiss is made in favor of the Arizona Lumber & Timber Co., and in the further event that an order to cease and desist is issued against the manufacturers of the so-called California white pine, and such order is either acquiesced in by respondents named therein or is affirmed by the Federal courts in case the proceeding is carried to the courts by petition for review or petition for enforcement, the Arizona Lumber & Timber Co. will acquiesce and will discontinue the very limited use of the word "white", as connected with its product.

"Is that agreeable?"

"Mr. BYRNE: Yes, on behalf of the Arizona Lumber & Timber Co. it is so stipulated." (Tr. 3300).

(e) In the matter of Saginaw & Manistee Lumber Co. et al., there is failure of proof that respondent has been using in interstate commerce the trade term Arizona white pine or any other term including the word "white" for its *Pinus ponderosa* products. The record shows that the respondent has variously designated its said products as "Arizona soft pine" (3253, 3258, 3261), "western yellow pine" (3255). Accordingly, this respondent placed of record a motion to dismiss the proceedings, Docket 1661 (3298).

(f) In the matter of C. A. Berry et al., trading as Berry & Sons, there is failure of proof of the use of any trade term including the word "white" or other representation that their *Pinus ponderosa* products are "white pine". We are credibly advised that these respondents designate their product "yellow pine".

That the proceedings in the aforesaid group, other than the nine hereinabove named and described, will amply suffice to settle the principles applicable to the practices in question, that of designating *Pinus ponderosa* products by trade terms including the word "white" and due action thereon will safeguard the public interest.

Accordingly, the undersigned counsel move that the Commission dismiss the nine proceedings named in the title hereof, but without prejudice to the bringing of subsequent proceeding or proceedings if subsequent methods of competition by one or more of said respondents so dismissed should, in the Commission's judgment, justify or require such subsequent action.

Respectfully submitted.

ROBT. E. HEALY, *Chief Counsel.*
EUGENE W. BURR, *Attorney.*

Dated May 20, 1930.

Docket 1660; Saginaw & Manistee Lumber Co. et al., Docket 1661; Harry Horr et al., Docket 1667; Henry A. Kuns et al. (misnamed Henry A. Kurns), Docket 1668; C. A. Berry et al., trading as Berry & Sons, Docket 1669; be and the same are hereby dismissed but without prejudice to the bringing of a subsequent proceeding or proceedings if subsequent methods of competition by one, any, or all of said respondents so dismissed should justify or require such subsequent action by this Commission;

And it is further ordered, That the secretary serve upon each of the above-named respondents a copy of this order.

Appearances: *Mr. Eugene W. Burr* for the Commission; *McCutchen, Olney, Mannon & Greene*, of San Francisco, Calif., and *Mr. T. J. Byrne*, of Prescott, Ariz., for respondent Arizona Lumber & Manistee Lumber Co. et al.; *Mr. T. J. Byrne*, of Prescott, Ariz., for respondent Saginaw & Manistee Lumber Co. et al.; and *Mr. C. H. Grayson*, of Sonora, Calif., for respondent Henry A. Kurns et al.

V. T. BOLIN, TRADING UNDER THE NAME AND STYLE OF V. T. BOLIN Co., Complaint, March 9, 1928. Order, June 11, 1930. (Docket 1501.)

Charge: Advertising falsely or misleadingly; in connection with the sale of "shares" or "interests" in leases acquired by him.

Dismissed, after answer, by the following order:

This matter coming on to be heard on the memorandum of the chief counsel, dated May 26, 1930, recommending dismissal of the complaint in this case, and the Commission being fully advised in the premises,

It is ordered, That this case be and the same is hereby dismissed upon the ground that the respondent has been prosecuted and convicted for violation of the criminal statute prohibiting misuse of the mails upon substantially the same set of facts as disclosed in the Commission's file.

Appearances: *Mr. E. J. Hornibrook* for the Commission; *Baskin, Eastus & Greines*, of Ft. Worth, Tex., for respondent.

PORTLAND CEMENT ASSOCIATION, ITS BOARD OF DIRECTORS, OFFICERS AND MEMBERS, Complaint, July 19, 1928. Order, June 13, 1930. (Docket 1532.)

Charge: Disparaging and misrepresenting competitive process through ostensibly disinterested and informed sources and otherwise; in connection with the manufacture and sale of cement.

Dismissed, after answer and trial, by the following order:

The above-entitled proceeding coming on for consideration by the Commission upon the petition of counsel for the respondents filed May 1, 1930, to dismiss the complaint in this case; and the Commis-

sion having considered the matter set forth in the papers filed on behalf of said petition, and having heard argument of counsel and being fully advised in the premises,

It is ordered, That said petition be and hereby is sustained and that the complaint herein be and hereby is dismissed for want of jurisdiction.

Appearances: *Mr. Everett F. Haycraft* for the Commission; *Defrees, Buckingham, Jones & Hoffman*, of Chicago, Ill., for respondent.

AUBURDALE MILLS, INC. Complaint, October 30, 1929. Order, June 14, 1930. (Docket 1717.)

Charge: Using misleading trade name and advertising falsely or misleadingly as to business status; in connection with the sale of woolen cloth.

Dismissed, after answer and trial, by the following order:

This case coming on for final hearing before the Commission upon the record and the briefs filed herein, and the Commission now being fully advised in the premises,

It is ordered, That the complaint herein be and the same is hereby dismissed for the reason that the charges of the complaint are not sustained by the evidence.

Appearances: *Mr. G. Ed. Rowland* for the Commission; *Marks & Marks*, of New York City, for respondent.

FELDBAUM & SPIEGEL, INC. Complaint, May 11, 1926. Order, June 25, 1930. (Docket 1380.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling; in connection with the manufacture and sale of fur garments.

Dismissed, after answer and trial, by the following order:

"The above-entitled proceeding coming on for consideration upon the complaint of the Commission, answer of respondent, testimony and evidence, and the Commission now being fully advised in the premises,

It is ordered, That the complaint herein be and the same is hereby dismissed for the reason that the respondent is out of business."

Appearances: *Mr. James M. Brinson* for the Commission.

CASSILETH, SCHWARTZ & CASSILETH, INC., JOSEPH BRICKNER AND JULIUS BERNFELD, PARTNERS, DOING BUSINESS UNDER THE TRADE NAME AND STYLE BRICKNER & BERNFELD, AND SAMUEL OLDMAN AND MAX OLDMAN, PARTNERS, DOING BUSINESS UNDER THE TRADE NAME

AND STYLE OLDMAN BROTHERS. Complaint, May 11, 1926. Order, June 25, 1930. (Docket 1382.)

Charge: Misbranding or mislabeling; in connection with the manufacture, dressing, dyeing, and sale of rabbit skin garments.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. James M. Brinson* for the Commission; *Burnstine & Geist* and *Mr. Maurice Rose*, of New York City, for respondents.

A. HOLLANDER & SON, INC., AND A. HOLLANDER & SON—ARNOLD CORPORATION, AND HARRY H. HERTZ Co. Complaint, May 12, 1926. Order, June 25, 1930. (Docket 1385.)

Charge: Misbranding or mislabeling; in connection with the manufacture, buying, importing, dressing, dyeing, and sale of fur and fur garments.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. James M. Brinson* for the Commission; *Mr. Samuel F. Leber*, of Newark, N. J., for respondents.

MENDOZA FUR DYEING WORKS, INC. Complaint, December 3, 1926. Order, June 25, 1930. (Docket 1432.)

Charge: Misbranding or mislabeling and advertising falsely or misleadingly; in connection with the buying and importing of rabbit pelts and processing, dressing, and dyeing and selling such finished product to fur dealers and manufacturers of fur garments.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. James M. Brinson* for the Commission; *Mr. Philip L. Liebman*, of New York City, for respondent.

MORGAN BELLEEK CHINA Co. Complaint, May 18, 1929. Order, June 30, 1930. (Docket 1670.)

Charge: Using misleading corporate and trade name and advertising falsely or misleadingly as to source or origin of product; in connection with the manufacture and sale of chinaware.

Dismissed, after answer and trial, without assignment of reasons, Commissioner McCulloch dissenting.

Appearances: *Mr. James M. Brinson* for the Commission; *Dustin, McKeehan, Merrick, Arter & Stewart*, of Cleveland, Ohio, for respondent.

Dissent by Commissioner McCulloch

I discern no distinction in principle between this case and the "California Hat case"² recently decided by the Commission; therefore I dissent from the dismissal of the complaint.

² See 14 F. T. C. 60.

FORREST DUSTIN AND C. G. ROSE, CO-PARTNERS DOING BUSINESS UNDER THE TRADE NAMES OF TAILOR-MADE SHOE SYSTEM, AND TRIANGLE SHOE FACTORIES. Complaint, May 14, 1928.^a Order, July 29, 1930. (Docket 1509)

Charge: Using misleading trade name, misrepresenting business status or advantages, advertising falsely or misleadingly, misbranding or mislabeling and offering deceptive inducements to salesman; in connection with the sale of shoes.

Dismissed, after answer, by the following order:

Upon the application of the Chief Counsel and it appearing to the Commission that the business conducted by the respondents under the trade name Tailor-Made Shoe System and other trade names as alleged in the complaint has been, since the fall of 1927, discontinued by reason of involuntary bankruptcy proceedings,

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

Appearances: *Mr. Alfred M. Craven* for the Commission.

A. W. LEWIS AND J. E. STRAIN COPARTNERS ENGAGED IN BUSINESS AS OAK VALLEY LUMBER CO., THEIR AGENTS AND REPRESENTATIVES. Complaint, May 23, 1929. Order, October 18, 1930. (Docket 1666.)

Charge: Advertising falsely or misleadingly and otherwise misrepresenting nature of product; in connection with the sale of logs and/or timber products and/or lumber products.

Dismissed, after trial, by the following order:

The above entitled matter coming on for consideration on memorandum of the chief counsel setting forth that respondents have retired from the lumber business and have no intention of resuming, setting forth further considerations and recommending the dismissal of the proceeding, and the Commission being fully advised in the premises,

It is hereby ordered, That the above entitled proceeding be and the same hereby is dismissed, but without prejudice to the bringing of a subsequent proceeding upon the same grounds in the event that respondents should resume the practices set forth in the complaint in the above proceeding set forth; and

It is further ordered, That the secretary cause a copy of this order to be served upon respondent J. E. Strain, Marysville, Calif., and Richard Belcher, attorney, Marysville, Calif.

Appearances: *Mr. Eugene W. Burr* for the Commission; *Mr. Richard Belcher*, of Marysville, Calif., for respondents.

E. K. WHITNEY, INDIVIDUALLY AND DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF MOTOR SNAP CO. and WHITNEY SALES CO.

^a Amended.

Complaint, December 21, 1929. Order, October 18, 1930. (Docket 1747.)

Charge: Advertising falsely or misleadingly; in connection with sale and distribution of "Motor Snap-Gas-Garets", for placing in automotive gasoline tanks.

Dismissed, after answer, without prejudice and without assignment of reasons.⁴

Appearances: *Mr. Richard P. Whiteley* for the Commission.

SAM KALB AND GEORGE KALB, COPARTNERS, DOING BUSINESS UNDER THE NAME AND STYLE OF KALB BROTHERS. Complaint, April 30, 1930. Order, October 18, 1930. (Docket 1801.)

Charge: Using lottery scheme in merchandising; in connection with the manufacture, sale, and distribution of candies.

Dismissed, after answer, by the following order:

The above-entitled proceeding coming on for consideration upon the complaint of the Commission, the memoranda of the chief examiner and the chief counsel, and the Commission now being fully advised in the premises,

It is ordered, That the complaint herein be and the same is hereby dismissed for the reason that the respondents are not now engaged in the manufacture and sale of candy.

Appearances: *Mr. Henry C. Lank* for the Commission.

NATIONAL SILVER CO., SAMUEL E. BERNSTEIN, INC., AND SAMUEL E. BERNSTEIN, INDIVIDUALLY AND AS PRESIDENT OF SAID CORPORATIONS, Complaint, October 18, 1929. Order, November 15, 1930. (Docket 1704.)

Charge: Misbranding or mislabeling, advertising falsely or misleadingly and misrepresenting product; in connection with the sale of white metal tableware of various kinds.

Dismissed, after answer, without assignment of reasons.

Commissioner McCulloch dissented as follows:

The so-called "Nickel Silver" wares now on the market are made of a metal composed of an alloy of nickel and copper. They contain no silver and the use of that word in advertising the wares is false and deceptive. Silver is silver and has always been so known. The use of the word silver for any length of time to describe wares made of baser metals does not remove the deception. Many purchasers and users of these wares doubtless know that they do not contain silver metal, but the functions of the Federal Trade Commission were authorized for the purpose of protecting the unwary—not the well informed.

⁴ Other than reference to memorandum of chief counsel.

I dissent from the ruling of the majority of the Commission in declaring that the use of the descriptive word is legitimate.

Appearances: *Mr. Henry C. Lank* for the Commission; *Brill, Bergenfeld & Brill*, of New York City, for respondents.

ISADORE AND EMANUEL M. ROTHMAN, COPARTNERS, DOING BUSINESS UNDER THE NAME AND STYLE OF MONROE CANDY CO. Complaint, March 12, 1930. Order, November 18, 1930. (Docket 1774.)

Charge: Using lottery scheme in merchandising; in connection with the sale of candy assortments, by candy manufacturer to wholesalers and jobbers.

Dismissed, after answer, "for the reason that the respondents have gone out of business".

Appearances: *Mr. Henry C. Lank* for the Commission.

GREAT NORTHERN FUR DYEING & DRESSING Co. Complaint, May 11, 1926. Order, November 21, 1930. (Docket 1379.)

Charge: Misbranding or mislabeling; in connection with the dressing and dyeing of Australian and New Zealand rabbit skins on contract with the owners of such skins, and also in connection with purchase and importation of such skins and dressing and dyeing thereof for sale as finished product.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard on the memorandum of the chief counsel dated October 30, 1930, and the Commission having duly considered same and the record herein and being fully advised in the premises,

It is ordered, in accordance with the recommendations of the chief counsel (a) that the stipulation herein be and the same is hereby disapproved; (b) ruled that the Great Northern Fur Dyeing & Dressing Co., Inc. (the new corporation), is not a party to the complaint; and (c) that the complaint herein be and the same is hereby dismissed as to the Great Northern Fur Dyeing & Dressing Corporation (the old corporation) the only respondent before the Commission on the ground that said respondent has been dissolved.

Appearances: *Mr. James M. Brinson* for the Commission; *Burnstine & Geist*, of New York City, for respondent.

EDWIN E. BERLINER & Co. Complaint, December 11, 1929. Order, December 3, 1930. (Docket 1731.)

Charge: Naming product misleadingly, advertising falsely or misleadingly and misbranding or mislabeling; in connection with the converting of cotton goods, cotton and rayon mixtures.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. G. Ed. Rowland* for the Commission; *Mr. Lee H. Burton*, of New York City, for respondents.

CROSSE & BLACKWELL, A CORPORATION OF LONDON, ENGLAND, AND CROSSE & BLACKWELL, A CORPORATION OF BALTIMORE, MD. Complaint, May 3, 1930. Order, December 19, 1930. (Docket 1821.)

Charge: Advertising falsely or misleadingly as to source or origin of products; in connection with the manufacture and sale of marmalades, jams, preserves, jellies, condiments and similar products.

Dismissed, after answer and trial, for the reason "that the practices charged in the complaint were discontinued long prior to its issuance".

Appearances: *Mr. James M. Brinson* for the Commission; *Marshall & Auchincloss*, of New York City, for respondents.

CHARLES HENNING AND V. RALPH McCULLOUGH, DOING BUSINESS AS KANSAS SEED CO. Complaint, July 8, 1930. Order, December 19, 1930. (Docket 1854.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to quality, source or origin and official tests or endorsement of product; in connection with the sale of grass and field seeds.

Dismissed, after answer, "for lack of interstate commerce."

Appearances: *Mr. Alfred M. Craven* for the Commission; *Mr. David Ritchie*, of Salina, Kans., for respondents.

IDAHO COAL DEALERS' ASS'N, UTAH COAL PRODUCERS' ASS'N, RETAIL FUEL DEALERS' ASS'N, OF UTAH, AND THE OFFICERS AND MEMBERS THEREOF. Complaint, June 9, 1930. Order, December 20, 1930. (Docket 1840.)

Charge: Entering into and abiding by agreements to restrict competition through limiting sale and distribution of coal to so-called regular or legitimate dealers and channels; in connection with the sale and distribution of coal.

Dismissed, after answers, without assignment of reasons.

Appearances: *Mr. Ellis DeBruler* for the Commission.

Richards & Haga, of Boise, Idaho, for Idaho Coal Dealers' Ass'n and numerous members thereof; *Mr. A. F. James*, of Gooding, Idaho (with whom *Richards & Haga*) for Farmer's Lumber & Supply Co. and Ravencroft Hardware Co.; *Mr. Earl J. Soelberg*, of Rexburg, Idaho, for Thurman Mercantile Co.; *Mr. J. T. Cook*, of Midvale, Idaho, for Midvale Lumber Co.; *Mr. Ira W. Kenward*, of Payette, Idaho, for Grange Co-op. and Payette Equity Exchange; *Mr. Thomas M. Morris* of Portland, Oreg., for H. P. Lewis; *Nichols, Hallock & Donald*, of Baker, Oreg., for Haines Commercial Co.; *Mr. E. Otis Smith*, of Ontario, Oreg., for Ontario Transfer Co.; *Clapp, Richardson, Elmquist, Briggs & Macartney* of St. Paul,

Minn., for Potlatch Lumber Co.; and *Byers & Byers* and *Mr. Alfred J. Westberg*, of Seattle, Wash., for Turn-a-lum Lumber Co.; members of aforesaid association.

Mr. O. W. Carlson, of Salt Lake City, Utah, for Utah Coal Producers' Ass'n, Retail Fuel Dealers' Ass'n, and numerous members of said associations, with whom (all of Salt Lake City, Utah) *Senior & Senior* for Liberty Fuel Co., and Carbon Fuel Co., *Cheney, Jensen & Marr*, for Royal Coal Co., *Fabian & Clendenin* for Peerless Coal Co., and for Rodman-Leslie Coal Co., *Mr. H. J. Binch*, for Utah Fuel Co., Castle Gate Coal Co., and Bamberger Coal Co., *Ingebretsen, Ray & Rawlins* for Blue Blaze Coal Co.; and *Mr. Royal J. Douglas* of Ogden, Utah, for Ideal Coal Co.; members of said associations.

PURITY BAKERIES CORPORATION. Complaint, March 25, 1929. Order, December 22, 1930. (Docket 1588.)

Charge: Acquiring stock of competitors, in violation of section 7 of the Clayton Act; in connection with the manufacture and sale of bread, biscuits, cakes, pies, and other food products.

Dismissed, after answer, without assignment of reasons.

Appearances: *Mr. Edward L. Smith* for the Commission; *Davies, Auerbach & Cornell*, of New York City, for respondent.

THE BLANTON Co. Complaint, February 9, 1929. Order, January 6, 1931. (Docket 1558.)

Charge: Misbranding or mislabeling; in connection with the manufacture and sale of oleomargarine.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. Edward E. Reardon* for the Commission; *Mr. Elliott W. Major*, of St. Louis, Mo., for respondent.

EMPIRE MANUFACTURING Co. (Docket 1515); MECHANICS FURNITURE Co. (Docket 1516); UNION FURNITURE Co. (Docket 1517); WEST END FURNITURE Co. (Docket 1518); WINNEBAGO MANUFACTURING Co. (Docket 1519); ROCKFORD CABINET Co. (Docket 1520); ROCKFORD CHAIR & FURNITURE Co. (Docket 1521); ROCKFORD NATIONAL FURNITURE Co. (Docket 1522); ROCKFORD PALACE FURNITURE Co. (Docket 1523); ROCKFORD REPUBLIC FURNITURE Co. (Docket 1524); ROCKFORD STANDARD FURNITURE Co. (Docket 1525); and ROCKFORD SUPERIOR FURNITURE Co. (Docket 1526). Complaints, May 14 and May 15, 1928.⁵ Orders, January 8, 1931.

Charge: Advertising falsely or misleadingly and misrepresenting product; in connection with the application of the words "walnut",

⁵ Complaints for first five cases issued as of May 14, 1928; other seven, as of May 15, 1928.

"mahogany", or "gumwood", in various combinations, to respondents' plywood constructed furniture, in their catalogues, invoices, price lists, etc., without disclosing use of such plywood or that the only walnut or other fine wood used in the broad or flat parts thereof is the exposed portion of the exterior ply of the broad or flat parts.

Dismissed, after answers and trial, without assignment of reasons.

Appearances: *Mr. James M. Brinson* for the Commission; *Mr. C. S. Bather*, of Rockford, Ill., for respondents.

W. H. BATES, trading under the firm name of Central Fixation Publishing Co. Complaint, May 28, 1929. Order, January 13, 1931. (Docket 1673.)

Charge: Advertising falsely or misleadingly; in connection with the publication, sale, and distribution of a book entitled "Perfect Sight Without Glasses."

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. James M. Brinson* for the Commission; *Miner, Van Amringe & Gildersleeve*, of New York City, for respondent.

MOHAWK ASBESTOS SLATE CO., INC. Complaint, March 6, 1930. Order, January 14, 1931. (Docket 1767.)

Charge: Using misleading corporate name and misrepresenting qualities and composition of product in connection with the manufacture and sale of shingles.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. Harry D. Michael* for the Commission; *Mr. M. William Bray* and *Mr. James N. O'Hara*, of Utica, N. Y., and *Davis, Polk, Wardwell, Gardiner & Reed*, of New York City, for respondent.

ABRAHAM POUST AND JACK POUST, partners, trading as Pilsner Importing Co. and Pilsner Products Co. Complaint, June 10, 1930. Order, March 5, 1931. (Docket 1842.)

Charge: Misbranding or mislabeling as to source and composition of products, naming product misleadingly and misrepresenting business status and affiliation; in connection with sale by respondent dealers of a domestic malt sirup and a domestic flavoring extract.

Dismissed, after answer and trial, "for lack of interstate commerce."

Appearances: *Mr. James M. Brinson* for the Commission; *Mr. Eli Resnikoff* of New York City, for respondents.

COLGATE-PALMOLIVE-PEET Co. Complaint, May 22, 1930. Order, March 9, 1931. (Docket 1836.)

Charge: Misbranding or mislabeling; in connection with manufacture and sale of soap, soap powder and similar products.

Dismissed, after answer and stipulation, without assignment of reasons.

Appearances: *Mr. Harry D. Michael* for the Commission; *Mr. Mason Trowbridge*, of Chicago, Ill., for respondent.

UNITED AMERICAN METALS Co., INC. Complaint, December 17, 1929. Order, March 11, 1931. (Docket 1745.)

Charge: Misbranding or mislabeling, and advertising falsely or misleadingly as to Government approval, indorsement, or nature of manufacture; in connection with manufacture and sale of nonferrous metals and alloys.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. James M. Brinson* for the Commission; *Mr. H. Louis Jacobson*, of New York City, for respondent.



DIGESTS OF STIPULATIONS PUBLISHED AFTER DELETING NAME OF RESPONDENTS ¹

STIPULATION OF THE FACTS AND AGREEMENTS TO CEASE AND DESIST

646. False and Misleading Advertising, Brands and Labels—Beverage.—Respondent, a corporation, engaged in the manufacture of a drink or beverage and in the sale and distribution thereof in interstate commerce, and in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from the use in its advertisements or advertising matter, or on its cartons in which said product is packed for shipment, and on its labels affixed to said product, of advertisements or advertising matter containing statements which do not truthfully represent and describe said product, its properties and powers or the curative and therapeutic effects to be derived from the use of said product. The said respondent also agreed to cease and desist from the use of the statement that its product "is the only product which the United States Government has permitted to use all of these statements," etc., or of any similar statement or statements so as to import or imply or which may have the capacity or tendency to mislead or deceive the purchasing public into the belief that the United States Government approves said product and/or that the said Government indorses any or all of the claims made for said product, when such is not the fact. The said corporation further agreed to cease and desist from the use of the statements that its said product is used in Government and other hospitals and in sanitariums, and that it is prescribed by physicians and dietitians, unless and until said statements are substantiated by the facts.

¹ Published to inform the public of those unfair methods and practices condemned by the Commission and to establish precedents that will serve to eliminate unfair business methods of interest to the public and injury to competitors.

The digests published herewith cover those accepted by the Commission during the period covered by this volume, namely, May 5, 1930, to March 23, 1931. Digests of all previous stipulations of this character accepted by the Commission—that is, numbers 1 to 645, inclusive—may be found in Vol. X at p. 461 et seq., Vol. XI at p. 494 et seq., Vol. XII at p. 514 et seq., and Vol. 13 at p. 335 et seq.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 5, 1930.)

647. False and Misleading Advertising—Correspondence School Courses.—Respondent, a corporation, engaged in conducting a school whose curriculum included and includes practical courses of instruction and home-study or correspondence courses of instruction and in the sale and distribution of such courses in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling in interstate commerce its home-study or correspondence courses of instruction, agreed to cease and desist forever from the use of the words or statements "Government Approved School," "Government Rated and Approved School," "Approved School of the United States Bureau of Aeronautics, Department of Commerce, Washington, D. C.," and "This course has the Official Endorsement of Authorities in Aviation" or of any other words, statements, or representations so as to import or imply or which may have the capacity or tendency to confuse, mislead or deceive the purchasing public into the belief that the said home-study or correspondence courses of instruction in aviation have the approval of or are rated, inspected or graded by the United States Government or have the official endorsement of authorities in aviation, when in truth such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 5, 1930.)

648. False and Misleading Advertising, Brands, Labels, and Names—Varnishes.—Respondent, a corporation, engaged in the manufacture of varnishes and in the sale and distribution of such products in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from (a) the use of the words "Shellac Products" as part of its corporate and trade name in connection or conjunction with the advertisement, sale, and/or distribution in interstate commerce of varnishes which contain no genuine shellac; and from the use of the words "Shellac Products" in any other way which may have the capacity and tendency to con-

fuse, mislead, and deceive purchasers into the belief that its products are made of genuine shellac, when such is not the fact; (b) the use of the word "Shea-Lac" or any other simulation or phonetic spelling of the word "shellac" either independently or in connection or conjunction with any other word or words, on labels or in any other way so as to import or imply that the product so labeled is composed of shellac, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 12, 1930.)

649. **Using Lottery Scheme—Perfumes, Toilet Water, Talcum Powder, etc.**—Respondent, a corporation, engaged in the manufacture of perfumes, toilet waters, talcum powder, and other similar products used in barber shops and beauty parlors and in the sale and distribution of the said products in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use in interstate commerce of any scheme, plan, or method of sale or of promoting the sale of its products which involves or includes the use of any free gift enterprise, lottery, or any scheme of chance whereby an article is given for or in consideration of the purchase of any other article; and said respondent further agreed to cease and desist forever from using and from transporting in interstate commerce any advertising matter for the use of local dealers in promoting the sale of said products by means of any gift enterprise, lottery, or scheme of chance whereby any article is offered as a prize or premium for and in consideration of the purchase of any other article.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 12, 1930.)

650. **False and Misleading Brands or Labels—Malt Syrup.**—Respondent, a corporation, engaged in the manufacture of a malt syrup product and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships and individuals likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from the

use of the word "Imported" either independently or in connection or conjunction with any other word or words, or in any other way, as a brand or label for its product so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that said product, or an ingredient or ingredients thereof, is or are of foreign origin or manufacture and/or is or have been imported into the United States from abroad; unless, when said product is composed in part of an ingredient or ingredients which has or have been actually obtained from abroad and/or imported into the United States, and the word "Imported" is used to designate such ingredient or ingredients, in which case the word "Imported" shall be used so as to accurately designate and refer to the particular ingredient or ingredients which has or have been imported and which also will distinguish properly such imported ingredient or ingredients from other ingredients of domestic origin.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 14, 1930.)

651. False and Misleading Advertising—Correspondence Course in Law.—Respondent, a corporation, engaged in the business of conducting a correspondence course of instruction in law and in the sale and distribution of its said courses of instruction in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its courses of instruction in interstate commerce, agreed to cease and desist forever from (1) offering a scholarship or a partial scholarship which is not in truth and in fact offered to prospective purchasers of said courses of instruction because of a bona fide demonstration of their ability or aptness in the courses of instruction to be pursued or because of their having previously completed in a satisfactory manner a certain portion of the field covered by the said courses of instruction, thus reducing the instructional cost of same; (2) representing that the price charged for its correspondence course is a special price reduced in consideration of the signing by the prospective customer of the reference pledge, when such is not the fact; and (3) the fictitious marking up of the cost of the said course of instruction and the use of a fictitious representation of price in connection with the advertisements, sale, and distribution of said courses of instruction in interstate commerce.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 16, 1930.)

652. False and Misleading Advertising—Paper Products.—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of paper products, and in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use of the word "Mills" either independently or in connection or conjunction with any other word or words, in its advertisements or advertising matter distributed in interstate commerce, so as to import or imply that the said corporation either owns, operates, or controls a mill or factory in which the products sold and distributed by it in interstate commerce are made or fabricated; and said respondent further agreed to cease and desist forever from the use of the word "Mills" in any way that may have the capacity and tendency to confuse, mislead, and deceive purchasers into the belief that the said corporation owns, operates, or controls a mill or factory wherein the products sold and distributed by it in interstate commerce are made or fabricated, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 16, 1930.)

653. False and Misleading Advertising—Brands and Labels—Blankets and Bedspreads.—Respondent, a corporation, engaged in the manufacture of woolen materials, woolen robes and blankets, and in the sale and distribution thereof in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use of the word "Indian" and/or "Navajo" in its advertisements or advertising matter, or in labeling its products sold and distributed by it in interstate commerce so as to import or imply that the said products are "Indian Blankets" and/or "Indian Bedspreads"; when such is not the fact; and from the use of any other word or words in its advertisements, brands, or labels so as to confuse, mislead, or deceive the purchasing public into the belief that the said products are "Indian Blankets" or "Indian Bedspreads" when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 28, 1930.)

654. False and Misleading Trade Names and Advertising—Coupons, Advertising Matter and Chinaware.—Respondent, an individual, engaged in the sale and distribution of coupons and advertising matter for use by retailers in connection with the sale of their merchandise and in the redemption of such coupons by exchanging therefor various articles of chinaware, and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in promoting the sale of and selling his said coupons, advertising matter and chinaware in interstate commerce, agreed to cease and desist forever from (a) the use of the trade names "Saxon China Publicity Department" and "Penn China Publicity Department" or either of them, either independently or in connection or conjunction with any other word or words, or in any way so as to import or imply that said companies are the advertising or publicity department of the Saxon China Co. and/or the Penn China Co., when such is not the fact; (b) stating and representing, either directly or indirectly, that he is, or they are, conducting an advertising campaign for the manufacturers whose products he is distributing, when such is not the fact; (c) stating and representing, directly or indirectly, that the products which he sells and distributes are given free, when such is not the fact; (d) misrepresenting, directly or indirectly, the commercial rating of himself or of any company under the trade name of which he is doing business, so that purchasers or prospective purchasers may be misled and deceived into the belief that the ratings of the manufacturers from whom he purchases his products are his ratings or those of any company under the name of which he may carry on business; (e) stating and representing, directly or indirectly, that the coupons and advertising matter which he sells to retailers will cost said retailers nothing, when such is not the fact; and from (f) stating and representing, directly or indirectly, in advertisements or otherwise, that the chinaware secured by dealers' customers will cost said customers nothing, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (May 28, 1930.)

655. **False and Misleading Corporate Name and Advertising—Coupons, Advertising Matter, and Silver Plated Ware.**—Respondent, a corporation, engaged in the sale and distribution of coupons and advertising matter for use by retailers in connection with the sale of their goods, and in the redemption of such coupons by exchanging therefor various articles of silver-plated ware, in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in promoting the sale of and selling its coupons and silverware in interstate commerce, agreed to cease and desist forever from (a) the use of the words "Publicity Bureau" or either of them, as part of its corporate or trade name, either independently or in connection or conjunction with any other word or words, or in any way so as to confuse, mislead and deceive the trade and purchasers into the belief that corporation is a publicity bureau, when such is not the fact; (b) stating and representing, directly or indirectly, that it is conducting an advertising campaign for the manufacturers whose products it is distributing, when such is not the fact; (c) stating and representing, directly or indirectly, that the products which it sells and distributes are given free, when such is not the fact; (d) stating and representing, directly or indirectly, that the coupons and advertising matter which it sells to retailers will cost them nothing, when such is not the fact; (e) stating and representing, directly or indirectly, in advertisements or otherwise, that the silverware secured by dealers' customers will cost them nothing, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 28, 1930.)

656. **False and Misleading Corporate Name and Advertising—Coupons, Advertising Matter, Radios, and Clocks.**—Respondent, a corporation, engaged in the sale and distribution under a sales plan designated by it as its "Radio Time Saving Plan," and under which plan it sold to retail merchants an outfit including therewith coupons or cards bearing drawings of clock dials, one radio, one 8-day clock, and a thousand copies of advertising matter, and which commodities taken together constituted one set-up for the carrying out of its merchandising plan by retail dealers, in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in promoting the sale of and selling its commodities in interstate commerce, agreed to cease and desist from (a) the use of the word "Advertising" as part of its corporate or trade name, either independently or in connection or conjunction with any other word or words or in any way so as to confuse, mislead, or deceive the trade and purchasers into the belief that said corporation is an advertising bureau, when such is not the fact; (b) stating and representing, either directly or through salesmen and/or agents, that it is conducting an advertising campaign for the manufacturers of the radios which it sells and distributes in commerce, when such is not the fact; (c) stating and representing, in advertising or in any other way, directly or indirectly, that the radio receiving sets which it sells and distributes in interstate commerce have a value of \$197.50 or any other false, misleading, and fictitious statements respecting their value; and from (d) using or transporting in interstate commerce any scheme, plan, or method of sale or of promoting the sale of its radio receiving sets which involves or includes the use of any gift enterprise, lottery, or any scheme of chance whereby an article is given as a prize or premium for or in consideration of the purchase of any other article; and from using and/or transporting in interstate commerce any advertising matter for the use of local dealers in soliciting the sale of said products by means of any gift enterprise, lottery, or scheme of chance whereby any article is offered as a prize or premium for or in consideration of the purchase of any other article.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 28, 1930.)

657. False and Misleading Course of Conduct and Representation—China ware.—Respondent, a corporation, engaged in the manufacture of china ware and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from—

I. Entering into contracts, agreements, or understandings with an individual and having for their purposes and objects (a) the granting of permission to and authorization of such individual by the respondent to use its trade name and style and to represent that such individual was not selling china ware but was conducting an advertising campaign for the respondent; (b) the representation that such individual's salesmen were advertising representatives of

the respondent; (*c*) the representation that the respondent was distributing its products free; (*d*) the representation that the commercial rating of respondent was "over a million dollars"; (*e*) the representation that the receipts from the retailers' customers sent in to such individual with coupons for redemption would produce the full return of the retailers' investment and that, therefore, the coupons and advertising matter would cost said retailers nothing; and (*f*) the representation that the chinaware which the retailers' customers received was "free" and cost them nothing;

II. Giving its approval to the use of such methods, or any of them;

III. Lending the use of its name, in whole or in part, to any person, firm, partnership, or corporation for use in connection with the sale and distribution of such products by any of the said methods and practices so described.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 28, 1930.)

658. **False and Misleading Course of Conduct and Representation—Chinaware.**—Respondent, a corporation, engaged in the manufacture of chinaware and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from—

I. Entering into contracts, agreements, or understandings with an individual and having for their purposes and objects (*a*) the granting of permission to and authorization of such individual by the respondent to use its trade name and style and to represent that such individual was not selling chinaware but was conducting an advertising campaign for the respondent; (*b*) the representation that such individual's salesmen were advertising representatives of the respondent; (*c*) the representation that the respondent was distributing its products free; (*d*) the representation that the commercial rating of respondent was "over a million dollars"; (*e*) the representation that the receipts from the retailers' customers sent in to such individual with coupons for redemption would produce the full return of the retailers' investment and that, therefore, the coupons and advertising matter would cost said retailers nothing; and (*f*) the representation that the chinaware which the retailers' customers received was "free" and cost them nothing.

II. Giving its approval to the use of such methods, or any of them.

III. Lending the use of its name, in whole or in part, to any person, firm, partnership, or corporation for the use in connection with the sale and distribution of such products by any of the said methods and practices so described.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 28, 1930.)

659. **False and Misleading Advertising—Trusses and Liniment or Lotions.**—Respondent, a corporation, engaged in the manufacture of trusses and of a liniment or lotion for use in connection therewith, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its said products in interstate commerce, agreed to cease and desist forever from the use of (a) statements and representations that its so-called "system" will heal or cure hernia or rupture, when such is not the fact; (b) statements and representations that the use of said system will make the use of trusses or supporters unnecessary, when such is not the fact; (c) that said appliances are made to order for each customer, when such is not the fact; (d) the use of the word "free" either independently or in connection or conjunction with any other word or words which import or imply that the products to which the same refer are given as a gratuity, when such is not the fact; and from the use of the word "free" in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the products so offered as "free" are in fact given free and that their cost is not included in the purchase price of other merchandise; (e) offering its products at pretended "special" or "reduced" prices which are, in truth and in fact the regular prices of such products; and (f) the publication, circulation and/or distribution in interstate commerce of advertising matter or advertisements which do not truthfully represent and describe the products or devices offered for sale or the results obtained as represented in said advertising matter.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 28, 1930.)

660. **False and Misleading Corporate Name and Advertising—Paints, Roofing Materials, etc.**—Respondent, a corporation, engaged as a jobber in the business of selling and distributing paints, roofing cement, caulking compound and similar materials in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist from the use of the abbreviation "Mfg." of the word "Manufacturing" as part of or in connection or conjunction with its corporate or trade name in the sale and distribution of its products in interstate commerce. The said corporation also agreed to cease and desist from the use of its said corporate or trade name containing the aforesaid abbreviation "Mfg." and from the use of the words "Manufactured by" in its advertisements or advertising matter so as to import or imply that the said corporation owns, operates, or controls a mill or factory in which are manufactured the products sold by it in interstate commerce. The said corporation further agreed to cease and desist from the use of the words "Manufacturing" or "Mfg." and "Manufactured by" either independently or in connection or conjunction with any other word or words, or in any way, which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said corporation owns, operates, and controls a mill or factory in which its products are manufactured.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 2, 1930.)

661. **Simulation of Trade Name—Rayon Underwear.**—Respondent, a corporation, engaged in the manufacture of ladies' rayon underwear and in the sale and distribution of the same in interstate commerce and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use of the word "Dutchess" in its corporate or trade name, in the sale and distribution of its products in interstate commerce, so as to import or imply that said respondent is a part of, or in any way connected or associated with the Dutchess Underwear Corporation, of Brooklyn, N. Y., when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts

may be used in evidence against it in the trial of the complaint which the commission may issue. (June 2, 1930.)

662. **Bribery—Lacquers.**—Respondents, two corporations, the one engaged in the manufacture of lacquers and in the sale and distribution of the same in interstate commerce, while the other acts in the capacity of an exclusive sales agent, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents agreed, jointly and severally, for themselves, their agents and employees, that they will cease and desist forever from, directly or indirectly, giving to superintendents, foremen, or other employees or representatives of customers or prospective customers, without the knowledge or consent of their employers, cash commission, sums of money, or other thing of value, in order to induce such employees or representatives to purchase on behalf of their employers the products of respondents, or to recommend such purchase to their employers, or as a promised reward for having induced such purchase by their employers.

Respondents agreed that if they should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (June 9, 1930.)

663. **False and Misleading Advertising and Brands or Labels—Soft Drink Powders.**—Respondent, an individual, engaged in the sale and distribution of powders for use in the preparation of soft drinks and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his product in interstate commerce, agreed to cease and desist forever from the use of the words "Grape," "Lemon," "Orange," "Cherry," "Strawberry," and "Loganberry" either independently or in connection or conjunction each with the other, or with any other word or words, or in any way in his advertising matter or on his brands or labels to designate his products in such a way as to import or imply, or which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that the said products are composed of the juice or the fruit of the grape, lemon, orange, cherry, strawberry, or loganberry, or of any fruit; unless (a) if the said words, or any of them, are used to designate or describe the flavor

of the said products, the words so used shall be immediately preceded by the word "Imitation" printed in type equally as conspicuous as that in which the said descriptive word is printed; and (b) if the product is composed in substantial part of the fruit or the juice of either the grape, lemon, orange, cherry, strawberry, or loganberry so as to derive its flavor and color from said fruit, and the word "grape," "lemon," "orange," "cherry," "strawberry," or "loganberry" is used to designate the product, in which case the said designating word shall be accompanied by a word or words which shall be printed in type equally as conspicuous as that in which the said designating word is printed so as clearly to indicate that the product is not made wholly from the juice or the fruit indicated by the said designating word and that will otherwise properly and accurately represent, define and describe the product so as clearly to indicate that the same is composed in part of a product or products other than the juice or fruit indicated by the said designating word.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (June 16, 1930.)

664. False and Misleading Advertising—Toy Aeroplanes.—Respondent, an individual, engaged in the sale and distribution of toy aeroplanes in interstate commerce and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling her products in interstate commerce, agreed to cease and desist forever from the publication, circulation, and distribution in interstate commerce of advertisements or advertising matter which does not accurately represent and describe the products offered for sale and/or the results obtained by their use.

Respondent agreed that if she should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against her in the trial of the complaint which the commission may issue. (June 18, 1930.)

665. False and Misleading Trade Name and Advertising—Toy Aeroplanes.—Respondent, an individual, engaged in the sale and distribution of toy aeroplanes in interstate commerce and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his said products in interstate commerce, agreed to cease and desist from the use of the word "Corporation" as part of or in connection or conjunction with his trade name, or in any other way so as to import or imply that his said business is incorporated, when such is not the fact, and respondent further agreed from the publication, circulation, and distribution in interstate commerce of advertisements or advertising matter which does not accurately represent and describe the products offered for sale and/or the results obtained by their use.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (June 18, 1930.)

666. **False and Misleading Trade Name and Advertising—Novelty or Occasional Pieces.**—Respondent, an individual, engaged in the manufacture of furniture of the type known as novelty or occasional pieces, and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Mahogany is the product of the genus "Swietenia" tribe "Swietenioideae" of the tree family scientifically called "Meliaceae." The genus "Swietenia" of which there are several known species, is the only one which produces true mahogany. Trees of the Swietenia group grow principally in the West Indies, southern Florida, southern Mexico, Central America, Venezuela, and Peru. No species of the genus "Swietenia" of this family group grows in the Philippine Islands, except as specifically planted for decorative or experimental purposes.

Respondent in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use of the word "mahogany" either independently or in connection or conjunction with any other word or words, in his advertisements or as a trade designation for said products so as to import or imply that such products are those products which are derived from trees of the mahogany or "Meliaceae" family, when such is not the fact; and said respondent further agreed to cease and desist from the use of the word "mahogany" either independently or in connection or conjunction with any other word or words, or in any way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that said products are those which are derived from trees of the mahogany or "Meliaceae" family, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (June 18, 1930.)

667. **False and Misleading Advertising—Medical Tablets.**—Respondent, an individual, engaged in the sale and distribution of medicine in tablet form in interstate commerce and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent in soliciting the sale of and selling his product in commerce between and among various States of the United States, agreed to cease and desist forever from making any and all exaggerated, false and misleading statements and representations in his advertisements and advertising matter circulated in interstate commerce, either in the form of testimonial letters or otherwise, which have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said product is composed of ingredients having such therapeutic and/or medicinal properties that the use thereof by users as a tonic or remedy will overcome, counteract, or act as an antidote for overwork, worry, lack of sufficient exercise, too much rich indigestible food, high tension, loss of sleep, and other unhealthy customs and habits, or any of them, when in truth such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (June 18, 1930.)

668. **Exclusive and Tying Contracts and Dealings—Cigar Bands, Flaps, Labels, and Banding Machines.**—International Banding Machine Co., a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal place of business located in the city of New York, in the State of New York, engaged in the manufacture of machines used for placing bands on cigars and in leasing such machines to the manufacturers of cigars in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

International Banding Machine Co. is the owner of letters patent on machines for automatically attaching bands to cigars and has a practical monopoly therein. In the year 1917 said International

Banding Machine Co., being then the owner of said letters patent and of a monopoly therein, entered into a contract or agreement with William Steiner & Sons Co. (Inc.), a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, and engaged therein in the manufacture, sale, and distribution in interstate commerce of cigar bands, labels, flaps, and other lithographic materials used principally by cigar manufacturers, by the terms of said contract or agreement said International Banding Machine Co. leased to William Steiner & Sons Co. (Inc.), certain of its said machines with the further agreement and understanding that said William Steiner & Sons Co. (Inc.), should sublet such machines only in conjunction with a sale of said William Steiner & Sons Co. (Inc.), lithographing material; and all machines leased by International Banding Machine Co. to said Steiner were subject to the aforesaid condition with respect to subletting. Said William Steiner & Sons Co. was, on December 12, 1925, merged with the consolidated Lithographing Corporation, which succeeded to the lease referred to.

By the terms of the leases made by William Steiner & Sons Co., and by its successor, Consolidated Lithographing Corporation, manufacturer-lessees were required, as a condition to the privilege of leasing such banding machines, to agree to purchase a quantity of bands per machine, and the contracts which they were required to sign contained the following standard restrictive clauses:

"It is hereby understood and agreed that no other bands are to be used on said machine during the period of its installation, except such bands that are made exclusively by the Consolidated Lithographing Corporation." This clause was varied to some extent and omitted in some instances, but the tying and restrictive feature of it was retained.

The policy and purpose to require sublessees of the banding machine to use none but the bands, etc., of the Consolidated Lithographing Corporation was announced and expressed by the latter corporation and by William Steiner & Sons Co. in correspondence and other communications included among the following:

It is our definite policy to lease banding machines only in conjunction with band orders.

As you probably understand, we require orders for 7,000,000 bands per annum per machine, and it is for this reason that our arrangements in leasing banding machines are on a basis whereby only our bands shall be used on the machine.

As we are no longer leasing these machines on a rental basis, although we are still adhering to the charge of \$600 per annum, viz, \$50 per month, we could very well rearrange your order to read for four machines instead of three machines and get the \$600 charge in on the price of the bands.

If you were to conform to our suggestion, it would simply be a case of doing things regularly, as from no one else are we accepting orders for banding machines unless band orders accompany same.

Please advise whether it is your intention to renew this arrangement for another year, in which event, you, of course, understand that it will be necessary for you to favor us with an order for 7,000,000 bands.

If, for any reason, you can not place orders for the 7,000,000 bands to conform with our basis of leasing these machines, we can, very readily, arrange for the removal of said machines to one of the several factories in Tampa from whom we have orders on this machine.

If you decide not to sign contract for renewal of machine, kindly arrange to return same to us at once charges prepaid as per original understanding. By doing this you will be under no further obligation to place additional band business with us. If you desire to keep machine it will be absolutely necessary for you to sign contract the same as every one of our other customers have done and favor us with assortment of bands desired between now and May 1, 1927. If you keep it, it will be absolutely essential for you to conform to our former arrangement.

Said Consolidated Lithographing Corporation, acting under the authority of said lease and agreement, enforced the tying and restrictive conditions of said leases.

By reason of the dominating position of the International Banding Machine Co. owing to its patent rights, and of the great demand for said machines because of their superiority over hand work, said Consolidated Lithographing Corporation was able to, and did, by means of the methods described, increase and extend its business in the sale of cigar bands, labels, flaps, and other lithographic materials among manufacturers using said banding machines leased pursuant to the aforesaid agreement; and the effect was to tend to and/or restrain the trade of competitors of said Consolidated Lithographing Corporation.

It is further stipulated and agreed, by and between the said Garland S. Ferguson, jr., chairman of the Federal Trade Commission, and International Banding Machine Co., that International Banding Machine Co. hereby agreed as follows:

(a) To cancel that clause in its contract originally made with William Steiner & Sons Co. (Inc.), and to which company said Consolidated Lithographing Co. is the successor, requiring the lessee to insert in its subleases any clause, condition or understanding respecting the purchase of bands, labels, flaps, or other lithographic materials by users of the machines;

(b) To cancel, or bring about the cancellation of all outstanding leases of its machine wherein or whereby it is stipulated that users must purchase their supply of bands, labels, flaps, and other lithographic materials from any particular manufacturer thereof;

(c) To cease and desist forever from leasing its machinery for use within the United States or any Territory thereof or the District of

Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor or requiring or permitting any other to lease the same for it, on the condition, agreement, or understanding that the lessee there shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor, where the effect of such lease or of such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

It is further stipulated and agreed, by and on behalf of the Commission, that this stipulation is taken for the purpose of effecting a settlement of the particular matters and things recited in said stipulation, and it is further understood and agreed that this stipulation, together with the names of the parties stipulating, shall be released for publication and become a part of the public record. (June 20, 1930.)

669. **Exclusive and Tying Contracts and Dealings—Cigar Bands, Flaps, Labels and Banding Machines.**—Consolidated Lithographing Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business located in the city of New York, in the State of New York, engaged in the manufacture of cigar bands, labels, flaps, and other lithographic materials used by cigar manufacturers and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Consolidated Lithographing Corporation was incorporated on December 12, 1925, being formed by the consolidation of a number of concerns engaged in the manufacture, sale, and distribution in interstate commerce of bands, labels, flaps, and other lithographic materials for the use of manufacturers of cigars. It is the successor of William Steiner & Sons Co. (Inc.), and as such the lessee of the International Banding Machine Co., by virtue of a contract or agreement made and entered into in the year 1917 by and between said last named corporation and William Steiner & Sons Co. (Inc.), and by the terms of which contract or agreement said International Banding Machine Co. leased to William Steiner & Sons Co. (Inc.) certain of its said machines with the further agreement and understanding that the said William Steiner & Sons Co. (Inc.) should sublet such machines only in conjunction with the sale of said William Steiner & Sons Co. (Inc.) lithographing material; and all machines leased by International Banding Machine Co. to said Steiner were subject to the aforesaid condition with respect to subletting. Said William

Steiner & Sons Co. (Inc.) was, on December 12, 1925, merged with the Consolidated Lithographing Corporation which succeeded to the leases referred to.

By the terms of the leases made by William Steiner & Sons Co. (Inc.) and by its successor, Consolidated Lithographing Corporation, manufacturer-lessees were required, as a condition to the privilege of leasing such banding machines, to agree to purchase a quantity of bands per machine, and contracts which they were required to sign contained the following standard restrictive clauses:

It is hereby understood and agreed that no other bands are to be used on said machine during the period of its installation, except such bands that are made exclusively by the Consolidated Lithographing Corporation.

This clause was varied to some extent and omitted in some instances, but the tying and restrictive feature of it was retained.

The policy and purpose to require sublessees of the banding machine to use none but the bands, etc., of the Consolidated Lithographing Corporation was announced and expressed by the latter corporation and by William Steiner & Sons Co. (Inc.), in correspondence and other communications, included among the following:

It is our definite policy to lease banding machines only in conjunction with band orders.

As you probably understand, we require orders for 7,000,000 bands per annum per machine, and it is for this reason that our arrangements in leasing banding machines are on a basis whereby only our bands shall be used on the machine.

As we are no longer leasing these machines on a rental basis, although we are still adhering to the charge of \$600 per annum, viz. \$50 per month, we could very well rearrange your order to read for four machines instead of three machines and get the \$600 charge in on the price of the bands.

If you were to conform to our suggestion, it would simply be a case of doing things regularly, as from no one else are we accepting orders for banding machines unless band orders accompany same.

Please advise whether it is your intention to renew this arrangement for another year, in which event you, of course, understand that it will be necessary for you to favor us with an order for 7,000,000 bands.

If for any reason you can not place orders for the 7,000,000 bands to conform with our basis of leasing these machines, we can, very readily, arrange for the removal of said machines to one of the several factories in Tampa from whom we have orders on this machine.

If you decide not to sign contract for renewal of machine, kindly arrange return of same to us at once charges prepaid as per original understanding. By doing this you will be under no further obligation to place additional band business with us. If you desire to keep machine it will be absolutely necessary for you to sign contract the same as every one of our other customers have done and favor us with assortment of bands desired between now and May 1, 1927. If you keep it it will be absolutely essential for you to conform to our former arrangement.

Said Consolidated Lithographing Corporation, acting under the authority of said lease and agreement, enforced the tying and restrictive conditions of said leases.

By reason of the dominating position of the International Banding Machine Co., owing to its patent rights, and of the great demand for said machines because of their superiority over hand work, said Consolidated Lithographing Corporation was able to, and did, by means of the methods described, increase and extend its business in the sale of cigar bands, labels, flaps, and other lithographic materials among manufacturers using said banding machines leased pursuant to the aforesaid agreement; and the effect was to tend to and/or restrain the trade of competitors of said Consolidated Lithographing Corporation.

It is hereby stipulated and agreed, by and between the said Garland S. Ferguson, jr., chairman of the Federal Trade Commission, and Consolidated Lithographing Corporation, that said Consolidated Lithographing Corporation hereby agrees as follows:

(a) To cancel that clause in the contract originally made between the International Banding Machine Co. and William Steiner & Sons Co. (Inc.), and to which contract said Consolidated Lithographing Corporation is the successor, requiring the lessee to insert in its subleases any clause, condition, or understanding respecting the purchase of bands, labels, flaps, or other lithographic materials by users of the machines;

(b) To cancel all outstanding leases of banding machines wherein or whereby it is stipulated that users must purchase their supply of bands, labels, flaps, or other lithographic materials from any particular manufacturer thereof;

(c) To cease and desist forever from subleasing the machinery leased by it for use within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, on the condition, agreement, or understanding that the lessee shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor, where the effect of such lease or of such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

It is further stipulated and agreed, by and on behalf of the commission, that this stipulation is taken for the purpose of effecting a settlement of the particular matters and things recited in said stipulation, and it is further understood and agreed that this stipulation, together with the names of the parties stipulating, shall be released for publication and become a part of the public record. (June 20, 1930.)

670. **False and Misleading Advertising—Clothing.**—Respondent, a corporation, engaged in the mail-order business of selling and distributing men's, women's, and children's clothing in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use in its catalogues and other advertising matter distributed in interstate commerce (a) of the words "Pongee," "Silk Chiffon Velvet," and "Silk Pile Seal Plush," either independently or in connection or conjunction with any other word or words so as to import or imply that the products thus represented, designated, or referred to are made of silk, the product of the cocoon of the silk-worm, and from the use of the word "Pongee" or "Silk" in any way which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the products so represented or designated are made of silk; or, unless, when the products are composed in substantial part of pongee or silk and the word "Pongee" or "Silk" is used as descriptive thereof, in which case the word "Pongee" or "Silk" shall be accompanied by some other word or words printed in type equally as conspicuous as that in which the word "Pongee" or "Silk" is printed so as to indicate clearly that said products are not made wholly of pongee or silk; (b) of the words "Domet Flannel," "Storm Serge," and "Wool Mixed" either independently or in connection or conjunction with any other word or words so as to import or imply that the products thus represented, designated or referred to are made of wool, and from the use of the words "Flannel," "Serge," or "Wool" either independently or in connection or conjunction with any other word or words, or in any other way, which may have the capacity and tendency to confuse, mislead or deceive the purchasing public into the belief that the products so represented or designated are made of wool; or, unless, when the products are composed in substantial part of wool and the word "Flannel," "Serge," or "Wool" is used as descriptive thereof, in which case the word "Flannel," "Serge," or "Wool" shall be accompanied by another word or words printed in type equally as conspicuous as that in which the word "Flannel," "Serge," or "Wool" is printed so as to indicate clearly that the said products are not composed wholly of wool; (c) of the words "Mink" and "Wolf" either independently or in connection or conjunction with any other word or words or in any way as descriptive of products so as to import or imply or which may have the capacity

or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products are made from the fur, skin, or pelt of the mink or of the wolf, when in truth such is not the fact; (d) of the words "Hand Tooled" and "Tooled" as descriptive of merchandise which is not in truth and in fact tooled or hand tooled; (e) of the words "Kid Finish" and "Calf Finish Leather" in any way so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products so described are made respectively from the skins or hides of young goats or of calves, when such is not the fact; (f) of the word "Linene" either independently or in connection or conjunction with any other word or words, or in any way so as to import or imply or which may have the capacity or tendency to mislead or deceive the purchasing public into the belief that the products so designated, represented, or referred to are made of linen, a product prepared from flax or hemp; (g) of the word "Chamois" either independently or in connection or conjunction with any other word or words as descriptive of its products so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products are made or fabricated from leather, a product prepared from the skin of a certain animal; (h) of the word "Filet" in connection or conjunction with the words "mesh lace" or with any other word or words, or in any other way, so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the product to which it refers is manufactured by hand when such is not the fact; (i) of the word "tooled," "hand tooled," or "engraved" either independently or in connection or conjunction with any other word or words, or in any way, as descriptive of products so as to import or imply or which may have the capacity or tendency to deceive the purchasing public into the belief that the said products are respectively tooled or engraved when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 21, 1930.)

671. **False and Misleading Trade or Corporate Name and Resale Price Maintenance—Malt Sirup.**—Respondent, a corporation, engaged in the manufacture of malt sirup and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from—

(a) The use in the said corporate or trade name of the word "extract." However, the company may, in the advertising of its products in interstate commerce, use the expression, "extracted from barley malt," or "an extract of barley malt," when the product is manufactured from barley malt;

(b) The use, directly or through its distributors, of agreements with dealers providing for the maintenance of resale prices;

(c) Seeking and securing by any cooperative means whatsoever, promises, agreements, or assurances by dealers for the maintenance of suggested resale prices, as a condition to supplying said dealers with its products, or otherwise, or at all.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 25, 1930.)

672. **False and Misleading Trade Name and Advertising—Correspondence Courses.**—Respondent, a corporation, engaged in conducting a school whose curriculum includes correspondence courses in accountancy, banking, bookkeeping, business organization and administration, commercial law, office management, penmanship, salesmanship, and typewriting and in the sale and distribution of such courses in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its courses of instruction by means of advertisements and advertising matter circulated in interstate commerce, agreed to cease and desist forever from (a) overstating and misrepresenting the actual and probable earnings of its alleged graduates; (b) overstating and misrepresenting the demands and opportunities of its alleged graduates for employment; (c) inaccurately listing or stating relationship of members of its faculty, instructors, and others; (d) using the word "University" in its advertisements circulated in interstate commerce, or otherwise calling itself a "University of Commerce"; and/or (e) using any pictorial or other representation misrepresenting or exaggerating its offices, buildings, or equipment.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 25, 1930.)

673. **Claiming Patent Rights Wrongfully and Misbranding—Commercial Soaps.**—Respondent, a corporation, engaged in the manufac-

ture of commercial soaps, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed in soliciting the sale of and selling its products in interstate commerce to cease and desist forever from the use on labels attached to the containers in which its products are packed, sold, and distributed in interstate commerce, or in any other way, of the words "Patented Faucet Process" either independently or in connection or conjunction with any other word or words, or in any way which may have a tendency and capacity to confuse, mislead, or deceive the trade or the purchasing public into the belief that it is the owner of a patent upon the process by which said products are made or compounded, or upon the faucet which accompanies the containers in which they are put up, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (July 7, 1930.)

674. **Misbranding or Mislabeling—Hosiery.**—Respondent, a corporation, engaged in the manufacture of hosiery and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, partnerships, and corporations likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from marking and/or labeling products with the word "Silk" either independently or in connection or conjunction with any other word or words so as to import or imply that said products are composed in whole or in part of silk, when such is not the fact; and from the use of the word "Silk" in any other way which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that such products are composed in whole or in part of silk, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (July 14, 1930.)

675. **False and Misleading Advertising—Oranges, Grapefruit, Jellies, Marmalades, Preserves, etc.**—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of oranges, grape-

fruit, vegetables, jellies, marmalades, preserves, and nuts, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

The term "Indian River" when used to describe the origin of citrus fruits, refers to a territory on the east coast of Florida, along the Indian River and in the counties of Brevard, Indian River, St. Lucie and Martin, but does not include the county of Lee, or any part thereof. The citrus fruits grown in the "Indian River" section have long enjoyed a reputation for superior quality, and the growers of and dealers in such fruits have built up a valuable good will in the term "Indian River" as applied to such fruits.

Respondent, in soliciting the sale of and selling its products in interstate commerce, or for interstate shipment, agreed to cease and desist forever from advertising, representing, or stating that such products are grown in the Indian River region, when such is not the fact; and from the use of the words "Indian River" either independently or in connection or conjunction with any other word or words, or in any way which may have the capacity or tendency to confuse, mislead or deceive purchasers into the belief that its products are grown in the Indian River region of Florida, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (July 14, 1930.)

676. False and Misleading Advertising—Waists and Dresses.—Respondent, a corporation, engaged in the manufacture of cotton waists and dresses and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into a stipulation of fact and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent in soliciting the sale of and selling its products in interstate commerce agreed to cease and desist forever from the use of the words "Linen" and/or "Lawn" either independently or in connection or conjunction with any other word or words in its advertisements or advertising matter distributed in interstate commerce, to designate or describe products not made of linen and/or lawn, and from the use of the words "Linen" and/or "Lawn" either independently or in connection or conjunction with any other word or words, or in any way which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that such products are made of linen and/or lawn, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (July 14, 1930.)

677. **False and Misleading Brands, Labels, and Advertising—Paints.**—Respondent, a corporation, engaged in the operation of a radio broadcasting station and also acting as agent for other corporations and individuals in the advertisement and sale of different items of merchandise, and respondent, an individual, engaged in the sale and distribution in interstate commerce of paints, and respondent, a corporation, engaged in the manufacture of paints, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling their products in interstate commerce, agreed jointly and severally to cease and desist forever from (a) the use of the words "white lead" and/or "zinc" or either of them either independently or in connection or conjunction with any other word or words in advertising, labeling, or describing their products so as to import or imply that said products are composed of pure lead sulphate and zinc oxide, when such is not the fact; and from the use of the words "lead" and/or "zinc" in any way to designate their products which may have the capacity and tendency to confuse, mislead and deceive the purchasing public into the belief that said products are composed of pure lead or zinc, when such is not the fact; (b) the use of the words "pure linseed oil" either independently or in connection or conjunction with any other word or words in advertising, labeling or describing their products so as to import or imply that said products are composed of pure linseed oil, when such is not the fact; and from the use of the words "pure linseed oil" in any way to designate their products which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that said products are composed of pure linseed oil, when such is not the fact; (c) labeling, advertising, and representing that their products are put up in full weight and measure, when such is not the fact; (d) stating and representing in advertisements and on labels that their products are sold direct from manufacturer to consumer, or any words of similar purport, when such is not the fact; and (e) advertising and representing on labels and otherwise, purported analyses of their said products which do not truly and accurately state the contents thereof.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question, this said stipulation as

to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (July 14, 1930.)

678. **False and Misleading Advertising—Citrus Fruits.**—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of citrus fruits, and in competition with other corporations, individuals, firms, partnerships, and corporations likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

The term "Indian River" when used to describe the origin of citrus fruits, refers to a territory on the east coast of Florida, along the Indian River and in the counties of Brevard, Indian River, St. Lucie, and Martin, but does not include the county of Lake or any part thereof. The citrus fruits grown in the Indian River section have long enjoyed a reputation for superior quality, and the growers of and dealers in such fruits have built up a valuable good will in the term "Indian River" as applied to such fruits.

Respondent, in soliciting the sale of and selling its products in interstate commerce or for interstate shipment, agreed to cease and desist forever from advertising, representing, or stating that such products are grown in the Indian River region, when such is not the fact; and from the use of the words "Indian River" either independently or in connection or conjunction with any other word or words, or in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that its products are grown in the Indian River region of Florida, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (July 14, 1930.)

679. **False and Misleading Advertising—Spring Water.**—Respondent, a corporation, engaged in the business of bottling spring water from a natural spring and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever in its advertisements and advertising matter from making any claims respecting the medicinal or curative properties of said product other or greater than those usually belonging to a mild laxative; and/or any other advertising which does not truthfully represent and describe the said product or the results obtained from its use.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (July 14, 1930.)

680. **False and Misleading Advertising—Merchandise.**—Respondent, a corporation engaged in the mail-order order business of selling and distributing merchandise in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce agreed to cease and desist forever from the use in its catalogues and other advertising matter distributed in interstate commerce (a) of the words "Silk" or "Satin" either independently or in connection or conjunction with any other word or words, letter or letters, or in any way so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the products so designated, represented, described, or referred to are made of silk, or unless, when the products are composed in substantial part of silk and the word "Silk" or "Satin" is used as descriptive thereof, such word shall be accompanied by another word or words which shall be printed in type equally as conspicuous as that in which the said descriptive word is printed so as to clearly indicate that the said products are not made wholly of silk; (b) of the word "Flannel" either independently or in connection or conjunction with any other word or words, or in any other way so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products so designated, represented, or described are made of wool; (c) of the words "Seal," "Lynx," "Fox," "Badger," "Wolf," and "Beaver" in any way which may have the capacity or tendency to mislead or deceive the purchasing public into the belief that the products so represented or described are made from the skins or fur of the seal, lynx, fox, badger, wolf, and beaver, respectively; (d) of the word "Pearl" or "Pearls," to describe products which are imitation of pearls; and (e) of the word "Engraved" either independently or in connection or conjunction with any other word or words, or in any way so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the products so described are engraved by hand, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the

facts may be used in evidence against it in the trial of the complaint which the commission may issue. (July 21, 1930.)

681. **False and Misleading Advertising—Merchandise.**—Respondent, a corporation, engaged in the mail-order business of selling and distributing merchandise in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent in soliciting the sale of and selling its products in interstate commerce agreed to cease and desist forever from using in its circulars and other advertising matter distributed in interstate commerce, the words "Free" or "Without Charge" or either of them either independently or in connection or conjunction with each other, or with any other word or words in such a way as to import or imply that the products to which said words, or either of them, refer are in truth and in fact given as a gratuity; and from the use of the words "Free" and/or "Without Charge" or any other word or words of like import in any way which may have the capacity and tendency to confuse, mislead, and deceive purchasers into the belief that the products so offered as "Free" or "Without Charge" are in fact given free and that their cost is not included in the price paid by the purchasers for some other product or products ordered.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (July 28, 1930.)

682. **False and Misleading Advertising—Knit Caps.**—Respondents, copartners, engaged in the manufacture of knit caps and in the sale and distribution of the same in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents agreed, in advertising their products, to cease and desist forever from so advertising and representing the same as to fail to disclose that one brand thereof is not composed wholly of wool, but is made in part of other materials; and to cease and desist from so advertising or in any way representing said products as to confuse, mislead, or deceive the trade or the purchasing public into the belief that the same are all wool, when such is not the fact.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (August 1, 1930.)

683. **False and Misleading Brand or Label—Soap and Soap Products.**—Respondent, a corporation, engaged in the manufacture of soap and soap products and in the sale and distribution of said products in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of, and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "Olive" either independently or in connection or conjunction with the word "Oil" or with any other word or words as part of its trade name or as a brand or label for its products sold in interstate commerce, so as to import or imply that the said products are composed in substantial part of olive oil, when such is not the fact; and from the use of the word "Olive" and the words "Olive Oil" in any way as descriptive of its products which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products so designated, represented, or described are composed in substantial part of olive oil, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (August 1, 1930.)

684. **False and Misleading Advertising—Citrus, Other Fruits and Fruit Products.**—Respondent, an individual, engaged in the sale and distribution in interstate commerce of citrus and other fruits and fruit products, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

The term "Indian River" when used to describe the origin of citrus fruits, refers to a territory on the east coast of Florida, along the Indian River and in the counties of Brevard, Indian River, St. Lucie, and Martin; but does not include the county of Lee or any part thereof. The citrus fruits grown in the Indian River section have long enjoyed a reputation for superior quality, and the growers of and dealers in such fruits have built up a valuable good-will in the term "Indian River" as applied to such fruits.

Respondent, in soliciting the sale of and selling his products in interstate commerce, or for interstate shipment, agreed to cease and desist forever from advertising, stating, or representing that such products are produced or grown in the Indian River region, when such is not the fact; and from the use of the words "Indian River"

either independently or in connection or conjunction with each other, or with any other word or words, or in any way which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that his products are grown or produced in the Indian River region of Florida, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (August 1, 1930.)

685. **False and Misleading Brands or Labels—Bronze Powders.**—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of bronze powders, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent in soliciting the sale of and selling its products in interstate commerce agreed to cease and desist forever from the use on the labels of the containers in which said products are packed of the words "Pure" and/or "Aluminum" either independently or in connection or conjunction with each other, or with any other word or words so as to import or imply that the product so marked and labeled is composed wholly of aluminum, when such is not the fact; or unless, when said product is not pure aluminum but one in which aluminum is the principal and predominant element, and the word "Aluminum" is used to designate the product, said word "Aluminum" shall be accompanied by the word "Compound" or some other like word printed in type as conspicuous as that in which the word "Aluminum" is printed so as clearly to indicate that such product is not composed wholly of aluminum.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 15, 1930.)

686. **False and Misleading Brands or Labels—Tobacco Pouches.**—Respondent, a corporation, engaged in the manufacture of tobacco pouches and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent in soliciting the sale of and selling its tobacco pouches in interstate commerce agreed to cease and desist forever from the use of a patent number and date or of any other marking upon or

in connection with its said tobacco pouches so as to import or imply, or which may have the capacity or tendency to mislead or deceive the purchasing public into the belief that the said tobacco pouches are patented devices and/or that the said respondent is the owner or licensee of a patent on said tobacco pouches when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 15, 1930.)

687. False and Misleading Advertising—Typewriter Ribbons.—Respondent, a corporation engaged in the manufacture of typewriter ribbons and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent in soliciting the sale of and selling its product in interstate commerce agreed to cease and desist forever from the use of the word "Silk" either independently or in connection or conjunction with the word "Fibre" or with any other word or words, letter or letters so as to import or imply that the products so designated, represented, and referred to were made of silk, the product of the cocoon of the silk worm; and said respondent also agreed to cease and desist from the use of the word "Silk" either independently or in connection or conjunction with any other word or words, letter or letters, or in any other way which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said product so designated, represented, or referred to is made of silk, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 15, 1930.)

688. Simulating Containers—Insulated Metal Staples.—Respondent, a corporation, engaged in the manufacture of insulated metal staples and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships like wise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Emerson Apparatus Co., a corporation with its principal place of business at Melrose Highlands in the State of Massachusetts, has for more than two years last past been engaged in the business of

manufacturing insulated metal staples and in the sale and distribution of the same in interstate commerce. In the course and conduct of its said business it adopted and used in its said business a box of characteristic shape, style, and color in which its products were and are sold in interstate commerce so that the same became and are well known as the product of Emerson Apparatus Co., and said company has a valuable good will therein.

Respondent agreed to cease and desist from the use in interstate commerce of boxes or containers for its products simulating the size, shape, style, and/or color of those used by Emerson Apparatus Co. so as to import or imply that the products thereof are the products of Emerson Apparatus Co., or in any way which may have the tendency to confuse, mislead, or deceive purchasers into the belief that the contents of such boxes are the products of Emerson Apparatus Co. when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 15, 1930.)

689. **False and Misleading Trade Name and Advertising—Accordians.**—Respondent, an individual, engaged in the purchase, importation, sale, and distribution in interstate commerce of accordians and also in the business of adjusting and repairing the same, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of, selling, and distributing his products in interstate commerce, agreed to cease and desist from advertising, stating, and representing that he owns or operates the largest accordian factory in the world, when such is not the fact; advertising, stating, and representing that he ships accordians to purchasers immediately upon receipt of an order accompanied by a partial payment, when such is not the fact; advertising, stating, and representing that the prices at which he sells his accordians are below factory cost, when such is not the fact; advertising, stating, and representing that he has always a large number of accordians ready to ship, or that the accordian ordered by a customer will be shipped immediately by express, when such is not the fact; the use of the word "manufacturing" as part of his trade name in advertisements and other printed matter circulated and distributed in interstate commerce, in soliciting the sale of and selling products not manufactured by him so as to import or imply that he is the manufacturer of said products, when such is not the fact; and from the use of the

word "manufacturing" in any way which may have the capacity and tendency to confuse, mislead, and deceive purchasers into the belief that he is the manufacturer of products sold by him when such is not the fact; publishing any pictorial representation of a factory building; together with reading matter importing or implying that such building is the building wherein his factory is located and his accordians are made, when such is not the fact; and advertising, stating, or representing that his business is a branch of the Italian or other manufacturers from whom he purchases his products, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (September 15, 1930.)

690. **False and Misleading Trade or Corporate Name—Paper, Twine, etc.**—Respondent, a corporation, engaged as a broker and jobber in the sale and distribution of paper, paper products, twine, cordage, and other similar products in interstate commerce, and in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent in soliciting the sale of and selling its products in interstate commerce agreed to cease and desist forever from the use of the word "Mills" as part of or in connection or conjunction with its corporate or trade name in the sale and distribution in interstate commerce of its products and from the use of the word "Mills" in any other way which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that said corporation either owns, controls, or operates a mill or factory wherein the products sold and distributed by it in interstate commerce are made or fabricated, or until such time as said respondent does actually own, operate, or control a mill or factory wherein the said products are made.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 15, 1930.)

691. **False and Misleading Advertising—Correspondence Courses.**—Respondents, copartners, engaged in conducting by correspondence a course of instruction in institutional management, and in the sale and distribution of their said course in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into a stipulation of facts and agree-

ment to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents in soliciting the sale of and selling their courses of instruction agreed to cease and desist forever from the use in their advertising matter of whatsoever character distributed in interstate commerce of any and all statements and representations having the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the earnings of the average student or graduate in said courses of instruction are in excess of what is actually or probably the case. The said respondents also agreed to cease and desist from the use in their said advertising matter of any and all offers purporting to be limited as to time or otherwise and from the use of any and all alleged "special" offers unless said alleged time and special offers are, respectively, actually so limited as to time and are not such offers as are customarily made in the regular course of business. The said respondents further agreed to cease and desist from the use in their advertising matter of any and all offers of a commodity or alleged gift as "free" unless such commodity or alleged gift is actually given free and is not regularly included in the cost and as part of the said course of instruction.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (September 15, 1930.)

692. **False and Misleading Advertising—Vibraphones.**—Respondent, a corporation, engaged in the business of having manufactured for it devices, known as vibraphones, purporting to aid hearing in deaf people and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms and partnerships likewise engaged, entered into a stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use in its advertisements and advertising matter distributed in interstate commerce of statements or representations which may have the capacity or tendency to mislead or deceive the purchasing public into the belief that sound waves passing through its device will cause certain parts of the device to vibrate and thereby act or tend to act as a massage to the inner ear, or to perceptibly amplify sound in close proximity to the ear drum, or to massage the different organs of hearing by amplified or intensified waves, or to stimulate and revive the aural organs, or to restore normal hearing, when such is not the fact; and the said corporation also agrees to cease and desist from the use in its advertisements and advertising matter of any state-

ment or representation so as to import or imply, or which may have the capacity or tendency to mislead or deceive the purchasing public into the belief that the use of its said device in the ear of a deaf person will effect or cause aural benefits to, or the cure or restoration of hearing to such deaf person through a massaging or similar action resulting from sound waves coming in contact with the parts, or certain of the parts of said device, when such is not the fact; and the said corporation further agreed to cease and desist from making any false or exaggerated statements or representations in its said advertisements or advertising matter tending to mislead or deceive the purchasing public as to the merits or benefits to be derived from the use of its said device by deaf persons.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 15, 1930.)

693. **False and Misleading Brands, Labels, and Advertising—Laundry, Textile, and Toilet Soaps.**—Respondent, a corporation, engaged in the manufacture of laundry, textile, and toilet soaps and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce agreed to cease and desist forever from the use of the word "Imported" either independently or in connection or conjunction with any other word or words, on its products or the wrappers or containers in which the same are packed, so as to import or imply, or which may lead purchasers to believe that said products are manufactured in a foreign country and/or imported into the United States, when such is not the fact; the word "Buttermilk" either independently or in connection or conjunction with any other word or words on its products so as to import or imply, or which may confuse, mislead, or deceive purchasers into the belief that said products are manufactured from buttermilk so as to be properly and accurately described and referred to as "Buttermilk Soap," when such is not the fact; the word "Peroxide" either independently or in connection or conjunction with any other word or words, on its products or the wrappers for the same, or in any way which may import or imply, or which may confuse, mislead, and deceive purchasers into the belief that said products are manufactured from peroxide so as to be properly and accurately described as "Peroxide Soap," when such is not the fact; the word "Witch-hazel" either

independently or in connection or conjunction with any other word or words, on its products, or in any way which may import or imply, or which may confuse, mislead, and deceive purchasers into the belief that said products are manufactured from witch-hazel so as to be properly and accurately described as "Witch-hazel Soap" when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 15, 1930.)

694. False and Misleading Brands, Labels, and Advertising—Imitation Amber or Bakelite, Necklaces, etc.—Respondent, an individual, engaged in the importation of imitation amber or bakelite, necklaces and chokers, and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist therefrom forever in interstate commerce.

Respondent in soliciting the sale of and selling his products in interstate commerce agreed to cease and desist forever from the use of the words "Amber," "Ambre," "Amberlite," or any other derivative or colorable imitation of the word "Amber" in marking, labeling, ticketing, or representing products not made of genuine natural amber; and from the use of the words "Amber," "Ambre," "Amberlite," or any other derivative or colorable imitation of the word "Amber," either separately or in combination with each other, or with any other word or words in any way which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that said products are made of genuine natural amber, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against him in the trial of the complaint which the commission may issue. (September 15, 1930.)

695. False and Misleading Brands, Labels, and Advertising—Oranges, Preserves, etc.—Respondent, an individual, engaged in the sale and distribution of oranges, grapefruit, jellies, marmalades, preserves, and nuts in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

The term "Indian River" when used to describe the origin of citrus fruits, refers to a territory on the east coast of Florida, along

the Indian River and in the counties of Brevard, Indian River, St. Lucie, and Martin, and does not include the county of Dade, or any part thereof. The citrus fruits grown in the "Indian River" section have long enjoyed a reputation for superior quality, and the growers of and dealers in such fruits have built up a valuable good will in the term "Indian River" as applied to such fruits.

Respondent agreed in soliciting the sale of and selling his products in interstate commerce, or for interstate shipment, to cease and desist forever from advertising, representing, or stating that such products are grown in the Indian River region, when such is not the fact; and from the use of the words "Indian River" either independently or in connection or conjunction with any other word or words, or in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that his products are grown in the Indian River region of Florida, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (September 15, 1930.)

696. **Price Combinations or Conspiracies—Head Lettuce.**—Respondent, a corporation, its stockholders and/or membership consisting of a number of individuals, firms, partnerships, and corporations who, or which, are now engaged in the growing of head lettuce in interstate commerce, and in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, its officers and shipper members, in soliciting the sale of and selling its or their products in interstate commerce, agreed to cease and desist forever from entering into any cooperative agreements or understandings that each and all of the said shipper members shall cause his, its, or their, receivers, buyers, brokers, consignees, or other purchasers or trade to be arbitrarily billed or charged with a consideration in addition to or in excess of the usual and customary cost billing of products delivered, sold, and/or consigned by said shipper member or members to his, its, or their, said receivers, buyers, brokers, consignees, or other purchasers or trade; and the said respondent, its officers, and members also agreed to cease and desist from entering into cooperative agreements or understandings that each and all of the said members shall fail, threaten to refuse, and/or refuse to deliver, sell, or consign products to his, its, or their receivers, buyers, brokers, consignees, or other purchasers or trade who will not pay or promise or agree to pay any such arbitrarily

billed or charged consideration in addition to or in excess of the usual and customary cost billing of such products; and the said respondent, its officers, and members, further agreed to cease and desist from entering into cooperative agreements or understandings whereby said members are required to, and do, exact, coerce, or otherwise obtain promises or assurances from their receivers, buyers, brokers, consignees, or other purchasers or trade that the said receivers, buyers, brokers, consignees, or other purchasers or trade will agree to pay any billed or charged consideration in addition to or in excess of the usual and customary cost billing of said products as a condition to supplying such purchasers or trade with products.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 16, 1930.)

697. False and Misleading Brands, Labels, and Advertising—Bronze Powders.—Respondent, an individual, engaged in the sale and distribution of bronze powders in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from advertising, labeling, or in any other way representing that he is a manufacturer of bronze powders, and/or that his products, or any of them, are manufactured by him or under his corporate or trade name, or in any other way which may confuse, mislead, or deceive purchasers into the belief that said respondent, or said respondent trading under a corporate name, is a manufacturer of bronze powders, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (October 13, 1930.)

698. Misbranding or Mislabeling—Knitted Sweaters.—Respondent, an individual, engaged in the manufacture of knitted sweaters and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of his products in interstate commerce, agreed to cease and desist forever from the use, as a brand or label, of the word "handfashioned" or of the words "hand fash-

ioned" either independently or in connection or combination with any other word or words, letter or letters so as to import or imply that the product so branded or labeled is "fashioned," when such is not the fact; and from the use of the word "fashioned" in any way which may have a tendency to confuse, mislead, or deceive purchasers into the belief that the products so branded or labeled are "fashioned" as that term is generally understood by the trade and the purchasing public, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (October 29, 1930.)

699. False and Misleading Advertising—Sirup.—Respondent, a corporation, engaged in the manufacture of a sirup and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use of the word "Maple" in its advertisements or advertising matter to represent or designate the product sold and distributed by it in interstate commerce either independently or in connection or conjunction with any other word or words, or in any other way to represent or designate its products so as to import or imply, or have the capacity and tendency to mislead and deceive the purchaser into the belief that the said product is composed wholly of maple sirup, when such is not the fact; or unless, if said product is composed in substantial part of maple sirup and the word "Maple" is used to describe or designate the maple content, the word "Maple" shall be accompanied by some other word or words displayed in type equally as conspicuous as the type in which the word "Maple" is printed so as to clearly indicate that said product is not composed wholly of maple and which will otherwise properly and accurately represent, define, and describe said product.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 10, 1930.)

700. False and Misleading Brands, Labels, and Advertising—Bronze Powders.—Respondent, a corporation, engaged in the sale and distribution of bronze powders in interstate commerce, and in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following agreement to cease and desist

forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from representing and designating its product on its labels or other printed matter with the words "Aluminum Bronze" and from the use of any other word or words so as to import or imply that the product so marked, labeled, advertised, and sold is composed wholly of aluminum, when such is not the fact; or unless, when said product is not pure aluminum but one in which aluminum is the principal and predominant element and the word "Aluminum" is used to designate the product, said word "Aluminum" shall be accompanied by the word "Compound" or some other like word printed in type as conspicuous as that in which the word "Aluminum" is printed so as clearly to indicate that such product is not composed wholly of aluminum and will otherwise properly and accurately designate said product. The respondent also agreed to cease and desist from the use of the word "Manufacturer" or "Manufacturers" either independently or in connection or conjunction with any other word or words so as to import or imply that it owns, operates, and controls a plant or factory manufacturing the product sold by it when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 10, 1930.)

701. Misbranding or Mislabeling—Batteries.—Respondent, a corporation, engaged in the manufacture of dry and wet batteries and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed, in soliciting the sale of and selling its products in interstate commerce, to cease and desist forever from marking, branding, or labeling any of its products in such a way as to indicate, import, or imply that such batteries are of a larger size and/or capacity than is the fact; and from marking, stamping, branding, or otherwise making use of any numbers, letters, or figures on said products which may have the capacity and tendency to confuse, mislead, and deceive purchasers into the belief that such products are larger or of a greater capacity than is the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the

facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 10, 1930.)

702. False and Misleading Brands, Labels, and Advertising—Dog Remedy.—Respondent, an individual, engaged in the manufacture of a dog remedy and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreements to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent in soliciting the sale of and selling his product in interstate commerce, agreed to cease and desist forever from the use of confusing and misleading statements and representations in advertisements and/or on labels circulated in interstate commerce to the effect that said product is a preventive of distemper or a remedy or cure for running fits, autointoxication, indigestion, convulsions, and/or for all types of worms in dogs; and from the publication, circulation, and distribution in interstate commerce of the aforesaid or any other advertising matter which does not truthfully represent and describe the product offered for sale or the results likely to be obtained from its use.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (November 10, 1930.)

703. False and Misleading Advertising—Imitation Pearls and Crystals.—Respondent, a corporation, engaged in the sale and distribution of merchandise, including imitation pearls and crystals, in interstate commerce, and in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its merchandise in interstate commerce, agreed to cease and desist forever from the use in advertisements or other printed matter of the words "Crystal" and/or "Pearl" independently or in connection or conjunction each with the other, or with any other word or words, so as to import or imply that said products are made of natural crystals or pearls, when such is not the fact; and from the use of the words "Crystal" and/or "Pearl" in any way which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that said products are natural or genuine, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 10, 1930.)

704. **False and Misleading Brands, Labels, and Advertising—Vermin Exterminator.**—Respondent, corporation, engaged in the manufacture of a vermin exterminator and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent in soliciting the sale of and selling its product in interstate commerce agreed to cease and desist from marking, branding, or labeling the containers in which its product is sold and distributed in interstate commerce with any word or words stating or representing that the same will mummify the carcass or prevent offensive odors from rats and mice killed by it and/or from statements and representations such as "Cats and dogs don't touch it," and from the circulation in interstate commerce of any similar statements or representations which do not truthfully and accurately represent and describe its product or the results obtained from its use.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 10, 1930.)

705. **False and Misleading Trade Name, Brands, Labels, and Advertising—Asbestos Building Materials.**—Respondent, a corporation, engaged in the importation of asbestos and the processing of same with other products to be used as building material, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent in soliciting the sale of and selling its product in interstate commerce agreed to cease and desist forever from the use of the word "Marble" either independently or in connection or combination with any other word or words in its advertising, on labels or as a trade name for its product so as to import or imply that the product so named, designated, advertised, labeled, and referred to is made of marble, when such is not the fact; and from the use of the word "Marble" either independently or in connection or conjunction with any other word or words or in any way which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that the same is made of marble, when such is not the fact; the use in advertisements or advertising matter of statements and representations that said product is a "new marble" or "a new type of marble" or "an asbestos marble," that

its finish is permanent, or that it is fireproof, waterproof or weather-proof, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 10, 1930.)

706. Misbranding or Mislabeling—Leather Goods and Novelties.—Respondents, copartners, engaged in the importation of leather goods and novelties and in the sale and distribution of same in interstate commerce, and in competition with other partnerships, firms, individuals, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from the use, as a brand or label for their products, of the word "Silver" either independently or in connection or conjunction with any other word or words which import or imply that said products are made of silver as that term is generally understood and used by the trade and the purchasing public; and from the use of the word "Silver" in any way which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that said products are made of silver, when such is not the fact.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (November 10, 1930.)

707. False and Misleading Advertising—Hog and Poultry Remedy or Tonic.—Respondent, a corporation, engaged in the manufacture of an alleged remedy and/or tonic for hogs and poultry and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into an agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use in its advertisements and advertising matter distributed in interstate commerce of statements or representations which import or imply or which may have the capacity or tendency to mislead or deceive the purchasing public into the belief that said products possess therapeutic values in excess of those which said products actually possess or that the said products have value as a remedy, cure, or tonic for specified diseases so as to justify the statements or representations that the said products do actually cure or effectively treat as a tonic or otherwise those infectious or other diseases as specified

in the aforesaid advertisements and advertising matter, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 10, 1930.)

708. False and Misleading Brands, Labels, and Advertising—Shirts.— Respondents, copartners, engaged in the manufacture of shirts and in the sale and distribution of the same in interstate commerce, and in competition with other partnerships, individuals, firms, and corporation likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents in soliciting the sale of and selling their product in interstate commerce agreed to cease and desist forever from representing, designating, advertising, or labeling said product as "Genuine English Broadcloth" or "English Broadcloth" when said product is not made from that cloth imported from England and known to the trade and purchasing public as English broadcloth, and the aforesaid respondents further agreed to cease and desist from representing, designating, advertising, or labeling said product as "144-76" when the fabric in said product is not constructed with threads running 144 in the warp and 76 in the filling. The aforesaid respondents further agreed to cease and desist from the use of the words "English broadcloth" and the figures "144 x 76" in any way so as to import or imply, or which may have the capacity or tendency to mislead the purchasing public into the belief that the product so represented, designated, and referred to is in truth English broadcloth and/or the fabric from which the same is constructed contains threads running 144 in the warp and 76 in the filling, when such is not the fact.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (November 12, 1930.)

709. Misleading Merchandising Schemes—Radio Sets, Etc.— Respondent, a corporation, engaged in the purchase of radio receiving sets and other similar merchandise and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling radios or similar products, agreed to cease and desist forever from the use in interstate commerce of any scheme, plan, or method of promoting the sale and selling said products which involves or includes any mate-

rial misrepresentation respecting the construction and/or equipment so as to confuse, mislead, or deceive the purchaser.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 12, 1930.)

710. False and Misleading Advertising—Confectionery.—Respondent, a corporation, engaged in the manufacture of confectionery and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreements to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from using in its circulars and other advertising matter distributed in interstate commerce the words "Free," "Gift," and/or "Given" either independently or in connection or conjunction each with the others, or with any other word or words so as to import or imply that the products to which said words or either of them refer, are in truth and in fact given as a gratuity; and from the use of the words "Free," "Gift," and/or "Given" or any other word or words of like import either independently or in connection or conjunction with any other word or words, or in any other way which may have the capacity and tendency to confuse, mislead, and deceive purchasers into the belief that the products so offered as "Free," "Gifts," or "Given" are in fact given free and that their cost is not included in the price paid by purchasers for some other product or products ordered.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 12, 1930.)

711. False and Misleading Advertising—Correspondence Course.—Respondent, a corporation, engaged in the business of conducting a school whose curriculum includes teaching by correspondence the subjects of dressmaking, millinery, and cooking, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its courses of instruction in interstate commerce, agreed to cease and desist forever from the use of the word "Free" either independently or in con-

nection or conjunction with any other word or words, or in any way as descriptive of merchandise accompanying its courses of instruction, so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the cost or price of said merchandise is not included in the purchase price of said courses of instruction, but that said merchandise is given as a gratuity with the purchase of said courses of instruction, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 12, 1930.)

712. **False and Misleading Advertising—Typewriters.**—Respondent, an individual, engaged in the business of purchasing new and used typewriters, of repairing, rebuilding, and refinishing them, and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from stating and representing, in advertisements or otherwise, that he sells portable or other typewriters at half prices, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (November 12, 1930.)

713. **False and Misleading Advertising—Sewing Needles.**—Respondent, an individual, engaged in the importation of advertising novelties, including sewing needles, and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from using the words "Queen Victoria" to designate said product and also likewise from the use of any pictorial representation of the British Royal Coat of Arms, and from the use in interstate commerce of the words "Queen Victoria" and of any pictorial representation of the British Royal Coat of Arms, separately or in combination each with the other, or in any other way which may have the tendency to

confuse, mislead, and deceive purchasers into the belief that said products are of English origin, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (November 12, 1930.)

714. False and Misleading Advertising—Raincoats and Similar Merchandise.—Respondents, copartners, engaged in the sale and distribution in interstate commerce of raincoats, leather coats, sheep-lined coats, and other similar merchandise at wholesale, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from the use of the word "Manufacturers" either independently or in connection or conjunction with any other word or words in their advertisements or advertising matter, letterheads, invoices, catalogues, or other printed matter distributed in interstate commerce so as to import or imply that said respondents either owned, operated, or controlled a factory in which the products sold and distributed by them in interstate commerce are made or fabricated; and from the use of the word "Manufacturers" in any way which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that said respondents owned, operated, or controlled a factory wherein the products sold and distributed by them are made or fabricated, when such are not the facts.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (November 12, 1930.)

715. False and Misleading Advertising—Boys' Caps.—Respondent, a corporation engaged in the sale and distribution in interstate commerce of a large variety of merchandise, including boys' caps, and in competition with other corporations, individuals, firms, and corporations likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent in soliciting the sale of and selling its product in interstate commerce agreed to cease and desist forever from representing, designating, describing, or referring to its said product in its advertisements or advertising matter distributed in interstate commerce as being "two-thirds wool" or "about two-thirds wool," when such is not the fact. Respondent also agreed to cease and desist from

the use in its advertisements and advertising matter of the word "wool," either independently or in connection or conjunction with any other word or words, or in any other way as descriptive of its product so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers thereof into the belief that the said product contains wool in excess of what it actually does contain.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 12, 1930.)

716. **Misrepresenting Business Status—Footwear.**—Respondent, a corporation, engaged in the sale and distribution of domestic and imported footwear in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreements to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce and foreign commerce, agreed to cease and desist forever from the use of the word "manufacturers" on its letterheads and in its correspondence, and from the use of the word "manufacturers" in any way which may have the capacity and tendency to confuse, mislead and deceive purchasers into the belief that said respondent owns, controls, or operates a factory wherein the products sold and distributed by it in interstate and foreign commerce are manufactured, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 19, 1930.)

717. **Misleading Merchandising Schemes—Perfumes and Chemicals.**—Respondent, a corporation, engaged in the manufacture of perfumes and chemicals and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreements to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use in interstate commerce of any scheme, plan, or method of promoting the sale of its products which involves or includes advertising or soliciting the sale of and selling in interstate commerce any instrument

or device purporting to be or representing a chance, share, or interest in or dependent upon the event of a lottery, so-called gift concern, or any other similar enterprise offering prizes dependent upon lot or chance.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 19, 1930.)

718. False and Misleading Advertising—Stained or Painted Cedar Shingles.—Respondent, an individual, engaged in staining and/or painting cedar shingles at his plants and the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use in his advertisements and advertising matter circulated or distributed in interstate commerce of such statements as "Color penetrates the wood" and "Therein lies the secret of their compelling beauty and remarkable durability," when in truth such is not the fact; and said respondent also agreed to cease and desist forever from the use of the statement, "Then, extended immersion, by hand, permits these denser, more durable colors to penetrate every fibre of the shingle" either independently or in connection or conjunction with any other words or statements, or in any other way, so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that each shingle is individually immersed by hand in the coloring matter so as to cause such coloring matter to penetrate every fiber of the shingle, when in truth such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (November 24, 1930.)

719. Misrepresenting Prices—Courses of Instruction.—Respondent, a corporation, engaged in the conduct of a school or college where courses of instruction on branches useful in business are taught, and offering these courses for sale, and in the sale and selling the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its scholarships in interstate commerce, agreed to cease and desist forever from representing, in any manner whatsoever, to customers and prospective customers that, as a special introductory offer, a limited number of persons in a given community would be sold scholarships at a price much lower than the usual and customary price, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 24, 1930.)

720. False and misleading advertising—Near Beer.—Respondent, a corporation, engaged in the business of manufacturing near beer and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in its advertisements and advertising matter distributed in interstate commerce of the word "Bohemian" as descriptive of the hops used in the brewing of its product so as to import or imply that the hops used in the brewing of said product are hops grown in and imported from the district of Bohemia, Czechoslovakia; and said respondent also agreed to cease and desist from the use of the word "Bohemian" either independently or in connection or conjunction with any other word or words or in any other way as descriptive of the hop content of its product which may have the capacity or tendency to confuse, mislead, or deceive the purchasers thereof into the belief that the hops used in the brewing of its product are grown in and imported from the district of Bohemia, Czechoslovakia, and the word "Bohemian" if used as descriptive thereof, in which case the said word "Bohemian" shall be accompanied by another word or words printed in type equally as conspicuous as that in which the word "Bohemian" is printed so as to indicate clearly that the hops used in the brewing of said product are not wholly obtained from Bohemia, and that will otherwise properly and accurately represent, designate, and describe the hops used in the brewing of said product.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 24, 1930.)

721. False and misleading advertising and brands or labels—Necklaces.—Respondents, copartners, engaged in the sale and distribution of

jewelry and jewelry products in interstate commerce, and in competition with other partnerships, firms, individuals, and corporations likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from representing, designating, or advertising their necklaces as pearl unless the word "Pearl" be accompanied by a word or words immediately preceding the same, printed in type equally as conspicuous as the word "Pearl" is printed so as to clearly indicate that the said product is an imitation and not genuine; and also from the use of the word "Pearl" in any other way so as to mislead and confuse the purchaser into the belief that the product so designated is pearl; when such is not the fact. The respondents also agreed to cease and desist from representing or designating its imitation pearl product as indestructible, when such is not the fact; and also to cease and desist from advertising, representing, or labeling its product with a fictitious value or price in excess of the price at which the said product is sold or contemplated to be sold in the usual course of trade. Respondents further agreed that they will not represent, advertise, or designate any article or merchandise as "free," "given free," or "absolutely free" when the cost of said article or merchandise is included in the price paid for some other product or products. Respondents further agreed that they will not represent, advertise, designate, or describe their rings as having diamond settings; when such is not the fact, and will also cease and desist from the use of the word "diamond" either independently or in connection or conjunction with any other word or words so as to import or imply or otherwise mislead or deceive the purchasers into the belief that the said setting is a diamond, when such is not the fact.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (November 24, 1930.)

722. **False and Misleading Advertising and Brands or Labels.—Manicure Sticks.**—Respondent, a corporation, engaged in the manufacture of manicure requisites, including manicure sticks; and in the sale and distribution of the same in interstate commerce; and in competition with other corporations, individuals, firms, and partnerships likewise engaged; entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its manicure sticks in interstate commerce, agreed to cease and desist forever from the

use of the word "orange" either independently or in connection or conjunction or combination with any other word or words, or in any way, in its advertisements or advertising matter distributed in interstate commerce, or as a brand or label for its products sold and distributed in interstate commerce, so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products are made from the wood of the orange tree, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 28, 1930.)

723. False and Misleading Trade Names and Brands or Labels—Flavoring Extracts and Sirups.—Respondent, a corporation, engaged in the manufacture of flavoring extracts and sirups and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use on its labels affixed to the containers of its products, of the trade name, brand, or designation containing the words "Munchen, Germany," either independently or in connection, conjunction, or combination with any other word or words, pictorial representation, or in any other manner, so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said products so branded, labeled, or designated are manufactured in Germany or have been imported into the United States, or have been obtained from any foreign source, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 11, 1928.)

724. False and Misleading Advertising and Representations—Plastic and Semiplastic Roofing Materials.—Respondent, a corporation, engaged in the manufacture of plastic and semiplastic roofing materials, composed in varying proportions of asphaltum, naphtha, and asbestos, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from stating, representing, directly or through its agents and solicitors: (a) That the asbestos used in the manufacture of its products is long fibered asbestos, when such is not the fact; (b) that it uses rubber gums, vegetable or other oils in the manufacture of its products, when such is not the fact; (c) that its product does not, under any conditions, require to be heated, thinned, or treated, when such is not the fact; (d) that the use of from 1½ to 2½ gallons of its product per square will give a coat ten times as thick as an ordinary coat of paint (e) that the use of its product will seal small holes and cracks in a roof, without preparation, when such is not the fact; (f) describing its product as "a roof," "roofing," "roof covering," "standard roofing" instead of what it really is, an asphalt fibrous roof coating; (g) that no upkeep expense is required when this product is used, when in truth and in fact the dealer and/or property owner is required to bear the labor cost of application; (h) making exaggerated and unqualified claims regarding the alleged 10-year durability of its product, not warranted by the facts; (i) making exaggerated and misleading statements and representations relative to the selling assistance given dealers; (j) making exaggerated and misleading statements and misrepresentations, not warranted by the facts, respecting the cheapness of its product as compared with other roof coatings.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 28, 1930.)

725. False and Misleading Trade Names and Advertising—Boilers.— Respondent, a corporation, engaged in the sale and distribution of small flueless boilers in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "Kisco" as descriptive of its said products in its advertisements and advertising matter; and from the use of the word "Kisco" in any way which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that the products referred to are those boilers known to the trade and the purchasing public as "Kisco" boilers, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts

may be used in evidence against it in the trial of the complaint which the commission may issue. (December 12, 1930.)

726. Misbranding or Mislabeling—Twine Cordage.—Respondent, a corporation, engaged in the sale and distribution of twine cordage in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "Java" as a mark, brand, or label for said products either alone or in combination with any other word or words, or in any way so as to import or imply, or which may have a tendency to confuse, mislead, and deceive purchasers into the belief that said products are composed wholly of Java sisal, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 3, 1930.)

727. False and Misleading Trade Name and Advertising—Cotton Piece Goods.—Respondents, copartners, engaged in the purchase of cotton piece goods which they cause to be converted or finished, and in the sale and distribution of the same in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from the use on stationery or other printed matter, or in correspondence or other written matter, of any trade name containing the word "mills" in any way which may import or imply, or which may have a capacity and tendency to confuse, mislead, or deceive purchasers into the belief that they own, operate, or control a mill or factory wherein the products sold and distributed by them are fabricated, when such is not the fact.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (December 3, 1930.)

728. False and Misleading Advertising and Brands or Labels—Boot and Shoe Laces.—Respondent, a corporation, engaged in the manufacture of boot and shoe laces and in the sale and distribution of the same in

interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever in advertising, listing, marking, branding, and referring to its products from the use of the figures "88" either alone or in connection or combination with any other figure or figures, so as to import or imply, or which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that the products so described and designated are composed of 88 strands or threads, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 5, 1930.)

729. False and Misleading Advertising—Voice Development Method.—Respondents, copartners, engaged in the sale and distribution of a certain method or system of voice or singing tone development in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their courses of instruction and other articles and things connected therewith in interstate commerce, agreed to cease and desist forever from (a) stating and representing, in advertisements or advertising matter circulated in interstate commerce that the prices, terms, and conditions of their enrollment offers are special, or offered for a limited time only, when in truth and in fact the same contain the regular and customary prices, terms, and conditions of enrollment; (b) circulating among customers and prospective customers in interstate commerce, advertisements and advertising matter containing letters of recommendation from former pupils who have since acquired an interest in the school, without at the same time disclosing such interest.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (December 5, 1930.)

730. False and Misleading Trade Name and Advertising—Watch Cases.—Respondent, a corporation, engaged in the purchase of watch

cases and other accessories, in the assembling of the same into complete watches, and in the sale and distribution of such products in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from (a) the use of the words "All American" or "American" either independently or in connection with any other word or words of similar import, as a trade name or designation for products not manufactured wholly in America; and (b) the use in advertisements and advertising matter of statements and representations to the effect that the group of famous football players use its watches, without at the same time disclosing that such watches were given them gratuitously by the aforesaid respondent.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 8, 1930.)

731. False and Misleading Advertising—Dog Remedies.—Respondent, an individual, engaged in the business of manufacturing dog remedies and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use of statements and representations in advertisements and advertising matter which import or imply, or which have the tendency and capacity to confuse, mislead, or deceive the purchasing public into the belief that his said dog remedies were carried or used by the Byrd South Pole Expedition, when such was not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (December 10, 1930.)

732. False and Misleading Advertising and Brands or Labels—Cardboard Boxes.—Respondents, copartners, engaged in the manufacture of collapsible cardboard boxes used for storing articles of wearing apparel and in the sale and distribution of the same in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following stipulation

as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from labeling, branding, marking, designating, or describing their product with the word "Cedarized" either alone or in connection or conjunction with any other word or words, or in any way which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that the preparation with which the interiors of their chests or boxes are treated contains oil of cedarwood, or that it contains oil of cedarwood in such substantial quantities that such products can be properly and accurately described and designated as "Cedarized" when such is not the fact; from using the word "Cedarized" or causing others to use the same in advertisements circulated in interstate commerce, either alone or in connection or conjunction with any other word or words, or in any way which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that the preparation with which the interiors of their chests or boxes are treated contains oil of cedarwood, or that it contains oil of cedarwood in such substantial quantities that such products can be properly and accurately described and designated as "Cedarized" when such is not the fact.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (December 10, 1930.)

733. False and Misleading Advertising—Subscription Books.—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of subscription books consisting of a 20-volume set, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its books in interstate commerce, agreed to cease and desist forever from the use of any false, fictitious, or pretended prices or time limit, and/or of any false, fictitious, or pretended reduction in its alleged prices for its books, whereby purchasers may be confused, misled, or deceived into the belief that they are obliged to subscribe within a limited time in order to secure the advantage of such pretended reduced price, and/or that the price or prices at which such books are offered them are special, introductory, for publicity, or for any other reason reduced from regular prices therefor, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the

facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 12, 1930.)

734. **False and Misleading Advertising and Brands or Labels—Flavoring Extracts and Sirups.**—Respondent, a corporation, engaged in the manufacture of flavoring extracts and sirups and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use in its advertisements and advertising matter, or on its labels affixed to products (*a*) of the name of a German city and certain German words or phrases either independently or in connection, conjunction, or combination each with the other, or with any other words or phrases, or in any other way as descriptive of its product so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said product is a product of foreign manufacture or made or manufactured in Germany and/or imported to the United States, when such is not the fact.

(*b*) Of the words "A real rye culinary extract" or "A perfect rye or bourbon extract" either independently or in connection or conjunction each with the other, or with the words "Natural color," "Natural flavor," "Pure character," and "Here is a product that is real! A rye or bourbon flavor that fills the bill," so as to import or imply that the product is a rye or bourbon extract, when such is not the fact; and the said corporation also agrees to cease and desist from the use of the word "Rye" either independently or in connection or conjunction with any other word or words, or in any other way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said product is a rye product or a product manufactured from oils derived from rye, when such is not the fact.

(*c*) Of the words "Grape," "Orange," "Lemon," "Cherry," "Strawberry," and "Raspberry," or any of them either independently or in connection or conjunction with any other word or words, or in any other way as descriptive of its product so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said products are composed of the juice or the fruit of the grape, orange, lemon, cherry, strawberry, or raspberry; unless (*a*) if the product is composed in substantial part of the juice or the fruit of either the grape, orange, lemon, cherry, strawberry, or raspberry so as to derive its color and

flavor from said fruit, and the words "grape," "orange," "lemon," "cherry," "strawberry," or "raspberry" is used to designate the product in which case the said designating word shall be accompanied by a word or words printed in type equally as conspicuous as that in which the said designating word is printed so as to indicate clearly that the product is not made wholly from the juice or the fruit indicated by the said designating word and that will otherwise properly and accurately represent and describe the product so as to indicate clearly that the same is composed in part of an ingredient or ingredients other than the juice or fruit indicated by the said designating word; or (b) if the word "grape," "orange," "lemon," "cherry," "strawberry," or "raspberry" is used to designate or describe the flavor of the said product, the designating word so used shall be immediately accompanied by the word "Imitation" printed out in full and in type equally as conspicuous as that in which the said designating word is printed.

(d) Of the phrase "Not a cheap imitation but the real thing" either independently or in connection or conjunction with any other word or words, or in any other way as descriptive of its product designated "London style fruit-cake flavoring," so as to import or imply or which may have the capacity or tendency to mislead or deceive purchasers into the belief that the said product is a European product and/or imported to the United States, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 15, 1930.)

735. False and Misleading Advertising—Question and Answer Books.—Respondent, a corporation, engaged in the publication of so-called "Blue Books" or "Question and Answer Books" for home study and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its books in interstate commerce, agreed to cease and desist forever from stating and asserting in its advertisements and advertising matter that it offers a complete high-school education or the equivalent of a 4-year high school training; that the average student through the use of its books can complete a high-school course from one to two years, or in a little time and with little effort; that the completion of its course prepares the student to pass the examination of the New York State Board of Regents, or of the New York State College Entrance Ex-

amination Board, or any college entrance or State examination; when such is not the fact; that its certificate is proof of the satisfactory completion of a high-school course, and stamps its possessor as an educated man or woman; that it issues a high-school certificate of graduation.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 17, 1930.)

736. False and Misleading Advertising and Brands or Labels—Leather and Shoe Preparation.—Respondent, a corporation, engaged in the manufacture of a product used in oiling leather, shoes, and the like and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from the use on its labels affixed to products sold in interstate commerce or in its advertisements or advertising matter distributed in interstate commerce, of the word "Neatsfoot" either independently or in connection or conjunction with any other word or words, or in any way as descriptive of its product so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said product is composed wholly of neatsfoot oil, when such is not the fact; unless, when the product is composed in substantial part of neatsfoot oil and the word "Neatsfoot" is used as descriptive thereof, in which case the said word "Neatsfoot" shall be immediately accompanied by some other word or words printed in type equally as conspicuous as that in which the word "Neatsfoot" is printed so as to indicate clearly that the said product is not composed wholly of neatsfoot oil and that will otherwise accurately and properly describe the said product.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 17, 1930.)

737. False and Misleading Advertising and Brands or Labels—Coat Fabric.—Respondent, a corporation, engaged in the manufacture of a fabric used for the making of coats and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist

forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from the use of the words "Camel," "Camelite," or any other derivative or simulation of the word "Camel" or the pictorial representation of a camel either independently or in connection or conjunction each with the other, or with any other word or words in its advertisements or advertising matter, or as a brand or label so as to import or imply or have the capacity and tendency to confuse, mislead, and deceive purchasers into the belief that said product is composed in whole or in part of camel's hair, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 17, 1930.)

738. False and Misleading Trade Name and Advertising—Blankets, Towels, Sheets, Piece Goods, and Other Cotton Goods.—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of cotton goods, including blankets, towels, sheets, piece goods, etc., and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "Mills," either independently or in connection or conjunction with any other word or words, or in any other way on its letterheads or other printed matter distributed in interstate commerce so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that respondent either owns, operates, or controls a mill or factory wherein the products sold and distributed by it in interstate commerce are made or manufactured, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 19, 1930.)

739. False and Misleading Trade Name, Advertising, and Brands or Labels—Trisodium Phosphate (Water Softener).—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of trisodium phosphate, used as a water softener, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and

desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use of the word "Soap" as a part of its corporate and trade name and/or in advertising, labeling and branding its said products either alone or in combination with any other word or words, or in any way which may confuse, mislead, or deceive purchasers into the belief that said product is a soap, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 29, 1930.)

740. False and Misleading Trade Names, Advertising, and Brands or Labels—Reducing Tablets.—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of alleged reducing tablets, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from (a) the use of the word "Takeoff" as a trade name for its product, either alone or in connection or combination with any other word or words, in its advertisements or advertising matter, or on the labels placed upon its said products; (b) the use in its advertisements or advertising matter or statements and representations which do not truthfully represent and describe its product and/or the results obtained by its use; (c) stating and representing that prices, terms, and conditions offered by it in its advertising matter are special or introductory offers, or for a limited time only, at a reduced price, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 29, 1930.)

741. False and Misleading Trade Names and Advertising and Disparagement and Misrepresentation of Competitors—Greeting Cards.—Respondent, a corporation, engaged in the business of designing and manufacturing greeting cards and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from directly or indirectly distributing or circulating in interstate commerce adver-

tising or other written or printed matter containing or setting forth any false, misleading, exaggerated, disparaging, or derogatory statements, representations, comments, or criticism concerning the merchandise, business, or business methods of its competitors, or a class of such competitors, or the agents of such competitors, or class of competitors, with the effect of restraining or embarrassing or which may have the capacity or tendency to restrain or embarrass said competitors, or class of competitors, or the said agents in the conduct of their business or businesses or with the effect of hindering or dissuading customers or prospective customers from purchasing products from said competitors, or class of competitors, or from said agents; from the circulation or distribution in interstate commerce of letters, advertisements, or other printed matter under the name of an association or associations, or any other name or names purporting to be that or those of an existing, functioning association or associations when in truth such association or associations is not or are not independent of, exists or exist only in name, and is or are controlled by the said respondent.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 29, 1930.)

742. **False and Misleading Advertising—Furs.**—Respondent, an individual, engaged in the sale and distribution of furs in interstate commerce, and in competition with other individuals, partnerships, firms, and corporations likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use in his advertisements or advertising matter of the word "Seal" either independently or in connection or conjunction with any other word or words, which may import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the product so designated or referred to is made from the fur of the seal, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (January 2, 1931.)

743. **False and Misleading Advertising—Electric Motor Devices.**—Respondent, an individual, engaged in the manufacture of a device designed for use in connection with the distributor of motor engines using electrical ignition, and in the sale and distribution of the same

in interstate commerce, and in competition with other individuals, partnerships, firms, and corporations likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use in his advertisements and advertising matter of any and all exaggerated statements and pictorial or other representations in any way so as to import or imply that the results which are accomplished by the use of the said product, as an adjunct to the distributor of a motor engine, are in excess of those of which the said product is capable of producing. Said respondent also agreed to cease and desist from the use of any and all statements and representations which import or imply or which may have the capacity or tendency to mislead or deceive the purchasers into the belief that the use of said product as an adjunct to the distributor of a motor engine will cause, result in, or effect a combustion, motor efficiency, gasoline mileage, and power in excess of that which is actually the case. Said respondent also agreed to cease and desist from representing in any way whatsoever that the use of his said device or product as an adjunct to motor-engine distributors will cause or result in clean spark plugs and cylinders, prevent or lessen carbon, and/or effect quicker starting, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (January 2, 1931.)

744. False and Misleading Advertising and Brands or Labels—Wire Clothes Line.—Respondent, a corporation, engaged in the sale and distribution of a wire clothes line product in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use, in its advertisements or advertising matter or on its labels or tags affixed to the product, of the words "Rust Proof" either independently or in connection or conjunction with any other word or words or in any way so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive the purchasers into the belief that the said product is rust proof or proof against rust, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 2, 1931.)

745. **Misbranding or Mislabeling—Washing Powder.**—Respondent, an individual, engaged in the sale and distribution of washing powder in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from (a) stamping, branding, or labeling said products, or either of them, or the containers in which the same are packed, with a selling price much in excess of the price at which they are intended to be sold and much in excess of the price at which they are actually sold in the usual course of business; (b) stamping, branding, or labeling said soap products, or the containers in which the same are packed and sold, with the words "U. S. Government," either independently or in connection or conjunction with any other word or words, figure or figures, or in any way which may import or imply that the products so stamped, branded, or labeled were manufactured in accordance with specifications of any department or bureau of the United States Government, or for Government requirements, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (January 2, 1931.)

746. **False and Misleading Advertising—Boys' Clothing.**—Respondent, an individual engaged in the sale and distribution of boys' clothing in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist (a) from the use of the word "Manufacturers" either independently or in connection or conjunction with any other word or words, in his advertising matter, letterheads, invoices, circulars, or other printed matter distributed in interstate commerce so as to import or imply that said respondent owns, controls, or operates a factory in which the products sold and distributed by him in interstate commerce are made or fabricated,

and from the use of the word "Manufacturers" in any way which may have the capacity to confuse, mislead, or deceive purchasers into the belief that said respondent owns, operates, or controls a factory where the products sold and distributed by him are made or fabricated, when such is not the fact; (b) from representing, designating, describing, or referring to his products in advertisements or advertising matter distributed in interstate commerce as "All Wool" when such products are not composed wholly of wool, and from the use in advertisements or advertising matter of the words "All Wool" either independently or in connection or conjunction with any other word or words, or in any way as descriptive of its products so as to import or imply, or which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that the same contain no ingredient other than wool, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (January 2, 1931.)

747. False and Misleading Advertising and Brands or Labels—Oil Product.—Respondent, a corporation, engaged in the manufacture of an oil product and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent in soliciting the sale of and selling its product in interstate commerce agreed to cease and desist forever from the use in its advertisements and advertising matter distributed in interstate commerce and on its labels affixed to the containers of product of the word "Neatsfoot," either independently or in connection or conjunction with any other word or words, or in any other way, as descriptive of its product so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said product is composed wholly of neatsfoot oil, when such is not the fact, unless when the product is composed in substantial part of neatsfoot oil and the word "Neatsfoot" is used as descriptive thereof, in which case the said word "Neatsfoot" shall be immediately accompanied by some other word or words printed in type equally as conspicuous as that in which word "Neatsfoot" is printed so as to indicate clearly that the said product is not composed wholly of neatsfoot and/or that will otherwise properly and accurately describe said product.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the

facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 5, 1931.)

748. False and Misleading Advertising and Brands or Labels—Volt-amp Condenser.—Respondent, an individual, engaged in the manufacture of a volt-amp condenser, and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his product in interstate commerce, agreed to cease and desist forever from making any false, fictitious, or misleading statements in his advertising matter distributed in interstate commerce or on the cartons in which said product is packed, sold, and distributed in interstate commerce concerning the price or value of said product, and from selling or supplying purchasers with said product which is stamped, branded, or otherwise marked with any false, fictitious, or misleading price known to be in excess of the price at which said product is intended to be and usually is sold at retail.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (January 7, 1931.)

749. False and Misleading Trade Name, Advertising, and Brands or Labels—Drugs and Proprietary Medicines.—Respondent, a corporation, engaged in the sale and distribution of drugs and proprietary medicines in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the words "United Drug Company" as a corporate or trade name and/or on labels, letterheads, envelopes, and other forms of advertisements or advertising matter so as to import or imply, or have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that it is identical, or is in any way connected with, or that its products are the same as those sold and distributed by United Drug Co., a Massachusetts corporation.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 7, 1931.)

750. False and Misleading Advertising—Chewing Gum and Slot Machine Confectionery.—Respondent, a corporation, engaged in the

manufacture of chewing gum and confectionery used in slot machines, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "Vegetable" as descriptive of the coloring or the finishing of its products in its advertisements or advertising matter circulated in interstate commerce, and from the use of the word "Vegetable" in any way which may have the capacity and tendency to confuse, mislead, and deceive purchasers into the belief that its products are finished with vegetable colors, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 9, 1931.)

751. False and Misleading Advertising—Poultry and Farming Correspondence Courses and Related Subjects.—Respondent, a corporation, engaged in conducting a correspondence school and more particularly in the business of preparing a course of instructions and/or lectures on poultry farming and related subjects, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use in its advertisements and advertising matter distributed in interstate commerce of statements pertaining to and/or lists or pictorial representations of persons so as to import or imply that each and all of said persons are members of the faculty of said respondent corporation, or engaged as active instructors in connection with its course or courses of instruction, when in fact such is not the case. Said respondent also agreed to cease and desist from the use of any and all statements, lists, or representations as to the relationship of persons alleged to be connected with the conduct of its course or courses of instruction which may have the capacity or tendency to mislead or deceive students or prospective students into an erroneous belief that all of said persons are faculty members of said respondent corporation engaged as active instructors of its course or courses of instruction; when in truth certain of said persons are affiliated

with the said respondent only in a nominal or advisory capacity. The said respondent further agreed to cease and desist from the use in its advertisements or advertising matter or in any way of any pictorial or other representation of a building or buildings which may have the capacity or tendency to mislead or deceive students or prospective students into the belief that the said respondent occupies and/or uses the said building or buildings in its or their entirety, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 9, 1931.)

752. False and Misleading Advertising and Brands or Labels—Shirts, Neckwear, and Underwear.—Respondents, copartners, engaged in the sale and distribution of shirts, neckwear, and underwear in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents in soliciting the sale of and selling their products in interstate commerce agreed to cease and desist forever from the use in their advertisements or advertising matter and on their brands or labels affixed to their products of the words "Makers of," the phrase "Direct from mill to wearer," and the pictorial representation of a factory, either independently or in connection or conjunction each with the other, or with any other words or phrase, or in any other way so as to import or imply or which may have the capacity and tendency to mislead and deceive purchasers into the belief that the said copartners own, operate, and control the mill or factory wherein said products are made or manufactured; of the word "English" or the word "China" either independently or in connection or conjunction with any other word or words, or in any way to designate their products so as to import or imply or which may have the capacity or tendency to mislead and deceive purchasers into the belief that the said products so designated are manufactured abroad, or in the country indicated by the said designating words or either of them, or have been imported from abroad; of the word "Silk" or the coined word "Silctex" or the word "Crêpe" either independently or in connection or conjunction with some other word or words to designate their products so as to import or imply or which may have the capacity or tendency to mislead or deceive purchasers into the belief that the products so designated are made of silk; of the word "Flannel" either independently or in connection or conjunction with any other word or words, or in any way to designate

their products so as to import or imply or which may have the capacity or tendency to deceive purchasers into the belief that the products so designated are made of wool; of the word "Suede" either independently or in connection or conjunction with any other word or words or in any way to designate their products so as to import or imply or which may have the capacity and tendency to deceive purchasers into the belief that the said products are made or fabricated from leather, a product prepared from the skins or hides of certain animals.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (January 14, 1931.)

753. False and Misleading Advertising, Trade Names, and Brands or Labels—Paint.—Respondent, an individual, engaged in the sale and distribution of paint, in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use of the word "Mills" as part of or in connection or conjunction with his trade name, or in any other way so as to import or imply, or which may have the capacity or tendency to mislead or deceive purchasers into the belief that the said respondent owns, operates, and controls the mill or factory in which are manufactured or made the products advertised, sold, and distributed by him in interstate commerce; and the said respondent also agreed to cease and desist from the use of the word "Mills" and such expressions as "Direct from the mills to you," "Save $\frac{1}{2}$ of your paint by purchasing direct and cutting out the middleman's profits," and "From this fine factory ideal paint comes to you" either independently or in connection or conjunction each with the other, or with any other word or words, pictorial representation, or in any way in his advertisements or advertising matter, or on his labels so as to import or imply or which may have the capacity or tendency to mislead or deceive purchasers into the belief that the said respondent owns, operates, and controls the mill or factory wherein his product is made or manufactured. The said respondent further agreed to cease and desist from the use of the words "Geneva paint" either independently or in connection or conjunction with the word "Mills" or with any other word or words, or in any other way to describe his products which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said products are products

made or manufactured by respondent when such is not the fact. The said respondent also agreed to cease and desist from selling or from advertising or offering for sale in interstate commerce his said product in containers represented or purporting to be of 1 gallon or other indicated quantity so as to import or imply that the said containers are filled with and/or contain the quantity of product as indicated, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (January 22, 1931.)

754. False and Misleading Advertising, Representations, and Course of Conduct—Reference Books.—Respondents, copartners, engaged in the sale and distribution in interstate commerce of publications consisting of sets of historical reference books, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents in soliciting the sale of and selling their products in interstate commerce agreed to cease and desist from stating and representing in any manner to purchasers or prospective purchasers that well-known scientists, artists, educators, statesmen, and public thinkers are associate editors of their work, or have assisted in the preparation thereof, when such is not the fact; collecting from subscribers any charge for wrapping and mailing their "ten-leaf looseleaf revision service" unless and until such charge is provided for in their subscription contract; and/or stating and representing in any manner that their reference books constitute a consolidation of two or more previously published works, when such is not the fact.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (January 22, 1931.)

755. False and Misleading Advertising—Paint Products.—Respondent, a corporation, engaged in the sale and distribution of paint products in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use in its advertisements or on its stationery, circulars, or other printed matter distributed in interstate commerce, of the words "Manu-

facturers" or "Manufactured" either independently or in connection or conjunction with any other word or words, pictorial representation, or in any other way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said respondent owns, operates, and controls a mill or factory wherein are manufactured the products sold and distributed by it in interstate commerce, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 22, 1931.)

756. **False and Misleading Advertising and Brands or Labels—Paints, Colors, and Painters' Materials.**—Respondent, a corporation, engaged in the manufacture of paints, colors, and painters' materials and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the words "Combination Zinc-Lead," either alone or in connection or combination with any other word or words in advertisements, brands, labels, or otherwise to designate any of its products, unless the product so advertised, branded, labeled, designated, or described actually contains substantial quantities of sulphate of zinc and of carbonate of lead so that both together constitute not less than 50 per cent by weight of the product; the use of the word "Lead" in its trade name, or any other combination of words containing the word "Lead," either independently or in connection or conjunction with any other word or words, or in any way so as to import or imply that the product sold under such trade name is lead, or that it contains carbonate of lead in substantial quantities, when such is not the fact; the use of the words "Strictly Pure White," alone or in connection with any trade name, and/or as a brand or label for its products sold under a trade name containing the word "Lead" so as to import or imply that the product so branded or labeled is in truth and in fact lead, or that it contains carbonate of lead in substantial quantities, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint with the commission may issue. (January 22, 1931.)

757. **False and Misleading Advertising and Brands or Labels—Woolen Piece Goods.**—Respondent, a corporation, engaged in the manufac-

ture of woolen piece goods and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein. :

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from the use of the words "Persian" and "Pelt" either independently or in connection or conjunction each with the other, or with any other word or words, or in any other way to designate its product so as to import or imply or which may have the capacity and tendency to confuse, mislead, and deceive purchasers into the belief that the said product is a product made or fabricated from either the pelt or the fur of the animal known as the Persian lamb, when in truth such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 28, 1931.)

758. False and Misleading Advertising, Representations, and Course of Conduct—Plastic and Semiplastic Roofing Materials.—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of plastic and semiplastic roofing materials composed in varying proportions of coal tar, asbestos, and other products, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent in soliciting the sale of and selling its products in interstate commerce agreed to cease and desist forever from stating and representing, directly or through its agents and solicitors that its products, sold under certain trade names, are "roof," "roofing," or a "compound roofing," when such is not the fact; that no upkeep expense is required when said products are used, when in truth and in fact repairs were necessary and when made only the material was furnished and the dealer and/or property owner was required to bear the labor cost of application; making exaggerated and unqualified claims respecting the alleged 10 and/or 15 year durability of its products not warranted by the facts; making exaggerated and misleading statements and representations, not warranted by the facts, respecting the cheapness of its products as compared with other roof coatings; and from making statements or representations so as to import or imply that collection of past due notes and other indebtedness are made through a collecting agency, when in truth and in

fact no such agency exists independent of the control of the said corporation or one or more of its said officers and stockholders.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 28, 1931.)

759. **False and Misleading Trade Name, Advertising, and Brands or Labels—Cotton Goods.**—Respondent, a corporation, engaged in selling and distributing cotton goods in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce agreed to cease and desist forever from the use of the word "Mills" as part of, or in connection or conjunction with its corporate or trade name, or on its letterheads, tags, pin tickets, or other advertising matter distributed in interstate commerce so as to import or imply, or which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that the said respondent owns, operates, and controls the mill, plant, or factory wherein are made, fabricated, and finished the products sold by it in interstate commerce under the aforesaid corporate name containing the word "Mills", when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 28, 1931.)

760. **False and Misleading Testimonial Advertising—Hosiery.**—Respondent, a corporation, engaged in the manufacture of hosiery and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce agreed to cease and desist forever from the use in newspaper, magazine, and other advertisements and advertising matter of any portraits of actresses in connection with statements that such actresses indorse, favor, use, and/or wear said products unless such statements represent and are the genuine and authorized opinions and/or testimonials of said actresses; and if a monetary or other consideration has been given on consideration of the privilege of using a portrait and of the expression of an opinion or the giving of a testimonial, that then the respondent shall publish, or cause to

be published, along with such portrait and/or testimonial and in an equally conspicuous manner the fact that such consideration has been paid, or agreed to be paid.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 4, 1931.)

761. False and Misleading Advertising and Brands or Labels—Ladies' Coats.—Respondent, a corporation, engaged in the manufacture of ladies' coats and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist from the alleged unfair practices as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "Persian" and/or the word "Pelt" either independently or in connection or conjunction each with the other, or with any other word or words, or in any other way to designate or as a brand or label for its products so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said products are made from the pelt of the Persian lamb or other animal, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 6, 1931.)

762. Misbranding or Mislabeling—Penknives.—Respondents, copartners, engaged in the manufacture of emblem jewelry and penknives and in the sale and distribution of the same in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair practices as set forth therein.

Respondents agreed to cease and desist forever from marking or branding the penknives made, sold, and distributed by them in interstate commerce, having an outer shell or covering of gold and an inner concealed sheet or filling of base metal, with any words, marks, or figures indicating the fineness of the gold covering so as to import or imply that the entire filling and shell of the handle of said penknives, with the exception of the skeleton of the same, was or is of the fineness of the gold indicated, when such is not the fact, and from the marking or stamping of any marks or figures on the aforesaid product indicating the fineness of gold of which any part or parts of the aforesaid product is made, without correctly indicating that part or

parts of said product that is composed of the fineness of gold as represented, and so as not to confuse or mislead the purchaser into the belief that the concealed sheet or filling of the handle of said knife is gold in whole or in part, when such is not the fact.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (February 11, 1931.)

763. False and Misleading Advertising and Brands or Labels—Battery Solution.—Respondent, a corporation, engaged in the manufacture of a product used as a battery solution and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreements to cease and desist from the alleged unfair methods of competition as set forth therein.

Respondent in soliciting the sale of and selling its product in interstate commerce agreed to cease and desist forever from the use in its advertisements and advertising matter, or on its brands or labels affixed to product, of any and all statements and representations so as to import or imply or which may have the capacity and tendency to mislead or deceive purchasers into the belief that its said product used as a battery solution will instantly charge or cause an immediate electrical energy to enter the plates or that the said product, when used as aforesaid, will not freeze, when such is not the fact. The said company also agrees to cease and desist from the use of any and all statements and representations or advertising matter or on its brands or labels affixed to product which are false, misleading, or deceptive, or are in excess of what may be accomplished by the use of said product as a battery solution.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 11, 1931.)

764. False and Misleading Advertising and Brands or Labels—Window Shades.—Respondent, a corporation, engaged in the sale and distribution of window shades in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent in soliciting the sale of and selling its products in interstate commerce agreed to cease and desist forever from the use of the word "Special" or "Specials," either independently or in connection or conjunction with any other word or words, or in any

other way as descriptive of said products in its advertisements or advertising matter, or on brands or labels affixed to said products so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said products are specially made up and offered at an attractive price, or are regular products offered at a special price or at a price other than that usually obtained or asked for such products in the ordinary course of business, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 16, 1931.)

765. False and Misleading Advertising and Brands or Labels—Malt Products.—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of malt products, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent in soliciting the sale of and selling its products in interstate commerce agreed to cease and desist forever from the use in advertisements and advertising matter and/or on the brands or labels which it causes to be placed on said products of the words "Canadian" and/or "Du Canadien," or either of them, either alone or in connection or conjunction with any other word or words, or in any way as descriptive of its products so as to import or imply that the said products are of Canadian manufacture or imported in the United States from Canada, when such is not the fact, and from the use of the word "Canada" in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are of Canadian manufacture and/or are imported into the United States, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 16, 1931.)

766. Misbranding or Mislabeling—Embroidery and Crocheting Threads.—Respondent, a corporation, engaged in the sale and distribution at wholesale in interstate commerce, among other things, of threads used for embroidering and crocheting, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "Satin" as a mark, brand, or label for products not composed of silk, the product of the cocoon of the silk worm; and from the use of the word "Satin" in any way which may import or imply, or which may confuse, mislead, or deceive purchasers into the belief that said products are composed of silk, the product of the cocoon of the silk worm, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 16, 1931.)

767. False and Misleading Advertising and Brands or Labels—Paints.— Respondent, a corporation, engaged in the nursery, seed, plant, and farmers' supply business and in the sale and distribution of its products in interstate commerce, including paints by mail orders, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed in soliciting the sale of and selling its paints in interstate commerce to cease and desist forever from advertising, claiming, and representing that its paints are "the best," or that they are "high grade" paints when such is not the fact; labeling and marking the containers in which its paint products are sold and distributed with purported analyses which do not properly and accurately represent the content thereof.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 16, 1931.)

768. False and Misleading Trade Names, Advertising, and Brands or Labels—Building Material.— Respondent, a corporation, engaged in the importation of asbestos and the processing of same with other products to be used as building material and in the sale and distribution of its products in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed in soliciting the sale of and selling its products in interstate commerce to cease and desist forever from (a) the use of the word "Marble" either independently or in connection or combination with any other word or words in its advertising, on

labels, or as a trade name for its product so as to import or imply that the product so designated, advertised, labeled, and referred to is made of marble, when such is not the fact; or if the word "Marble" or "Newmarble" is used to represent or designate said product, in which case the same must be accompanied by an explanatory word or words printed in letters equally as conspicuous as those in which the word marble or newmarble is printed so as to indicate clearly that the product is not composed of marble either in whole or in part; (b) the use in advertisements or advertising matter of statements and representations that the finish of said product is permanent, or that it is fireproof, waterproof, or weatherproof, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (March 4, 1931.)

769. **False and Misleading Advertising—Stock Certificates and Options.**—Respondent, an individual, engaged as a stock promoter and stock broker in the sale and distribution of options and stock certificates in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent in soliciting the sale of and selling certificates of option or of stock in a certain mining company agreed to cease and desist forever from the use in advertisements and advertising matter distributed in interstate commerce of the word "Tangible" either independently or in connection or conjunction with the word "Assets" or with any other word or words, or in any way as descriptive of unproved ores possibly existing or contained in properties controlled and/or operated by said company so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that ores in said properties have been actually proved and/or blocked out to make them appraisable as an actual, tangible mass of ores, when such is not the fact. Respondent also agreed to cease and desist from the statement or representation in his advertisements or advertising matter that a certain individual connected with said mining company is an executive of a certain oil company, when in fact said individual is not such official.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (March 4, 1931.)

770. **False and Misleading Advertising and Brands or Labels—Cotton Thread.**—Respondent, a corporation, engaged in the sale and distribution of cotton thread in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent in soliciting the sale of and selling its products in interstate commerce agreed to cease and desist forever from the use of the word "Silk" in advertisements, labels, or any other way, either alone or in connection or combination with any other word or words, letter or letters, so as to import or imply that the products so designated, represented, referred to and/or labeled and sold in interstate commerce are manufactured in whole or in part from silk, the product of the cocoon of the silk worm, when such is not the fact; and from the use of the word "Silk" either independently or in connection or conjunction with any other word or words, or in any other way which may have the tendency and capacity to confuse, mislead, and deceive the purchasing public into the belief that the products so designated and sold by respondent in interstate commerce are manufactured in whole or in part from silk, the product of the cocoon of the silk worm, when such is not the fact; the use of words, phrases, and expressions suggesting and/or tending to cause the belief that seams stitched with mercerized thread and the thread itself are hidden or concealed so that they can not be seen, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (March 4, 1931.)

771. **False and Misleading Advertising and Brands or Labels—Jam and Jelly Powders.**—Respondent, a corporation, engaged in the manufacture of powders for making jam and jelly and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair practices as set forth therein.

Respondent in soliciting the sale of and selling its products in interstate commerce agreed to cease and desist forever from the use of the word "Grape" or other fruit name, either independently or in connection or conjunction with any other word or words, pictorial representations, or in any other way, on its labels or in its advertisements or advertising matter to designate, represent, or refer

to its said products so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said products are manufactured from and/or flavored with the juice or the fruit of the grape, or other designated fruit; unless if the word "Grape" or other fruit name be used to designate or describe a synthetic product or the flavor thereof, in which case the word "Grape" or other fruit name shall be immediately accompanied by a word or words printed in type equally as conspicuous as that in which the word "Grape" or other fruit name is printed so as to indicate clearly that the said product or the flavor thereof is not made or derived from the grape, or other designated fruit. Said respondent also agreed to cease and desist from the representation that its said products contain all of the jelly making properties of fruit, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (March 4, 1931.)

772. False and Misleading Advertising—Cosmetics.—Respondent, a corporation, engaged in the preparation of cosmetics and in the sale and distribution of said products in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair practices as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use in its advertisements and advertising matter of statements and representations which may have the tendency and capacity to confuse, mislead, and deceive purchasers into the belief that the products purchased from said respondent are compounded or prepared to order to meet the requirements of each individual customer, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (March 4, 1931.)

773. False and Misleading Advertising and Brands or Labels—"Fruit drink" Powders.—Respondent, an individual, engaged in the sale and distribution in interstate commerce of alleged fruit drink powders, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair practices as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from marking, stamping, and/or labeling his products with such words as "Strawberry," "Orange," "Grape," "Cherry," "Raspberry," or either of them, or with the name of any other fruit, either independently or in connection or conjunction with any other word or words, as a brand or designation for synthetic products in the sale and distribution thereof in interstate commerce which import or imply that said products are composed of the juice or the fruit of either the orange, lemon, grape, cherry, raspberry, strawberry, or other fruit, or of the fruit thereof when such is not the fact, and from the use of the words orange, lemon, grape, cherry, raspberry, strawberry, or any of them, or of the name of any other fruit in any way which may have the capacity and tendency to confuse, mislead, and deceive purchasers into the belief that said products are manufactured from either the juice or the fruit of the orange, lemon, grape, cherry, raspberry, strawberry, or any other fruit, when such is not the fact; the said respondent further agreed to cease and desist forever from the use in advertising matter or on labels of such phrases and expressions as: "Fully guaranteed under all pure food laws," or any other equivalent or similar expressions having the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that said products have been examined and/or approved by any bureau of the Government, or that any such bureau has guaranteed or guarantees that the same comply with the pure food laws, when such is not the fact.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (March 4, 1931.)

774. False and Misleading Trade Names, Advertising, and Brands or Labels—Watches.—Respondent, a corporation, engaged in the sale and distribution of watches in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its watches in interstate commerce, agreed to cease and desist forever from the use as a brand or label for its product, or in advertising, selling, or distributing the same in interstate commerce, any pictorial representation of a military cadet or soldier in uniform, or the words "Westpointer Watches Guarding the Nation's Time" either independently or in connection or conjunction each with the other, or with the

words "West Point" or with any other word or words so as to confuse, mislead, or deceive the purchasing public into the belief that the said products are made in accordance with Government specifications and/or have been adopted by the War Department for the use of the United States Military Academy at West Point and/or are used by the cadets of the aforesaid Government institution, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (March 4, 1931.)

775. Misbranding or Mislabeling—Hair Pins and Metal Specialties.— Respondent, a corporation, engaged in the manufacture of metal specialties, including hairpins, and in the sale and distribution of said products in interstate commerce, and in competition with other corporations, individuals, firms; and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from marking or labeling the cards on which its products, or any of them, are mounted with the words "Reg. U. S. Pat. Off.," when the name under which the same are sold has not been registered in the United States Patent Office as a trade-mark; and from the use of the words "Registered in the U. S. Patent Office," or of any abbreviation thereof in any way which may have the capacity and tendency to confuse, mislead, and deceive purchasers into the belief that the trade name under which the product so marked is sold has been registered in the United States Patent Office, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (March 11, 1931.)

776. False and Misleading Testimonial Advertising—Cosmetics.— Respondent, a corporation engaged in the manufacture of cosmetics, face powder, and skin creams, and in the sale and distribution of said products in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent in soliciting the sale of and selling its products agreed to cease and desist forever from the use in its advertisements and advertising matter distributed in interstate commerce of testimonials and/or pictorial or other forms of indorsements of said products, unless said testimonials and indorsements represent and are the

genuine, authorized, and unbiased opinions of the author or authors thereof or of the persons whose photographs are used, and if a monetary or other consideration is given or agreed to be given for a testimonial or for the privilege of using a photograph or pictorial representation, the said respondent shall publish or cause to be published along with said advertisement and in an equally conspicuous manner the fact that said testimonial or the privilege of using said photograph or pictorial representation has been secured for a consideration.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (March 11, 1931.)

777. False and Misleading Advertising—Cameras, Films, Flash Lights, Batteries, and Other Merchandise.—Respondents, copartners, engaged in the sale and distribution of cameras, films, flashlights, batteries, and other merchandise in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from using in their advertisements or advertising matter in interstate commerce the word "Free" either independently or in connection or conjunction with any other word or words, or in any way so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the products to which said word refers are in truth and in fact given free or as a gratuity, and that their cost is not included in the price paid by the purchasers for some other product or products. The said copartners further agree to cease and desist from the use of the statement or representation that "This offer is made by the manufacturer to introduce to you roll films"; when in truth such statement or representation is not in accordance with the fact.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (March 11, 1931.)

778. False and Misleading Advertising—Insulating Boards and Fiber Products.—Respondents, a corporation, engaged in the manufacture, sale, and distribution of fiber products, including insulating board, in interstate commerce, and a partnership engaged in the purchase and sale of fiber products, including insulating board, in interstate

commerce, and in competition with other corporations, partnerships, individuals, and firms likewise engaged entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from the use in their advertisements and advertising matter of any word, words, or expressions suggesting or implying that any bureau of the Government of the United States has officially indorsed or approved any of their products, or that such bureau has stated or held that any such product is the best insulation made, or is better than any other similar product, when such is not the fact; and from the use in advertisement or advertising matter of any word, words, or expressions which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that said products have been officially indorsed or approved by any bureau of the United States Government, or that any such bureau has stated or held that any such product is the best insulation made, or is better than any other similar product, when such is not the fact.

Respondents also agreed that should they ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (March 16, 1931.)

779. False and Misleading Advertising and Brands or Labels—"Aluminum" Powder.—Respondent, a corporation, engaged in the manufacture of an alleged pure aluminum powder and in the sale and distribution of said product in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed, in soliciting the sale of and selling its product in interstate commerce, to cease and desist forever from the use of the word "Aluminum" either independently or in connection or conjunction with the words "Superior Quality" or "Chemically Pure" or the letters "C. P.", or with any other word or words, letter or letters, or in any other way so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said products are composed of aluminum, when such is not the fact; unless, when the said products are composed in substantial part of aluminum and the word "Aluminum" is used to designate the same, in which case the said designating word shall be accompanied by some other word or words printed in type equally as conspicuous as that in which the word "Aluminum" is printed so as to indicate clearly that the said products are composed in part of a material or materials other than aluminum.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (March 16, 1931.)

780. Misbranding or Mislabeled—Hosiery.—Respondent, a corporation, engaged in the manufacture of hosiery and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair practices as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "Wool" either independently or in connection or conjunction with any other word or words, as a brand or label for its products so as to import or imply that said products are composed in substantial part of wool, or that wool is the principal and predominant element therein, when such is not the fact; and from the use of the word "Wool" in any other way which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that the products so described, designated, marked, or branded are composed of wool, or that wool is the principal or predominant element therein, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (March 16, 1930.)

781. False and Misleading Advertising—Automobile Accessories, Radios, Radio Accessories, Fishing Tackle, and Similar Merchandise.—Respondents, corporations engaged in the coordinative purchasing, sale, and distribution of merchandise such as that handled by hardware stores, and including automobile accessories, radios, radio accessories, fishing tackle, and the like in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents in soliciting the sale of and selling their products in interstate commerce agreed to cease and desist forever from the use in their advertisements and advertising matter distributed in interstate commerce of the statement or representation, "An average of 31 cents out of every dollar you spend is put back into the community through your own pocketbook," either independently or in connection or conjunction with the statement, "This represents the saving you make," or with any other statement or representation, or in any

other way so as to import or imply that there is a saving of 31 cents on each dollar, or a saving of any other amount effected by purchasers of products from the aforesaid corporations, when such is not the fact. The said corporations also agreed to cease and desist from the aforesaid statements or representations, or from any other statements or representations that may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that a saving of a specified amount, or of any other amount, is actually made by purchasing their products, when such is not the fact.

Respondents also agreed that should they ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (March 16, 1931.)

782. **False and Misleading Trade Name, Advertising, and Brands or Labels—Phonograph and "Talking-Picture" Sound Needles.**—Respondent, a corporation, engaged in the purchase, importation, sale, and distribution in interstate commerce of phonograph and "talking-picture" sound needles, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "Manufacturing" as a part of, or in connection with its corporate and trade name, and in advertisements and advertising matter, on letterheads and other stationery, as a label for the packages in which its products are put up, or in any way which may import or imply, or which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that said respondent owns, controls, or operates a mill or factory wherein the products sold by it in interstate commerce are fabricated, when such is not the fact; and from the use in advertisements or advertising matter circulated in interstate commerce of statements and expressions to the effect that its products, other than a certain brand of needles, have been tested and/or approved by an electrical research company, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (March 20, 1931.)

783. **False and Misleading Advertising—Jelly Spread Preparation.**—Respondent, a corporation, engaged in the manufacture of a product which, when prepared as directed with sugar and water, makes a jelly spread, and in the sale and distribution of the same in inter-

state commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from the use in its advertisements or advertising matter distributed in interstate commerce of the words "Contains all the jelly-making properties of the fruit" either independently or in connection or conjunction with the statement "One step ahead of jelly" or with any other word or words, statement or statements, or in any way as descriptive of its product so as to import or imply or which may have the capacity or tendency to mislead or deceive purchasers into the belief that the said product is a fruit jelly or contains all the jelly-making properties of true, fresh fruit, or that it contains all the nutritious value or properties of true fruit jelly, when in fact such is not the case.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (March 23, 1931.)

784. **False and Misleading Advertising and Brands or Labels—Cotton Goods.**—Respondent, an individual, engaged in the sale and distribution of cotton goods in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use as a brand or label for the same, or in advertising, selling, or distributing the same in interstate commerce, of the words "West Point," together with a pictorial representation of a military cadet or soldier in uniform, or in connection or conjunction with any other word or words, or any other pictorial representation so as to confuse, mislead, or deceive the purchasing public into the belief that the said products are made in accordance with Government specifications and/or have been adopted by the War Department for the use of the said Military Academy at West Point and/or that the said products are used by the cadets of the aforesaid Government institution, when such is not the fact.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (March 23, 1931.)

DIGEST OF FALSE, MISLEADING, AND FRAUDULENT ADVERTISING, STIPULATIONS OF THE SPECIAL BOARD OF INVESTIGATION, WITH PUBLISHERS, ADVERTISING AGENCIES, AND ADVERTISING VENDORS, PUBLISHED AFTER DELETING NAMES OF RESPONDENTS¹

01. Publisher—"Good Luck" Powders, Oils, and Other Preparations and Devices—"Pep" Tablets.—A corporation engaged in the publication, sale, and distribution of a weekly magazine having general circulation throughout the United States has entered into a stipulation and agreement with the Federal Trade Commission based on its publication and circulation in interstate commerce of certain alleged false and misleading advertisements.

¹ The stipulations published herewith include those negotiated by the board and accepted by the commission during the period from May 6, 1929, the date of the board's creation, to and including March 23, 1931, the concluding date of this volume.

The history and work of the board, with jurisdiction over radio as well as published advertising, were discussed in the commission's annual report for 1930, as follows:

"The special board of investigation was created by order of the commission May 6, 1929, following adoption of a definite policy of dealing with false, misleading, and fraudulent advertising published in magazines, newspapers, and periodicals.

"Composed of three of the commission's attorneys, the board was given general power to take jurisdiction over all matters referred to it, to carry out investigations, hold hearings, and submit reports and recommendations directly to the commission.

"Prior to creation of the board a large number of applications for complaints were filed charging publication of false and misleading advertisements, resulting in an order for issuance of complaints against numerous advertisers in many magazines, newspapers, and other publications.

"The commission deemed it advisable in the proper prosecution of such complaints to join the advertising agency and the publisher involved in each case as respondents with the advertiser. To give publishers and advertising agencies an opportunity and option to stipulate and abide by the action of the commission without becoming or being made respondents to complaints was one reason for creation of the new tribunal.

"Hearings conducted by the board are informal. They have proven to be most effective in the development of the commission's policy. Many informal hearings have been held and publishers and advertising agencies uniformly elected to abide the action of the commission without becoming or being made parties respondent to the commission's complaints.

"As an aid to immediate correction of the evils complained of, and to facilitate elimination of the objectionable matter against which such complaints had been ordered to issue, the publishers and advertising agencies requested that the advertisers be given the option of like informal hearings to be granted on their petitions therefor.

"The commission broadened the jurisdiction of the board giving to it the discretionary power to grant an informal hearing, upon his petition, to any advertiser against whom a complaint had been ordered to be issued. Petitions for a hearing before the board are usually granted, the advertiser being given the opportunity to appear in person or by counsel, and to submit or make such statements of fact or law as he may desire. These hearings are participated in not only by the advertiser but quite often by the agency that carries his account and assists in preparation of his advertising copy.

"The advertiser and his advertising agency, as a result of these hearings, are engaged in so modifying their advertising copy as to bring it in conformity with the law, eliminating all matter to be charged as unlawful and unfair in such complaints.

"In any case, the special board, if the advertiser, agency, and publisher so elect, prepares tentative stipulations against future use of the objectionable matter, causes them to be executed by the proposed respondents, and submits them for such action as the commission may deem best in the premises.

"In every case in which the special board shall be compelled to report that the advertiser, his agency, and the publisher have so elected, complaints are to issue under such former orders therefor and proceed to service.

The publisher accepted and published in certain issues of its magazine, copies of which were circulated in interstate commerce, the advertisements of a number of concerns against whom the commission ordered complaints based on charges of false and misleading advertising. The advertisements which formed the basis of the commission's action comprised the advertisements of certain individuals, partnerships, and corporations, all doing business in interstate commerce, and include the advertisements of a copartnership selling charms, amulets, rings, curios, good-luck outfits, magic lodestones, powders, oils, and various other preparations and devices alleged to bring good luck, success in love affairs, games of chance, business, and in all matters pertaining to the life of the purchasers thereof, and to control the life or affairs of others. The stipulation also

"The board, upon full consideration of the facts and law, may also prepare and submit direct to the commission its report containing a summary of the facts developed, together with its opinion based on the facts and law and its recommendation that the order for complaint be vacated where the evidence does not disclose a violation of law over which the commission has jurisdiction.

"A large percentage of the cases before the board pertain to alleged cure-alls, devices for therapeutic treatments, and drug and toilet preparations, and it is significant to note that the total amount of newspaper space devoted to advertisements of medical products and toilet articles in 1929, according to a survey conducted by a department of the Government in 50 representative cities was 81,146,000 lines. Foods and beverages were advertised to the extent of 74,241,000 lines, bringing the grand total of advertising of articles or services directly affecting the health of the consumer in these 50 cities to 155,387,000 lines.

"A survey including leading monthly and weekly magazines, representative farm magazines, and advertising by radio, discloses that during 1929 there was expended for national advertising \$231,629,270, of which total \$64,260,218, or 27.7 per cent, was to advertise products which directly affect the health of the consumer; namely, drugs and toilet articles, \$35,987,386; and foods and food beverages, \$28,272,832.

"These are minimum figures, as the survey embraced only a number of leading periodicals. The amount listed for broadcasting covered only two leading chains. All local advertising and advertisements of less than 14 agate lines were excluded.

"The work of the special board has expedited the work of the commission, and it can be stated that generally the publishers and advertising agencies have expressed approval of the commission's campaign against false and misleading and fraudulent advertising, and have offered to cooperate to prevent the methods denounced by the commission, as well as to aid advertisers in so modifying their copy as to bring it at all times in conformity with the law.

"The cooperation accorded the special board by the advertiser, publisher, and agency is a complete vindication of the commission's policy in respect to its new method of procedure in cases dealing with false, misleading, and fraudulent advertising in newspapers, magazines, and periodicals. A continued vigorous prosecution of this work will be necessary to give to the commission and the public the full benefit of this cooperation."

The social and economic significance of false, misleading, and fraudulent advertising, with annual aggregate losses undoubtedly running into huge figures, has been generally recognized. Legal aspects of the work of the commission in dealing with this class of case, more particularly as suggested by the case of Federal Trade Commission v. Raladam, decided by the Supreme Court on May 25, 1931, 283 U. S. 643, may be found treated at length in an article in the Columbia Law Review for April, 1931, by Milton J. Handler, assistant professor of law at Columbia University.

The first board was composed of Mr. Martin A. Morrison, acting chairman, Mr. James E. Horton, and Mr. Eugene L. Culver, the first two, later assistant chief counsel and assistant chief examiner, respectively, serving in addition to their other duties. Mr. Culver's assignment, however, had to do entirely with the work of the new board. The latter, upon his resignation to engage in private practice, was succeeded by Mr. W. F. Davidson, Messrs. Edgar J. Adams and Clyde M. Hadley succeeding Messrs. Morrison and Horton, respectively, upon their being relieved of their assignments. The personnel of the board as of March 23, 1931, is thus composed of Messrs. Adams, chairman; Davidson, vice chairman; and Hadley, all of whose time is assigned exclusively to its affairs.

covers the advertisements of four other concerns selling so-called "Pep" tablets for the alleged restoration of vigor, energy, or vitality in mankind.

The publisher waived its right to be made party respondent in each of said complaints, and stipulated and agreed that if complaints issue the proceedings based thereon may go forward in all things with the same effect as though the publisher were a party thereto, and that it will be bound by and obey any cease and desist order that may be issued thereon.

The publisher also stipulated and agreed that it would discontinue the publication and circulation of said advertisements pending the disposition by the Federal Trade Commission of complaints so ordered, and also stipulated and agreed that if any of these cases are disposed of by stipulation between the commission and any of the advertiser respondents, the publisher will be bound by and faithfully observe the terms of such stipulation, and will not break or cause to be broken or be a party to the breach of any of the terms, provisions, or agreements thereof. (October 30, 1929.)

02. Advertising Agency—Treatment for Female Weakness.—An advertising agency engaged in conducting a general advertising agency business has entered into a stipulation and agreement with the Federal Trade Commission based on its activities in procuring the insertion and publication of a certain false and misleading advertisement.

The advertising agency procured and caused to be inserted and published in newspapers, periodicals, and magazines of general circulation throughout the United States, an advertisement of a corporation engaged in the manufacture and sale in interstate commerce of an alleged treatment for female weakness, against which corporation the commission ordered complaint, based on a charge of false and misleading advertising.

The name of the corporation, the real party in interest, was not disclosed, the advertisement being inserted and published over the name of an individual who represented that she had nothing to sell and that the method of treatment would be sent free on request.

The advertising agency waived its right to be made party respondent in said complaint and stipulated and agreed that if complaint issue the proceedings based thereon may go forward in all things with the same effect as though the agency were a party thereto, and that it will be bound by and obey any cease and desist order that may be issued thereon. (October 30, 1929.)

03. Vendor Advertiser—Course in Applied Psychology.—Respondent, an individual engaged in the business of selling a course of instruction in applied psychology, sold and distributed in interstate com-

merce and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into a stipulation of facts and agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Respondent in soliciting the sale of and selling his course of instruction in interstate commerce agreed to cease and desist from representing in advertisements, or otherwise, that he can bring to the purchasers of said course of instruction money, advancement, or success in any form; or that by an alleged combination of certain principles of chemistry, physics, and psychology he has developed a formula that enables him to produce success in others; and that through this "success formula" one's hopes, desires, and ambitions can be achieved, or that one's life and career can be controlled, or that the use of this formula guarantees success in any undertaking, or from making any other statements or representations which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the course of instruction so represented or described will produce any of the results set out therein when such is not the fact. (October 30, 1929.)

04. Vendor Advertiser—Asthma Remedy.—Respondent, a corporation engaged in the manufacture of a remedy for asthma, sold and distributed in interstate commerce, and in competition with other individuals, firms, copartnerships, and corporations likewise engaged, entered into a stipulation of facts and agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from representing in advertisements or otherwise that its product is a specific cure for asthma or that it is more than a remedy or treatment for the alleviation or relief from the pain or inconvenience incident thereto, and also from making any other statements or representations which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the product so represented or described will produce any of the results set out therein when such is not the fact. (November 4, 1929.)

05. Advertising Agency—Pycorrhoea Treatment.—An advertising agency engaged in conducting a general advertising-agency business has entered into a stipulation and agreement with the Federal Trade Commission based on its activities in procuring the insertion and publication of a certain false and misleading advertisement.

The advertising agency procured and caused to be inserted and published in newspapers, periodicals, and magazines of general circulation throughout the United States an advertisement of an individual engaged in the manufacture and sale in interstate commerce

of an alleged treatment for the cure of pyorrhea, against which individual the commission ordered complaint, based on a charge of false and misleading advertising.

The advertising agency waived its right to be made party respondent in said complaint and stipulated and agreed that if complaint issue the proceeding based thereon may go forward in all things with the same effect as though the agency were a party thereto and that it will be bound by and obey any cease-and-desist order that may be issued thereon. (November 18, 1929.)

06. Advertising Agency—Asthma Remedy.—An advertising agency engaged in the business of procuring, preparing, and placing advertising copy for publication in periodicals of general circulation, and having placed copy for a certain vendor of an alleged cure for asthma, against whom proceedings have been instituted before the Federal Trade Commission, has signed a stipulation with the Federal Trade Commission by which it agrees that it will not insert or cause to be inserted or published any advertisement of the said asthma cure which contains any statement or representation declared by the Federal Trade Commission to be false and misleading, pending the final disposition of proceedings before the commission against the vendor of said cure.

The advertising agency also agrees that it will observe and abide by the terms and provisions of any cease and desist order that may be issued by the commission against the vendor of the alleged cure for asthma; all upon condition that the Federal Trade Commission will not make the advertising agency a party defendant or correspondent in the proceedings against the vendor.

The charges against the vendor are that he is making false and misleading statements and representations concerning his alleged cure which have the capacity and tendency to, and do, mislead and deceive the public into buying his alleged remedy instead of others that may be offered for sale by fair methods under truthful representations. (November 22, 1929.)

07. Magazine Publisher—Asthma Cure; Pyorrhea Cure; Treatments or Remedies for Female Weakness, Stomach and Heart Diseases, Nervous Debility, Catarrh, and Dropsy.—A corporation engaged in the publication, sale, and distribution of a monthly magazine having general circulation throughout the United States has entered into a stipulation and agreement with the Federal Trade Commission based on its publication and circulation in interstate commerce of certain alleged false and misleading advertisements.

The publisher accepted and published in certain issues of its magazine, copies of which were circulated in interstate commerce, the advertisements of a number of concerns against whom the commis-

sion ordered complaints, based on charges of false and misleading advertising. The advertisements which formed the basis of the commission's action comprised the advertisements of certain individuals, partnerships, and corporations, all doing business in interstate commerce, and include the advertisements of a corporation selling an alleged cure for asthma; the advertisement of an individual selling an alleged treatment for the cure of pyorrhea; the advertisement of a corporation selling an alleged treatment for female weakness, in which advertisement the name of the corporation, the real party in interest, was not disclosed, the said advertisement being inserted and published over the name of an individual stating she had nothing to sell, and that the method of treatment would be sent free on request; the advertisement of an individual selling an alleged remedy for the cure of asthma; the advertisement of a corporation selling an alleged remedy for the treatment of stomach and heart diseases, nervous debility, and catarrh; and the advertisement of an individual selling an alleged remedy for the cure of dropsy.

The publisher waived its right to be made party respondent in each of said complaints, and stipulated that pending the disposition of said complaints it would not insert and publish in its magazine any advertisements of the products referred to which contained any statements or representations alleged by the Federal Trade Commission to be false and misleading. The publisher also stipulated and agreed that it would be bound by and obey any cease and desist order that may issue on any of said complaints. (November 22, 1929.)

08. **Publisher—Grow Hair Quickly; Hair Treatment.**—A corporation, publisher of a periodical that published advertisements of two companies, one offering for sale a compound that it is claimed would cause the hair to grow quickly and another selling a hair treatment has signed a stipulation with the Federal Trade Commission in which it agrees that it will do, or cause to be done, no act or thing that would violate the provisions of the cease and desist orders against the vendor-advertisers pending final disposition of proceedings against them, and will observe and abide by the terms and provisions of such cease and desist orders when issued, if the Federal Trade Commission will refrain from making the publisher a corespondent or party defendant with such vendor-advertisers in the proceedings.

The charges against the vendor-advertisers are that they have made and published false and misleading statements and representations concerning the things offered for sale that have the capacity and tendency to and do deceive and mislead the public into buying from them instead of competitors that may sell the same or similar things by fair methods and truthful claims. (December 12, 1929.)

09. **Advertising Agency—Mineral Detector and Book on Death.**—An advertising agency engaged in placing advertising copy for publication in various periodicals of general circulation for the vendors of an instrument to detect minerals in the earth and a book, *What Happens Upon Death*, has agreed with the Federal Trade Commission by stipulation that if the commission will refrain from making the advertising agency a joint defendant in the proceedings against the advertisers that it will faithfully observe and abide by the provisions of any cease and desist order that may be issued against the advertisers and will do no act that would be a violation of such an order.

The advertisers are charged with making, circulating, and publishing statements and representations that are false and misleading concerning the commodities offered for sale to the general public and thereby deceive and mislead the public into buying their commodities in preference to others that are offered for sale under fair methods and truthful claims and representations. (December 9, 1929.)

010. **Advertising Agent—Eczema Cure, Cure for Tobacco Habit, and a Personality Book.**—An advertising agency placing for publication the advertisements of the vendors of an alleged cure for eczema; a personality book, and a cure for the tobacco habit, has stipulated with the Federal Trade Commission that if the commission will not join it with these vendor-advertisers as a correspondent in the proceedings pending before the commission against them that it, the advertising agency, will abide by the provisions of any cease and desist orders that may issue in such proceedings to the same extent as if the advertising agency was made a party defendant in each of such orders, and do no act or thing thereafter that would be a violation thereof.

The charges against the vendor-advertisers are making and publishing false and misleading representations that deceive and mislead the public into buying from them instead of competitors who used fair methods and truthful representations in selling their products. (December 9, 1929.)

011. **Advertising Agency—Excessive Earnings.**—A corporation engaged in the business of procuring, preparing, and placing for publication in periodicals of general circulation the advertisements of clients seeking salesmen and promising large and excessive earnings for those who will engage in selling a new trouble light and a line of shirts, has signed a stipulation with the Federal Trade Commission in which the advertising agency agrees that if the commission will refrain from making it a party defendant or correspondent with the advertisers in proceedings pending against them until the pro-

ceedings against the advertisers have been definitely disposed of it "will not insert or publish, or cause to be inserted or published, in any publication any advertisements of the products of said respondent which contain statements or representations so declared by the Federal Trade Commission to be false and misleading in violation of section 5 of the Federal Trade Commission act," and in case a cease and desist order shall be issued against the advertisers, or either of them, it, the advertising agency, "will do no act or thing, and will cause no act or thing to be done, that would be a violation of such order."

The charges against the advertisers are that the claims made are false and misleading, have the capacity and tendency to and do mislead and deceive that part of the public seeking employment to undertake to sell the commodities offered with the hope of earning the compensation claimed by the advertiser. (December 9, 1929.)

012. Advertising Agency—Cure for Rheumatism.—A corporation conducting the general business of an advertising agency and placing for publication the advertisements of a vendor selling an alleged cure for rheumatism direct to the public has agreed with the Federal Trade Commission by stipulation signed by it that if the commission will refrain from joining this advertising agency as a correspondent with the advertiser in proceedings pending against him, until the proceedings have been finally disposed of, it "will not insert or publish, or cause to be inserted or published, in any publication any advertisements of the products of said respondent which contain any statements or representations so declared by the Federal Trade Commission to be false and misleading in violation of section 5 of the Federal Trade Commission Act," and in case a cease and desist order shall be issued against the advertiser it, the advertising agency, "will do no act or thing and will cause no act or thing to be done that would be a violation of such order."

In the proceedings against the advertiser it is alleged that false and misleading claims, representations and statements that have the capacity and tendency to, and do, deceive the purchasing public are being made, circulated, and published. (December 9, 1929.)

013. Advertising Agent—Device for Locating Hidden Treasure.—An advertising agent placing for publication the advertisements of a client selling direct to the consuming public in interstate commerce a device for locating hidden treasure has signed a stipulation with the Federal Trade Commission in which he agrees that until the proceedings pending against the vendor of the device have been finally disposed of he will not "insert or cause to be inserted or published in any newspaper, magazine, or periodical any advertisement of the product * * * which contains any statement or representation

declared by the Federal Trade Commission to be false and misleading in violation of section 5 of the Federal Trade Commission Act" and if a cease and desist order is issued against the advertiser he will abide by it and will "do no act or thing and will cause no act or thing to be done that would be a violation of such order."

All this on condition the advertising agent is not made a party respondent in the proceedings against the advertiser-vendor.

The charge against the vendor is that he is making false and misleading representations concerning his device that deceive and mislead the public into buying it. A postal fraud order has since been issued against the vendor of this device. (December 16, 1929.)

014. Advertiser-Vendor—Hair Tonic.—Respondent, a corporation engaged in the manufacture of a hair tonic sold and distributed in interstate commerce and in competition with other individuals, firms, co-partnerships, and corporations likewise engaged, entered into a stipulation of facts and agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Respondent in soliciting the sale of and selling its product in interstate commerce agreed to cease and desist from representing in advertisements or otherwise that its product is an effectual, or a guaranteed, or a sure treatment for cultivating hair growth; or that a fresh growth of hair is assured by the use of said tonic; or that respondent's method is the only way to grow hair; or that the application of respondent's tonic will produce a growth of hair.

Respondent also agreed to cease and desist from using such statements and representations, among others, as "No need to be bald." "Bald men grow hair quick." "The only hair treatment yet devised which goes direct to the source of baldness." "What I accomplished on my own head and on others I can do for you." "I will prove to you free that I can grow hair quick." "We know it will help you to regrow your hair."

Respondent also agreed to cease and desist from the use of special or free offers unless such offers were made in good faith, or from making any other statements or representations which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the product so represented or described will produce any of the results set out therein when such is not the fact. (December 16, 1929.)

015. Advertising Agency—Eardrum.—An advertising agency placing for publication in various periodicals the advertisements of the vendor of an eardrum alleged to aid the deaf to hear has stipulated with the Federal Trade Commission that if the complaint shall be issued against the advertiser-vendor without making the advertising

agency a party respondent the proceedings may go forward the same as if it was made a party thereto and it will abide by and be bound by the provisions of any cease and desist order that may issue in such proceedings the same as it would be if made a party defendant, and that it will do no act or thing thereafter in violation of such an order.

The charges alleged against the vendor-advertiser are making false and misleading representations that deceive and mislead the public into buying its eardrums instead of the products of competitors. (January 1, 1930.)

016. **Advertising Agency—Asthma Cure.**—An advertising agency engaged in procuring, preparing, and placing for publication in various periodicals the advertising copy for the vendor of an alleged cure for asthma has stipulated with the Federal Trade Commission that if the commission will not join this advertising agency as a party defendant in proceedings against the vendor-advertiser now pending before the commission it will “not cause to be inserted or published any advertisements of said products which contain any statements or representations so declared by the Federal Trade Commission to be false and misleading in violation of section 5 of the Federal Trade Commission act,” and “in case a cease and desist order shall be issued * * * against” the vendor-advertiser this advertising agency “will do no act or thing and will cause no act or thing to be done that would be a violation of such order.”

The charges against the advertiser-vendor are making and publishing false and misleading representations that deceive and mislead the public into buying its product instead of the products of competitors that use fair methods in competition and make truthful representations to effect the sale of their products. (January 13, 1930.)

017. **Advertising Agency—Calcium Wafers.**—An advertising agency engaged in procuring, preparing, and placing for publication in various periodicals of general circulation the advertising copy for a client selling calcium wafers, has stipulated with the Federal Trade Commission that, if the commission will not make the advertising agency a party defendant in the proceedings pending against the advertiser-vendor, pending final disposition of proceedings against the the advertiser-vendor, they “will not procure to be inserted and published in any newspaper, magazine, or other publication any advertisement of said products * * * that contains any statement or representation so alleged by the Federal Trade Commission to be false and misleading” and “when said proceedings shall have been finally decided and disposed of” they “will be bound by the decision thereof, and respect, obey, and conform unto such

final decision in all things as though "they had been a party thereto and were legally bound thereby."

The charges alleged against the advertiser-vendor are making and publishing false and misleading statements and representations that deceive and mislead the public into buying its product instead of the product of competitors who do not misrepresent themselves or their products, and observe fair methods of competition in commerce. (January 13, 1930.)

018. Advertising Agency—Big Money Raising Hares—Advice on Motherhood—Remedy for Bladder Trouble—Treatment for Bladder Weakness.—An advertising agency engaged in procuring, preparing, and placing for publication in various periodicals of general circulation the advertising copy for clients advertising big money in raising hares; advice on motherhood; a remedy for bladder trouble, and a treatment for bladder weakness, has signed a stipulation with the Federal Trade Commission wherein it is agreed that if the commission will refrain from making the advertising agency a party respondent in proceedings against the advertiser-vendors it, the advertising agency, "will be bound by and will submit to and abide by" the provisions of any cease and desist order issued in such proceedings and "will thereafter do no act or thing, and will cause no act or thing to be done that would be a violation of such order."

The charges alleged against the advertiser-vendors are making and publishing false and misleading statements and representations that deceive and mislead the public into buying their products instead of the products of competitors who do not misrepresent themselves or their products and observe fair methods of competition in commerce. (January 13, 1930.)

019. Advertising Agency—Asthma Cure.—An advertising agency engaged in procuring, preparing, and placing for publication in various periodicals of general circulation the advertising copy for the vendors of an alleged cure for asthma and a treatment for stomach ailments, has stipulated with the Federal Trade Commission that, if the commission will not make the advertising agency a party defendant in the proceedings pending against the advertiser-vendors, they, the advertising agents, agree "the proceedings * * * may go forward in all things and with the same effect" as though they were made parties thereto and if a cease and desist order shall be issued they "will be bound by and will submit to and abide by the same," and they "will thereafter do no act or thing, and will cause no act or thing to be done that would be a violation of such order."

The charges alleged against the advertiser-vendors are making and publishing false and misleading statements and representations that deceive and mislead the public into buying their products instead of

the products of competitors who do not misrepresent themselves or their products and observe fair methods of competition in commerce. (January 13, 1930.)

020. Advertiser—Pep Tablets.—The vendor of a pep tablet claiming to be manufacturing chemists, importers, and exporters, with offices in several places in the United States and advertising in various periodicals and by letters and literature that such tablets are French tablets and will restore vitality, pep, and youthful energy, has revised and corrected all its advertising copy, letters, and literature, and stipulated with the Federal Trade Commission that hereafter they will not use, make, or publish any statements, representations, or claims that are false, misleading, or have the capacity and tendency to deceive or mislead the public into buying its product. (January 20, 1930.)

021. Publisher—Mechanical Therapeutic Dispenser, Electric Device for Dandruff, etc.—A corporation publisher of a magazine with a circulation of more than 100,000 copies monthly and printing, publishing, and circulating the advertisements of three advertisers mentioned against whom proceedings are pending before the Federal Trade Commission has stipulated with the commission that if the complaints against these advertisers shall be issued and served without making it a party defendant, and a cease and desist order shall issue in the proceedings instituted against such advertisers, or any of them, it, the publishing company, "will be bound by and will submit to and abide by" the terms of such order and thereafter will do, or cause to be done, no act or thing that would be a violation of such order.

The advertisements referred to are one for a mechanical substitute for human dispensation of suggestive therapeutics, a device the vendor-advertiser claims will restore health, correct evil habits, bring success, prosperity, happiness, and works for you while you sleep; another, the advertisement of an electric device to cure dandruff, stop falling hair and produce a new growth of luxurious hair in a few weeks; and another of a specific massage that it is claimed will stimulate and vitalize the generative glands.

It is alleged in the proceedings pending before the commission that the statements, representations and claims made for the several things advertised are false and misleading and deceive and mislead the public. (January 20, 1930.)

NOTE.—One of these advertisers has since gone out of business and proceedings against the other two are still pending.

022. Advertising Agency—Puzzle Advertisement.—An advertising agency, engaged in placing for publication advertisements for the publisher of a newspaper of certain puzzle contests that are held to be misleading and result in securing contact with prospective solici-

tors by unfair methods of competition, has signed a stipulation with the Federal Trade Commission in which they agree that if the complaint against the advertiser is issued and served without making them (the advertising agents) a party defendant in such proceedings, they "will submit to and abide by" the cease and desist order against the advertiser-publisher if such an order is made, and will "thereafter do no act or thing, and will cause no act or thing to be done, that would be a violation of such order." (January 20, 1930.)

023. Advertising Agency—Astrologer, Pep Tablets, and Hair Dye.—An advertising agency, engaged in the general business of procuring, preparing, and placing advertising copy with various periodicals of general circulation, and having so placed copy for the vendor of an alleged hair dye, the distributor of French pep tablets for men, and an astrologer, has stipulated with the Federal Trade Commission that if the commission will not make it, the advertising agency, joint defendant with its clients, the advertisers, in the proceedings instituted and pending against them, the advertising agency will observe and abide by the terms of any cease and desist order that may issue in the course of such proceedings, and will do, or cause to be done, no act or thing that would be a violation of such an order.

The charges alleged against the advertisers are making and publishing false and misleading representations and claims that deceive and mislead the public. (January 20, 1930.)

NOTE.—The distributor of the pep tablets has since discontinued business, the astrologer has changed her trade name and location, and proceedings against the vendor of the hair dye are still pending.

024. Advertising Agency—Fat Reducing Belt; Instruction Course; Hair Grower.—An advertising agent, engaged in procuring, preparing, and placing for publication in various periodicals of general circulation for advertising clients, and specifically for the manufacturer of an alleged fat reducing belt, the vendors of an instruction course in business building, and a compound for making hair grow, has stipulated with the Federal Trade Commission that if the commission will not make him a party defendant in the proceedings instituted against the advertisers, he "will be bound by and will submit to and abide by" any cease and desist orders that may issue in such proceedings and will do, or cause to be done, no act or thing that will violate such order.

The charges alleged against the advertisers are making and publishing false and misleading statements, representations, and claims that deceive and mislead the public. (February 7, 1930.)

025. Advertiser—Asthma Remedy.—The vendor of an alleged cure for asthma has entered into a stipulation with the Federal Trade Commission wherein he agrees that he will not again at any time

cause to be distributed to the public any statement or representation directly upon his own responsibility or indirectly as purporting to be upon the responsibility or in the words of another tending to induce the public or prospective purchasers to believe that the physical condition commonly known as asthma, or the pain or inconvenience incident thereto is a specific disease; the same being admitted to be a mere symptom, accompaniment, or indication of a pathological condition or conditions as yet not fully ascertained by or known to medical science; and also that he will not represent his alleged remedy as a specific cure for asthma or anything more than a remedy or treatment for alleviation or relief from the pain and inconvenience incident to the physical condition commonly known and referred to as asthma; and also that he will not publish or distribute to the public or to prospective purchasers any statement, representation, or implication that is held by the Federal Trade Commission to be false and misleading. (February 7, 1930.)

026. **Advertiser—Bladder Weakness Tablet.**—The vendor of a tablet for the treatment of bladder weakness and irritation has revised its advertising copy, literature, and forms, corrected its methods of doing business, and signed a stipulation with the Federal Trade Commission in which it agrees that it "will not again at any time insert and cause to be published or distributed to the public or to prospective purchasers of its products * * * or otherwise, any statement, representation, or implication held by the Federal Trade Commission to be false and misleading," etc. (February 7, 1930.)

027. **Advertiser—Ear Drums.**—An advertiser offering for sale direct to the public ear drums that it represents and states in published advertisements, printed matter, form letters, and other literature will overcome deafness and restore perfect hearing in some specific cases, has revised its advertising copy, letters, and literature and stipulated with the Federal Trade Commission that it will not again use, make, or publish the claims, representations, and statements held by the commission to be misleading and having the capacity and tendency to deceive and mislead the public into buying its product in preference to the product of competitors; neither will it publish nor distribute any statement, representation, or implication that is equivalent or similar in form or substance thereto. (February 7, 1930.)

028. **Advertising Agency—Eczema Remedy; Skin Treatments; Bladder Weakness.**—An advertising agency has agreed with the Federal Trade Commission by stipulation it will submit to and abide by any cease and desist order that may be issued in pending proceedings against three vendor-advertisers for whom it has been placing advertising copy with various periodicals of general circulation, and requests the

commission to not joint it as a party defendant in the proceedings against the advertisers.

It also agrees to do no act or thing that would be a violation of any such cease and desist order if issued.

The three advertisers are charged with making and publishing false and misleading representations that deceive and mislead the purchasing public into buying their products. One of the advertisers is selling a remedy for eczema, another a treatment for skin ailments, and the third an alleged cure for bladder weakness and kindred ailments. (February 7, 1930.)

029. **Publisher—Rupture Cure.**—The publisher of a daily newspaper of large circulation in an eastern city that has been publishing the advertisement of the manufacturer and vendor of an appliance for the treatment of hernia, commonly called rupture, has signed a stipulation with the Federal Trade Commission wherein it is agreed that, if the commission will refrain from joining the publisher with the advertiser in proceedings against him now pending, the publisher will observe and abide by any cease and desist order that may issue in such proceedings, and will do, or cause to be done, no act or thing that would be a violation of such an order were the publisher made a party defendant in such proceedings and order.

The seller of the appliance is charged with making and publishing false and misleading statements, representations, and claims that deceive and mislead the public into buying its appliance in preference to others that are offered for sale by fair methods and truthful claims. (March 3, 1930.)

030. **Publisher—Massage Cream; Puzzle Advertisements; Bust Developer; Nose Shaper; Fat Reducing Compound.**—A corporation, publisher of a professional periodical having accepted, printed, and published the advertisements of several manufacturers and vendors of various articles, against whom complaints have been made before the Federal Trade Commission, has stipulated with the commission and agreed that if the commission will refrain from making the publishing corporation a corespondent with the advertising vendors in such proceedings, the publisher will observe, submit to, and abide by the terms of any cease and desist orders that may be issued in such proceedings as fully as if it was made a party thereto and thereafter will do or cause to be done no act or thing that would be a violation of any of such orders.

Two of the advertisers are offering for sale to the public a massage cream alleged to develop the bust, neck, arms, legs, or any part of the human body desired. One advertiser is offering a device for development of the bust, another an appliance to reshape the nose of humans that are not satisfied with nature's nasal production,

another offers a fat-reducing compound, and two other advertisers publish simple puzzles that apparently offer substantial rewards for correct solution when in fact they merely provide a mailing list and a prospective purchaser, agent, or solicitor for the advertiser.

In all of these cases it is alleged the advertiser is making and publishing false and misleading statements and representations that deceive and mislead the public and secure an advantage over competitors by unfair methods of competition in commerce, which is a violation of law. (March 10, 1930.)

031. Advertising Agency—Rupture Cure; Puzzle Advertisement.—A corporation conducting a general-advertising agency and placing for publication in periodicals of general circulation the advertisement of a manufacturer and seller of an appliance for the treatment of hernia, and a vendor that advertises a puzzle contest that appears to offer large rewards or prizes for the correct solution but which in fact merely “qualifies” the one who answers to enter the real contest for the prizes offered in which his time, energy, skill, or money is required to win in competition with others, has stipulated with the Federal Trade Commission that if the commission will proceed against the advertisers without making this advertising agency a party defendant in such proceedings, it, the advertising agency, will observe, submit to, and abide by any cease and desist orders that may issue in such proceedings, and thereafter do or cause to be done no act or thing that would be a violation of such orders if it was made a party thereto.

The charges against the advertisers are making and publishing false and misleading representations to effect sales that deceive and mislead the public, amount to unfair methods of competition in commerce and violate the statute. (March 10, 1930.)

032. Publisher—Massage Creams; Ring of Ancient Make.—The publisher of a magazine containing the advertisements of certain vendors against whom proceedings have been instituted before the Federal Trade Commission has stipulated with the commission that it will observe, submit to, and be bound by any cease and desist orders issued in such proceedings and thereafter do or cause to be done no act or thing that would be a violation of such orders if the commission will proceed without making this publisher a party defendant in such proceedings.

Two of the advertisers are offering for sale to the public direct massage creams for which apparently misleading and exaggerated claims are being made for the creams as flesh foods, tissue builders, bust and form developers, etc.

The other advertiser is offering a guard finger ring alleged to be the famous creation of an artist in the fifteenth century which claims

are charged to be false and misleading and mislead and deceive the public. (March 10, 1930.)

033. **Publisher—Bust Developing Device; Tobacco Habit Cure; Hair Removing Electric Device; Goiter Cure.**—A corporation, publishing several periodicals of general circulation, engaged in publishing and circulating the advertisements of four advertising vendors against whom complaints have been ordered, has stipulated with the Federal Trade Commission that it will observe, submit to and abide by any cease and desist order that may issue in the proceedings pending against the advertisers mentioned if the commission will refrain from joining this publishing company in such proceedings as a joint defendant with the advertisers and after an order issues, it will do or cause to be done no act or thing that would be a violation of any such order if it was a party defendant.

One of these advertisers has invented and patented a device for the development of the bust and is selling it to the general public.

Another is offering a remedy or cure for the tobacco habit, another manufactures and sells an electric needle device for killing and removing hairs and is selling it direct for home use, while the other is advertising and selling a cure for goiter without an operation.

The charges made against these advertisers is making false and misleading representations that deceive and mislead the public, and violate section 5 of the Federal Trade Commission act. (March 3, 1930.)

034. **Advertising Agency—Puzzle-Prize Method of Selling Cosmetics; Pep and Vigor Preparation; Soliciting Salesmen by Promise of Excessive Earnings.**—An advertising agency, placing for publication in various periodicals of general circulation for four advertisers against whom proceedings have been instituted alleging false and misleading representations and claims that deceive and mislead the public, has requested the Federal Trade Commission to not make it a joint defendant with the advertisers in such proceedings and has signed a stipulation with the commission agreeing to observe, submit to, and abide by any cease and desist order that may issue against the advertisers in such proceedings and thereafter will do or cause to be done no act or thing that would be a violation of any such order if it was a party to it.

One of the advertisers is using the puzzle-prize method of advertising to sell cosmetics; another is offering for sale a pep-vigor preparation alleged to renew the vitality of youth; and the other two are seeking agents to sell their products by advertising excessive and improbable earnings. (March 10, 1930.)

035. **Advertising Agency—Diabetes Remedy.**—An advertising agency, placing advertising copy for publication in various publications for

a concern that is advertising and selling treatments for diabetes, has signed a stipulation with the Federal Trade Commission in which it agrees to abide by any cease and desist order that may issue in proceedings against the advertiser and thereafter do or cause to be done no act or thing that would be a violation of such an order if the advertising agency had been made a corespondent and requests the commission to not make it a party defendant in the proceedings.

The charges against the advertiser are making false and misleading representations to deceive and mislead the public into buying its treatments. (March 10, 1930.)

036. **Advertiser—Calcium Wafers.**—A corporation, selling calcium wafers, charged in proceedings before the Federal Trade Commission with making false and misleading claims and representations to effect sales of its product, has corrected its methods, revised its advertising copy, literature, and form letters and stipulated with the commission that hereafter it will not make or use any claim or representation that is held to be false or misleading by the commission.

The broad, all-inclusive, extravagant claims made by the respondent that these wafers would clarify the skin, improve the complexion, and beautify the user while the ingredients of the wafers are indicated in medicine as mere laxatives, were objected to by the commission and are not to be used in the future. (March 10, 1930.)

037. **Advertiser—Asthma Cure.**—An advertiser offered a treatment for the relief of asthmatic attacks for sale direct to those that suffer with this ailment, under representations that the treatment would cure asthma. The commission alleged, in proceedings against this vendor-advertiser, that such broad claims were false and misleading and deceived and misled the purchasing public.

The respondent has agreed by stipulation with the commission that he "will not again at any time insert and cause to be published or distributed to the public or to prospective purchasers of its product, or otherwise, any statement, representation or implication held by the Federal Trade Commission to be false and misleading. * * * or implication that is equivalent or similar in form or in substance," etc.

This respondent revised his advertising copy, literature, and follow-up letters and filed such revised matter with the commission as evidence of good faith. (March 10, 1930.)

038. **Publisher—Asthma Cure.**—The publisher of a daily newspaper of large circulation that accepted, printed, and published the advertisement of a vendor of a treatment for asthmatic attacks, claiming and representing it to be a cure for asthma, would banish it forever and rid the user of asthma, bronchitis, and hay fever quickly and

forever, and many other extravagant, exaggerated, and all-inclusive claims, has requested the Federal Trade Commission to not include it, the publishing company, as a corespondent in the proceedings instituted against the advertiser, and signed a stipulation in which it agrees to observe and abide by any cease and desist order that may issue and do or cause to be done no act or thing that would be a violation of such an order if it was a party named in the order. (March 10, 1930.)

039. **Vendor-Advertiser—Treatment of Liquor Habit.**—The vendor of a compound offered for sale to cure a person of the liquor habit under claims it could be administered without the patient's knowledge and effect a cure and offering to send a trial treatment free but which was merely a sample to show how it could be used without the knowledge of the one taking it, was proceeded against before the Federal Trade Commission, alleging the representations and claims made to effect sales were false and misleading and deceived and misled the purchasing public.

The respondent corrected and revised its advertising copy, literature, and form letters to eliminate all matter held by the commission to be objectionable and filed copies of these revisions with the commission as evidence of good faith.

It then signed a stipulation with the commission in which it agrees that it will not again at any time publish or distribute any of such objectionable representations and claims or "any statement, representation, or implication that is equivalent or similar in form or in substance" to those eliminated from former advertising copy and matter. (March 17, 1930.)

040. **Vendor-Advertiser—Stop Tobacco Habit.**—The vendor offering for sale direct to the public a compound that it claims, through statements and representations in published advertisements, booklets, circulars, folders, and form letters, will stop tobacco and banish the craving for it in a few days, has signed a stipulation with the Federal Trade Commission in which it agrees to stop making claims which are held by the commission to be false and misleading.

It is held by the commission that the remedy offered will not stop the tobacco habit or banish the craving, but at most may in some degree aid the user to quit. (March 31, 1930.)

041. **Publisher—Eleven Ads.**—The publisher of a household magazine of large and wide circulation throughout the United States, printing and circulating the advertisements of 11 advertisers against whom complaints have been ordered, has signed a stipulation with the Federal Trade Commission in which it is agreed the publisher will submit to and abide by any cease and desist orders that may issue in the proceedings against the advertisers if the commission

will refrain from making the publisher a correspondent with the advertisers, and thereafter the publisher agrees to do or cause to be done no act or thing that would be a violation of such orders if it was a party thereto.

The advertisers against whom charges are pending are offering for sale direct to the public a device for developing busts; a puzzle-prize ad to secure solicitors; a watch free for selling a few bottles of perfume; watches and jewelry; cures for blood diseases, asthma, tonsil ailments, gallstones, colic, and the tobacco habit.

In all of these cases it is alleged the vendors are making and publishing false and misleading statements and representations that mislead and deceive the purchasing public. (April 11, 1930.)

042. **Publisher—Gland Treatment; Jewelry and Perfumes; Bust Developer; Massage Cream.**—The publisher of a magazine of wide general circulation, printing and circulating advertisements for four advertising-vendors of an alleged electric gland treatment; a bust-developing device, a massage cream offered to the public as a cream that will develop the bust, neck, arms, legs, etc.; and jewelry, perfume, etc., against whom complaints are pending before the Federal Trade Commission, has stipulated with the commission that if it is not made a defendant with the advertisers in the pending proceedings it will submit to and abide by any cease and desist orders that may issue against the advertisers and thereafter will do or cause to be done no act or thing that would be a violation of such orders.

The charges against the advertisers are making and publishing false and misleading statements, claims, and representations that deceive and mislead the purchasing public. (April 11, 1930.)

043. **Advertiser—Pile Cure.**—The manufacturer and vendor of a treatment for piles has signed a stipulation with the Federal Trade Commission in which it agrees to cease and desist from making the claims and representations that its treatment will stop all pain; afford positive relief for the very worst cases; that suffering from piles is needless; or that by remembering the name you can forget your piles; "and all representations and statements equivalent or similar thereto in form and substance." (May 19, 1930.)

044. **Vendor-Advertiser—Artificial Eardrums.**—The vendor of an artificial eardrum has stipulated with the Federal Trade Commission and agreed that it, a corporation, will cease and desist from using, making, or publishing any statement or representation that will lead the reader, or prospective purchaser, to understand or believe that a person formerly active in the business, but now deceased, is still active in it, giving his advice and attention and signing correspondence; or that the drums are medicated; or that the use of such drums will restore hearing; or that the use of such artificial eardrums will make

the reader or prospective purchaser hear unless such representations are qualified to indicate they will not be effective in all cases of deafness; or that the building in which respondent maintains its offices is occupied solely by it; and all representations and statements equivalent thereto in form or substance. (May 19, 1930.)

045. **Advertiser—Remedy for Sterility.**—The vendor of a remedy that he advertises, represents, and claims will overcome sterility and enable every married woman that wants children to obtain them, has stipulated with the Federal Trade Commission that he will cease and desist making representations and statements that his remedy or treatment will overcome sterility unless such statements are so qualified as to indicate clearly that they refer to cases of sterility due to functional weakness only; or that it is a competent treatment or remedy for all cases of sterility caused by functional weakness. (June 2, 1930.)

046. **Advertiser-Vendor—Remedy for Stomach and Bowel Disorders.**—The vendor of an alleged remedy for stomach and bowel disorders has stipulated with the Federal Trade Commission that he will cease and desist from stating or representing that the treatment he is offering for sale direct to the public is a new or successful method of treating disorders of the stomach, or an adequate treatment for the most stubborn cases, or will accomplish more than temporary relief, or that has been prescribed by a prominent physician in many cases with most astonishing results, or that a free trial treatment will prove it is a meritorious treatment, "and all representations and statements equivalent or similar thereto in form or substance." (June 2, 1930.)

047. **Publisher—Fat-Reducing Belt.**—The publisher of a magazine of wide general circulation, printing an advertisement for an abdominal belt, has signed a stipulation with the Federal Trade Commission in which it, the publisher, a corporation, agrees if the commission will proceed against the advertiser without joining the publisher as a party defendant, it will be bound by, submit to, obey, and abide by any cease and desist order that may issue against the advertiser and will also be bound by and faithfully observe the terms of any stipulation the advertiser may execute with the commission.

The advertiser is offering an abdominal belt to the public and claiming it will reduce fat and weight of the wearer by a massage action.

It is alleged in the proceedings pending against the advertiser that such claims are false and misleading and deceive the purchasers. (June 9, 1930.)

048. **Advertising Agency—Artificial Eardrums.**—An advertising agency preparing and placing advertising copy for the vendor of

artificial eardrums has signed a stipulation with the Federal Trade Commission in which it is agreed proceedings against the advertiser-vendor may proceed without making the advertising agency a party defendant, and if a cease and desist order issues or the advertiser stipulates to discontinue making claims and representations alleged to be false and misleading that it, the advertising agency, will observe, abide by, and obey all the terms and conditions of such order or stipulation the same as if it had been made a party defendant in such proceedings. (June 6, 1930.)

049. **Advertiser—Dropsy Remedy.**—The vendor of, an alleged cure for dropsy has stipulated with the Federal Trade Commission that he will discontinue and hereafter cease and desist from making statements, representations, and claims that dropsy can be cured; or that the remedy offered for sale to the public is a competent treatment for dropsy; that it will result in the relief of short breathing unless clearly indicated that such relief is indirectly caused by the elimination of surplus fluid, or removal of swelling; or that it will be effective in all cases; or that any of the medicinal preparations is a cure for any disease, symptom, or pathological condition; or any representations or statements equivalent or similar thereto in form or substance.

The advertiser-vendor also agrees to discontinue the use of the word "Dropsy" in a trade name and all advertising copy, literature, and form letters. (June 27, 1930.)

050. **Publisher—Two Reducing Belts.**—The publisher of a fraternal magazine of wide circulation, printing the advertisements of two different vendors selling abdominal belts and claiming fat-reducing qualities for such belts which are alleged in proceedings before the commission to be false and misleading in form and substance that deceive and mislead the purchasers, has stipulated with the commission that proceedings against the advertisers may go forward without joining this publisher as a defendant and if a cease and desist order shall issue in such proceedings or the advertisers agree by stipulation with the commission that they will correct their methods and discontinue objectionable representations, the publisher will observe, submit to, abide and be bound by the terms and provisions in such order or stipulation. (October 13, 1930.)

051. **Advertising Agency—New Hair.**—An advertising agent preparing and placing for publication the advertising copy for the manufacturer and vendor of a preparation they represented and claimed would make human hair grow and produce a new hair growth on bald heads and cause new thick wavy hair to grow where hair was thin and many other claims that are alleged to be false, misleading, and deceptive in proceedings pending before the Federal Trade Com-

mission, has signed a stipulation with the commission, in which it is agreed the proceedings may go forward against the advertiser without making the advertising agent a party to them and the advertising agent will observe and be bound by the terms and provisions of any cease and desist order that may issue or any stipulation executed by the advertiser. (October 13, 1930.)

052. **Advertising Agent—Massage Cream.**—In the case of an advertiser selling a massage cream, alleging it to be a tissue builder that would develop any portion of the human body desired, bust, arms, neck, legs, etc., the advertising agent placing the advertising copy for publication, has signed a stipulation with the Federal Trade Commission that if it is not made a party defendant with the advertiser in proceedings pending before the commission, it will observe and abide by the terms and provisions of any cease and desist order that may issue against the advertiser or any stipulation the advertiser may sign and agree to. (October 13, 1930.)

053. **Advertising Agent—Cure for Rheumatism, Kidney Trouble, Bladder Weakness, etc.**—The advertising agent placing advertising copy for the vendor of a medicine alleged to cure or relieve rheumatism, sore muscles, kidney trouble, bladder weakness, and kindred ailments by dissolving or eliminating uric acid, has stipulated with the Federal Trade Commission that if it is not joined in proceedings against the advertiser-vendor pending before the commission, that it will observe, obey, and abide by all the terms and provisions of any cease and desist order that may issue against the advertiser-vendor or any stipulation he may sign. (October 13, 1930.)

054. **Advertiser—Correspondence Exchange.**—A person operating a correspondence exchange has signed a stipulation with the Federal Trade Commission in which she agrees she will not state or represent that she advertises in foreign periodicals; that description lists will be furnished free; that the business is conducted as a club or is the world's greatest club; that the membership fee or subscription price stated is special; that there is a time limit for receiving subscriptions; and that there are no other charges until and unless such be the facts and also to quit representing that results are guaranteed and using a fictitious name, whether trade name, a registered name, or otherwise, in signing any document or communication, in such a manner as to indicate that such fictitious person is an officer of any firm, company, copartnership, corporation, association, or other business organization. (October 13, 1930.)

055. **Advertising Agents—Stomach Troubles.**—Advertising agents placing copy for publication for a company selling an alleged remedy for stomach troubles against whom complaint is pending before the Federal Trade Commission have signed a stipulation in which they

agree to observe, abide by, and obey all the terms and provisions of any cease and desist order that may issue against the advertiser or any stipulation the advertiser may sign with the commission if the commission will not make them joint defendants in the proceedings against the advertiser. (October 27, 1930.)

056. Advertising Agent—Development Cream.—The advertising agent, placing advertising copy with various periodicals for the vendor of a cream which the seller claims and represents will develop any portion of the body desired, has signed a stipulation with the Federal Trade Commission in which he agrees to observe, abide, and be bound by the terms and provisions of any cease and desist order issued against the advertiser or any stipulation signed by her if the commission will not join the advertising agent with the vendor in proceedings now instituted against the advertising vendor of such cream.

It is charged that the cream is merely a massage cream and all claims as to its power to develop the body or any part is false and misleading and deceives the purchasing public. (October 27, 1930.)

057. Advertiser-Vendor—Epilepsy Cure.—A firm engaged in selling an alleged cure for epilepsy direct to the public has stipulated with the Federal Trade Commission that they will not hereafter state, claim, or represent that the medicinal preparation offered for sale by them is a cure for epilepsy, fits, falling sickness, or convulsions; that attacks of epilepsy can be stopped by its use in all cases; that it is competent to relieve attacks of epilepsy or fits, regardless of the severity of the attacks or the length of time afflicted; that it is so mild a child may take it; that immediate alleviation of attacks of epilepsy is now possible in all cases through its use, unless qualified to indicate such results are not possible in all cases; that vendors will furnish purchaser proof it is a competent treatment for epilepsy; that it will help the purchaser unless qualified; that it is harmless, unless qualified by adding when taken according to directions or equivalent; or that the preparation contains no narcotics; and all statements and representations equivalent thereto in substance and form. (October 27, 1930.)

058. Advertiser-Vendor—Lucky Stones, etc.—The vendors of various articles of merchandise by mail have signed a stipulation with the Federal Trade Commission that they will cease and desist forever from stating, claiming, or representing in advertisements or otherwise that they will personally advise purchasers of such merchandise on matters pertaining to business, love, health, games of chance, or any other matter; that they, the vendors, can solve problems, especially those relating to business, love, finances, happiness, success, etc.; that possession or use of the various articles of merchandise such as magnetic lodestones, lodestone powders, attraction powders, money-

drawing oils, lucky stones, lucky bags, wishing bones or bags, sprinkling powders, hot foot powders, fast luck oil, love powders, black snake powders, wooing powders, rubbing oils, emblems, or other articles of merchandise will bring the purchaser or user fame, success, wealth, or other similar thing, or that they will remove evil, break so-called charms, or possess magical power, or affect the habits, fortune, health, or condition of the possessor or enable him to win at games, or bring him luck, or that any of such articles are imported unless such be the fact.

These vendors also agree to stop representing the wooing powders, charm breakers, and rubbing oils sold by them are wonderful; that their French pepups are potent to revive or renew vitality; that their preparation for straightening and growing hair is a new gland discovery that feeds the roots of the hair and grows beautiful straight hair, etc., and all equivalent or similar statements. (October 27, 1930.)

059. **Publisher—Various Things.**—The publisher of a periodical of wide circulation printing and circulating the advertisements of nine vendors selling lucky stones, French pep-ups, stimulants for men, French toruquettes, cures and treatments for goiter, diabetes, the tobacco habit, etc., has signed a stipulation wherein it agrees to discontinue the publication of such advertisements until the proceedings pending against the advertiser are finally disposed of, and if cease and desist orders are issued against the vendor-advertisers or the proceedings terminated by stipulation that this publisher will observe, abide by, and obey all the terms and provisions of such orders and stipulations as if it had been made a party defendant in such proceedings. (October 27, 1930.)

060. **Advertiser—Drug Habit.**—A party selling and administering treatments for the relief and cure of the drug or narcotic habits has signed a stipulation with the Federal Trade Commission in which it is agreed he will cease and desist from making any statement or representation hereafter that will lead prospects to understand or believe that a doctor formerly conducting the business but now deceased is still living or actively engaged in the conduct of said business or that statements and representations are being made by him unless clearly indicated that such were made during his lifetime by him. (November 3, 1930.)

061. **Advertiser-Vendor—Tonsil Treatment.**—The advertising vendor of a treatment for tonsil ailments sold direct to the public has stipulated with the Federal Trade Commission that he will not hereafter make statements or representations in advertisements, advertising literature, or otherwise, that an operation for the removal or relief of enlarged or diseased tonsils may be avoided by the use

of his medicinal preparation; that his preparation is a cure for enlarged or diseased tonsils; will be effective in all cases; is guaranteed; that the purchase price will be refunded to dissatisfied purchasers unless accompanied by a statement setting forth all the terms and conditions; that the place of compounding is a laboratory; that the preparation will destroy germs in throat or nose without injury, unless qualified to indicate that all germs of the throat or nose can not be safely destroyed by its use; or that it is a sure cure or only known remedy for enlarged or diseased tonsils, and all representations and statements equivalent or similar thereto. (November 10, 1930.)

062. **Advertiser-Vendor—Eczema Remedy.**—The vendor of a medical preparation for the treatment of eczema charged with making false and misleading statements, representations and claims concerning its therapeutic value and curative efficiency has stipulated with the Federal Trade Commission that he will cease and desist from representing "That said medicinal preparation will cure eczema or will rid the prospective purchaser of eczema, or will effect a permanent relief from eczema, unless such representations are qualified to indicate that said results can not be accomplished in all cases, and all representations and statements equivalent or similar thereto in form or substance. (November 10, 1930.)

063. **Advertising Agent—Remedy for Nervous Disorders.**—An advertising agent procuring, preparing, and placing the advertising copy for publication in various periodicals of general circulation for a client that is selling an alleged remedy for nervous disorders, against whom complaint is made to the Federal Trade Commission, has signed a stipulation with the commission in which he agrees that proceedings against the advertiser-vendor may proceed without making him a party respondent and if a cease and desist order is issued, or the proceedings terminated by stipulation, he will observe, abide by, and be bound by the terms and provisions of such order or stipulation the same as if he were a party respondent in and to the proceedings, order, and stipulation.

The charges against the advertiser-vendor of such remedy is that of making false and misleading statements, representations, and claims to effect sales that mislead and deceive the purchasing public. (November 10, 1930.)

064. **Publisher—Tissue Builder; Watches and Jewelry; Skin Peel; Cosmetics; Bust Developer; Hair Remover.**—The publisher of a magazine of wide circulation in interstate commerce printing and circulating advertisements for the vendors of a massage cream alleged to be a tissue builder; watches, rings, and other jewelry; a skin peel; cosmetics; a hair remover; and bust developing device, against whom

complaints have been ordered by the Federal Trade Commission, has stipulated with the commission that if complaint is issued in these matters against any of said advertisers-vendors without making this publisher a party respondent, the proceedings may go forward with the same effect as though the publisher were a party thereto, and the publisher will be bound by, submit to, obey, and abide by any cease and desist order that may be issued; and will discontinue and cease and desist from the publication and circulation of said advertisements pending the disposition of proceedings against the advertisers-vendors; and if they effect the termination of proceedings by stipulation, the publisher will be bound by and faithfully observe the terms of such stipulations and will not break, cause to be broken, or be a party to the breach of any of the terms, provisions, or agreements contained therein, of which it has notice.

It is charged in the complaints against these advertiser-vendors that they are making and publishing false and misleading statements, representations, and claims that mislead and deceive the public in their efforts to sell their goods. (November 10, 1930.)

065. **Publisher of Ads for Skin Peel, Photographs, and Matrimonial Agencies.**—The publisher of a magazine printing, publishing, and circulating the advertisements of the vendors of a liquid skin peel, and photographs of French, Spanish, and American girls and operations of several correspondence clubs or matrimonial bureaus has agreed by stipulation with the Federal Trade Commission that he will discontinue the publication and circulation of said advertisements pending the disposition by the commission of proceedings pending against the advertisers and abide the result thereof.

False and misleading representations and statements to induce purchases and subscriptions are the charges made against these advertisers. (December 8, 1930.)

066. **Vendor-Advertiser of an Asthma Cure.**—The advertiser-vendor of an alleged treatment for asthma has stipulated with the Federal Trade Commission that he will cease and desist from publishing and circulating any statement that is false or misleading and specifically from representing that (*a*) such medicinal preparation is a new discovery; (*b*) was discovered by him; (*c*) results from its use are magical or miraculous; (*d*) he never had another attack since the discovery; (*e*) its use will aid the user of asthma or any kindred ailment; (*f*) it is constitutional treatment for asthma; (*g*) it is free, until such be the fact; (*h*) the sample sent is a complete and not a mere trial treatment; (*i*) it is a successful new method for treatment of attacks of asthma; (*j*) there is a long record of reported recoveries due to its use; and all representations equivalent or similar thereto in form or substance. (December 8, 1930.)

067. **Vendor-Advertiser—Wrinkle Oil.**—The manufacturing-vendor of an alleged wrinkle-removing oil has executed a stipulation wherein she agrees with the Federal Trade Commission that she will cease and desist from publishing and circulating false or misleading statements, and specifically that (*a*) the product is a new or the formula of a French secret; (*b*) wrinkles can be removed or eradicated by the mere application of it; (*c*) its use will result in amazing improvement overnight; (*d*) the first trial will prove the claims made for it; (*e*) its use will cause wrinkles to disappear while you sleep; (*f*) the user can prove the claims and astound his friends; and all representations and statements equivalent or similar in form or substance, and she also agrees to quit designating, describing, or labeling the product a “wrinkle oil.” (December 8, 1930.)

068. **Vendor-Advertiser of a Hair Dye.**—The vendor of an alleged hair dye has agreed by stipulation with the Federal Trade Commission that in soliciting the sale of her alleged hair dye she will cease and desist forever from making, publishing, and circulating false and misleading statements and specifically that she will not state or represent (*a*) that such alleged hair dye is Parisian or that she maintains or practices a system of beauty culture having its inception or origin in Paris, France; (*b*) that the product is a French compound or prepared from a formula developed in France; (*c*) that only one application is necessary to dye the hair, unless qualified; (*d*) that it is harmless; (*e*) that it produces a permanent coloration of the hair; (*f*) that it will not stain the scalp; and all representations and statements equivalent or similar in form or substance.

She also agrees to cease using the words “American office” in connection with her trade name; or other words or phrases that import or imply that she maintains or operates an office or a branch in a foreign country. (December 8, 1930.)

069. **Vendor-Advertiser—Remedy for Bladder Weakness, etc.**—The vendor of a medicinal preparation alleged to relieve and cure bladder weakness and similar ailments has agreed by stipulation with the Federal Trade Commission that it will not hereafter claim and represent that said medicinal preparation is a cure for bladder weakness; or that it is a recent scientific discovery; or that it will correct bladder weakness, unless qualified to indicate it is not effective in all cases; or that it is effective in causing the user to sleep all night unless qualified; or that it will end nights of misery; or that it will stop frequent impulses to urinate, and all representations and statements equivalent or similar in form or substance.

Also that a sample is sent free unless it is sent without requiring payment of any money for postage, packing, or any other purpose. (December 8, 1930.)

070. **Advertising Agent—Hair Dye.**—An advertising agent preparing and placing for publication the advertising copy for the manufacturer and vendor of a hair dye has agreed by stipulation with the Federal Trade Commission that he will observe, obey, and abide by the provisions of any cease and desist order that may be issued against this advertising-vendor and/or the provisions of any stipulation with the Federal Trade Commission the advertiser-vendor may execute. (December 8, 1930.)

071. **Advertising Agency—Rheumatism, Bladder Trouble, Blood Disease, Gall Stones, Pep Tablets.**—An advertising agency preparing and placing for publication the advertising copy for the vendors of a cure for rheumatism, a corrective for bladder trouble, a remedy for blood diseases, a relief for gallstone sufferings, and a tablet to restore vitality has signed a stipulation with the Federal Trade Commission in which it is agreed that the advertising agency waives its rights to be joined as a correspondent, in proceedings against such advertiser-vendors and if it is not made a party defendant in such proceedings it will nevertheless observe, obey, and abide by the provisions of any cease and desist orders that may issue in such proceedings and also the provisions of any stipulations that may be negotiated and executed between the advertising vendors and the Federal Trade Commission.

The charges against the advertisers are that of making false and misleading statements and representations in trying to sell their commodities. (December 15, 1930.)

072. **Advertising Agent—Remedy for Relief of Head, Lung, and Bronchial-Tube Troubles.**—An advertising agent placing for publication copy for advertisements of a vendor of an appliance and medicated tablets for the relief of lung, bronchial, and sinus troubles has stipulated with the Federal Trade Commission that he will waive his right to be joined with the advertiser in proceedings before the Federal Trade Commission and if he is not made a defendant in such proceedings that he will nevertheless observe and abide by the provisions of any cease and desist order that may issue and/or any stipulation the advertiser-vendor may execute.

The charges against the advertiser are that of making false and misleading representations in trying to sell his appliance and medicine. (December 15, 1930.)

073. **Publisher-Vendor—Sensational Books.**—The publisher of a small magazine with limited circulation advertising for sale certain books with sensational titles and representing himself as the publisher of such books has stipulated with the Federal Trade Commission that he will quit representing that portraits are photographs and that he is the publisher of books offered for sale by him unless and until he is the publisher thereof in fact. (December 29, 1930.)

074. **Vendor—Perfumes and Cosmetics.**—A corporation selling perfumes and cosmetics direct to consumers by mail has agreed by stipulation with the Federal Trade Commission that it will eliminate from its trade name, stationery, advertisements, and literature, words and representations stating or indicating that it has offices or places of business in Paris, France, or any other foreign country, or that its products are imported from a foreign country; or that it is the distributor for a foreign producer; or that its products represent the highest art of pharmacist or cosmetician.

This vendor-advertiser also agrees that in using the prize contest method of advertising it will not state there is nothing for the contestant to buy or sell unless such be the fact and unless such representation be accompanied by statement showing clearly the particular contest to which it applies. (January 12, 1931.)

075. **Advertising Agency—Fat Reducing Compound.**—An advertising agency placing for publication the advertisements of a concern selling a fat-reducing compound direct to consumers by mail has signed a stipulation with the Federal Trade Commission in which it agrees to waive its right to be joined as a respondent in proceedings against the vendor-advertiser; that proceedings may go forward without making it a defendant, and it will observe, obey, and abide by all the provisions of any cease-and-desist order that may issue and/or any stipulation that may be executed by the vendor-advertiser-respondent.

The advertiser is charged with making false and misleading representations in trying to sell its fat-reducing compound. (January 12, 1931.)

076. **Vendor—Tobacco Habit Cure.**—Vendors operating under a trade name advertising extensively an alleged cure for the tobacco habit have agreed by stipulation with the Federal Trade Commission to cease and desist: (a) Representing that the preparation will cure, stop, or overcome or rid the user of the habit of using tobacco or snuff, unless qualified to indicate it is effective only as an aid to the treatment for such habits; (b) that the preparation will cost the user nothing if it fails to satisfy, unless it is sent the purchaser without requiring payment before delivery; (c) that any definite number of persons have "used" it, unless that number known by vendors to have actually "used" it. (February 2, 1931.)

077. **Advertising Agency—Watches.**—A corporation engaged in the business of writing and placing advertisements for publication and in this case for the vendor of a watch offered for sale direct to the public under representation alleged to be false and misleading, have agreed by stipulation with the Federal Trade Commission, that if the commission will not include this advertising agency as a respondent in

proceedings against the advertiser, it will waive any right it has to be joined as a respondent and will be bound by and faithfully observe any cease and desist order that may issue against the vendor-advertiser and the provisions of any stipulation that may be entered into by the vendor and the commission. (February 2, 1931.)

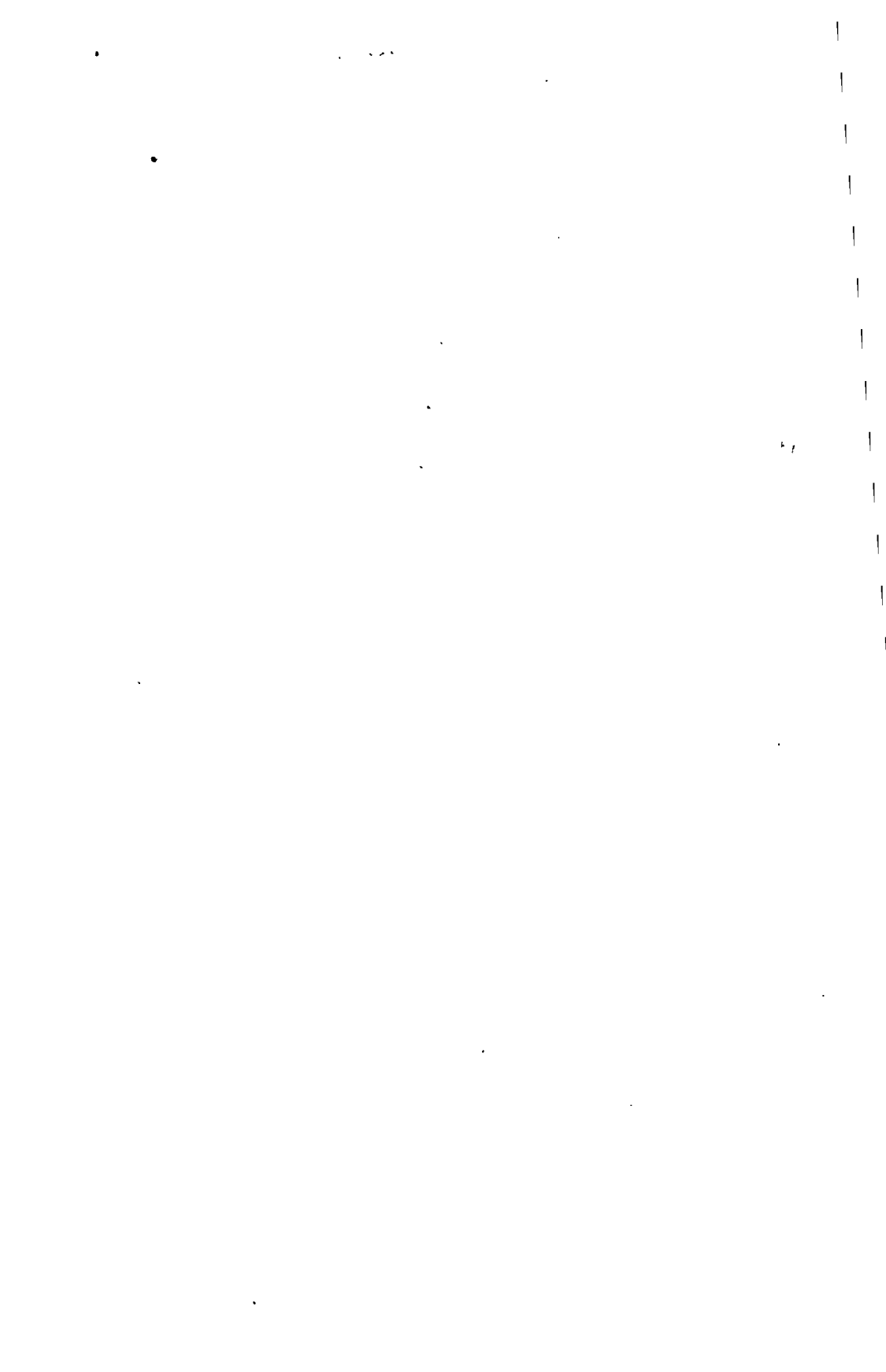
078. **The Publisher of Advertisements for Vendors of Charms, Lucky Stones, Sex Books, Novelties, etc.**—The publisher of a newspaper, with a large circulation among colored people, printing and circulating the advertisements of a vendor of so-called lucky stones, charms, sex books, and many other similar things appealing to the superstition and cupidity of its readers, under various forms, terms, representations, and claims alleged to be false and misleading, has agreed by stipulation with the Federal Trade Commission that if the commission will not include The Publisher as a joint respondent with the advertiser it will discontinue publication of such advertisements until the proceedings against this vendor-advertiser have been disposed of by the commission and will then observe, be bound by, and obey any cease and desist order that may issue and the provisions of any stipulation by the vendor-advertiser with the commission. (January 8, 1931.)

079. **Vendor-Advertiser—Instrument to Remove Hair.**—The vendor of an instrument to remove hair from face, limbs, or body, advertising extensively and selling it direct to purchasers for use by themselves has agreed by stipulation with the commission to cease and desist from representing that the use of this instrument (*a*) is the only way to prevent hair from growing again; (*b*) is painless or harmless unless qualified to indicate it is painless or harmless only when proper skill and care is used; (*c*) is free from risk; (*d*) that no shock or scar will result from its use; (*e*) that warts, moles, or birthmarks may be safely removed by its use unless qualified to indicate this applies only to certain types of warts, moles, and birthmarks, and then only by the exercise of proper care and skill. (February 9, 1931.)

080. **Vendor-Advertiser of Developing Cream and System.**—The manufacturers and vendors of a cream represented to be effective in the development of the busts, neck, limbs, and body, if, when, and where desired, has agreed by stipulation with the commission that such cream is effective principally as a lubricant to use in massaging and to quit representing (*a*) that the mere application of such cream will develop any part of the body without massaging, dieting, or exercise; (*b*) that the cream is a scientific preparation or the method a scientific system; (*c*) that a sample is free unless sent without charge and without requiring money for packing, postage, or otherwise and without requiring service rendered; (*d*) that a sample is worth more

than regular price received for like quantity; (e) that a sample will last longer than is justified by quantity sent; (f) that the formula cost \$5,000 or any sum in excess of actual cost to respondents; (g) that respondents are giving free service of value stated or any value which can not be definitely determined. (March 9, 1931.)

081. **Publisher of Advertising Copy for Vendors of Healing Appliance and Pile Cure.**—The publisher of a magazine of large circulation throughout the United States printing and circulating advertising copy for the manufacturer and vendor of an appliance claiming to have radio-active healing power and the vendor of a pile remedy has stipulated with the commission waiving its right to be joined as a respondent with these advertising vendors, and agrees that if the commission will refrain from making it a joint respondent with the advertisers to defend the claims made for such appliance and remedy, which are alleged to be false and misleading, that it, the publisher, will discontinue publishing such advertisements pending disposition of the cases against the vendors; will be bound by, submit to, obey, and abide by any cease and desist order that may issue against the advertiser-vendor; and will be bound by and faithfully observe the terms of any stipulations of which it has notice, entered into between the commission and the advertisers. (March 16, 1931.)



APPENDIX I

ACTS OF CONGRESS FROM WHICH THE COMMISSION DERIVES ITS POWERS

FEDERAL TRADE COMMISSION ACT¹

[Approved Sept. 26, 1914]

[PUBLIC—No. 203—63D CONGRESS]

[H. R. 15613]

AN ACT To create a Federal Trade Commission, to define its powers and duties, and for other purposes

Sec. 1. CREATION AND ESTABLISHMENT OF THE COMMISSION.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a commission is hereby created and established, to be known as the Federal Trade Commission (hereinafter referred to as the commission), which shall be composed of five commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three of the commissioners shall be members of the same political party. The first commissioners appointed shall continue in office for terms of three, four, five, six, and seven years, respectively, from the date of the taking effect of this Act, the term of

Five commissioners. Appointed by President, by and with, etc. Not more than three from same political party.

¹ Reported decisions of the courts for the period covered by this volume (May 5, 1930 to Mar. 23, 1931, inclusive) and arising under this act are printed in full in Appendix II hereof (see *infra*, p. 675 et seq.). Previously reported decisions will be found set forth in Appendix II of Volumes II-XIII, inclusive, of the Commission's Reports. Such decisions may also be found, with the exceptions noted below, compiled and indexed in the Commission publication entitled "Statutes and Decisions—Federal Trade Commission—1914-1929." Exceptions referred to, which may be found in Appendix II of Volume XIII, follow: *N. Fluegelman & Co., Inc. v. Federal Trade Commission*, Jan. 6, 1930, 37 F. (2d) 89, 13 F. T. C. 602; *Federal Trade Commission v. American Snuff Co.*, Feb. 13, 1930, 38 F. (2d) 647, 13 F. T. C. 607; and *Federal Trade Commission v. Casoff*, Feb. 17, 1930, 38 F. (2d) 790, 13 F. T. C. 612.

It should be noted that the jurisdiction of the Commission is limited by the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159, sec. 406 of said Act providing that "on and after the enactment of this Act and so long as it remains in effect the Federal Trade Commission shall have no power or jurisdiction so far as relating to any matter which by this Act is made subject to the jurisdiction of the Secretary [of Agriculture] except in cases in which, before the enactment of this Act, complaint has been served under sec. 5 of the Act, entitled 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved Sept. 26, 1914, or under sec. 11 of the Act, entitled 'An Act to supplement existing laws against

Sec. 1. CREATION AND ESTABLISHMENT OF THE COMMISSION—Continued.

each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed. The commission shall choose a chairman from its own membership. No commissioner shall engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the commission shall not impair the right of the remaining commissioners to exercise all the powers of the commission.

The commission shall have an official seal, which shall be judicially noticed.

Term seven years.

Chairman to be chosen by commission. Pursuit of other business prohibited. Removal by President.

Vacancy not to impair exercise of power by remaining commissioners.

Seal judicially noticed.

Sec. 2. SALARIES. SECRETARY. OTHER EMPLOYEES. EXPENSES OF THE COMMISSION. OFFICES.

Commissioner's salary, \$10,000.

SEC. 2. That each commissioner shall receive a salary of \$10,000 a year, payable in the same manner as the salaries of the judges of the courts of the United States. The

unlawful restraints and monopolies, and for other purposes,' approved Oct. 15, 1914, and except when the Secretary of Agriculture, in the exercise of his duties hereunder, shall request of the said Federal Trade Commission that it make investigations and report in any case."

In connection with the history in Congress of the Federal Trade Commission Act, see address of President Wilson delivered at a joint session on Jan. 20, 1914 (Congressional Record, vol. 51, pt. 2, pp. 1962-1964, 63d Cong., 2d sess.); report of Senator Cummins from the Committee on Interstate Commerce on Control of Corporations, Persons, and Firms engaged in Interstate Commerce (Feb. 26, 1913, 62d Cong., 3d sess., Rept. No. 1326); Hearings on Interstate Trade Commission before Committee on Interstate and Foreign Commerce of the House, Jan. 30 to Feb. 16, 1914, 63d Cong., 2d sess.; Interstate Trade, Hearings on Bills relating to Trust Legislation before Senate Committee on Interstate Commerce, 2 vols., 63d Cong., 2d sess.; report of Mr. Covington from the House Committee on Interstate and Foreign Commerce on Interstate Trade Commission (Apr. 14, 1914, 63d Cong., 2d sess., Rept. No. 533); also parts 2 and 3 of said report presenting the minority views respectively of Messrs. Stevens and Lafferty; report of Senator Newlands from the Committee on Interstate Commerce on Federal Trade Commission (June 13, 1914, 63d Cong., 2d sess., Rept. No. 597) and debates and speeches, among others, of Congressmen Covington for (references to Congressional Record, 63d Cong., 2d sess., vol. 51), part 9, pp. 8840-8849; 9068; 14925-14933 (part 15); Dickinson for, part 9, pp. 9189-9190; Mann against, part 15, pp. 14939-14940; Morgan, part 9, 8854-8857, 9063-9064, 14941-14943 (part 15); Sims for, 14940-14941; Stevens of N. H. for, 9063 (part 9); 14941 (part 15); Stevens of Minn. for, 8840-8853 (part 9); 14933-14939 (part 15); and of Senators Borah against, 11186-11189 (part 11); 11232-11237, 11298-11302, 11600-11601 (part 12); Brandegee against, 12217-12218, 12220-12222, 12261-12262, 12410-12411, 12792-12804 (part 13), 13103-13105, 13299-13301; Clapp against, 11872-11873 (part 12), 13061-13065 (part 13), 13143-13146; 13301-13302; Cummins for, 11102-11106 (part 11), 11379-11389 11447-11458 (part 12), 11528-11539, 12873-12875 (part 13), 12912-12924, 12987-12992, 13045-

commission shall appoint a secretary; who shall receive a salary of \$5,000 a year, payable in like manner, and it shall have authority to employ and fix the compensation of such attorneys, special experts, examiners, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.

Appointment of secretary. Salary, \$5,000.

Other employees. Salaries fixed by Commission.

With the exception of the secretary, a clerk to each commissioner, the attorneys, and such special experts and examiners as the commission may from time to time find necessary for the conduct of its work, all employees of the commission shall be a part of the classified civil service, and shall enter the service under such rules and regulations as may be prescribed by the commission and by the Civil Service Commission.

Except for secretary, commissioners' clerks, and such special experts and examiners as Commission may find necessary, all employees part of classified service.

All of the expenses of the commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefore approved by the commission.

Expenses of commission allowed and paid on presentation of itemized approved vouchers.

13052, 14768-14770 (part 15); Hollis for, 11177-11180 (part 11), 12141-12149 (part 12), 12151-12152; Kenyon for, 13155-13160 (part 13); Lewis for, 11302-11307 (part 11), 12924-12933 (part 13); Lippit against, 11111-11112 (part 11), 13210-13219 (part 13); Newlands for, 0930 (part 10), 10376-10378 (part 11), 11081-11101, 11106-11116, 11594-11597 (part 12); Pomerene for, 12870-12873 (part 13), 12993-12996, 13102-13103; Reed against, 11112-11116 (part 11), 11874-11876 (part 12), 12022-12029, 12150-12151, 12539-12551 (part 13), 12933-12939, 13224-13234, 14787-14791 (part 15); Robinson for, 11107 (part 11), 11228-11232; Saulsbury for, 11185, 11591-11594 (part 2); Shields against, 13056-13061 (part 13), 13146-13148; Sutherland against, 11601-11604 (part 12), 12805-12817 (part 13), 12855-12862, 12980-12986, 13055-13056, 13109-13111; Thomas against, 11181-11185 (part 11), 11598-11600 (part 12), 12862-12869 (part 13), 12979-12980; Townsend against, 11870-11872 (part 12); and Walsh for, 13052-13054 (part 13).

See also Letters from the Interstate Commerce Commission to the chairman of the Committee on Interstate Commerce, submitting certain suggestions to the bill creating an Interstate Trade Commission, the first being a letter from Hon. C. A. Prouty dated Apr. 9, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); letter from the Commissioner of Corporations to the chairman of the Committee on Interstate Commerce, transmitting certain suggestions relative to the bill (H. R. 15613) to create a Federal Trade Commission, first letter dated July 8, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); brief by the Bureau of Corporations, relative to sec. 5 of the bill (H. R. 15613) to create a Federal Trade Commission, dated Aug. 20, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); brief by George Rublee relative to the court review in the bill (H. R. 15613) to create a Federal Trade Commission, dated Aug. 25, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); and dissenting opinion of Justice Brandeis in *Federal Trade Commission v. Gratz*, 253 U. S. 421, 429-442. (See case also in Vol. II of Commission's Decisions, p. 564 at pp. 570-579.)

Sec. 2. SALARIES. SECRETARY. OTHER EMPLOYEES. EXPENSES OF THE COMMISSION. OFFICES—Continued.

Commission may rent suitable offices.

Until otherwise provided by law, the commission may rent suitable offices for its use.

Auditing of accounts.

The Auditor for the State and Other Departments shall receive and examine all accounts of expenditures of the commission.

Sec. 3. BUREAU OF CORPORATIONS. OFFICE OF THE COMMISSION. PROSECUTION OF INQUIRIES.

Bureau of Corporations absorbed by Commission.

SEC. 3. That upon the organization of the commission and election of its chairman, the Bureau of Corporations and the offices of Commissioner and Deputy Commissioner of Corporations shall cease to exist; and all pending investigations and proceedings of the Bureau of Corporations shall be continued by the commission.

Clerks, employees, records, papers, property, appropriations, transferred to Commission.

All clerks and employees of the said bureau shall be transferred to and become clerks and employees of the commission at their present grades and salaries. All records, papers, and property of the said bureau shall become records, papers, and property of the commission, and all unexpended funds and appropriations for the use and maintenance of the said bureau, including any allotment already made to it by the Secretary of Commerce from the contingent appropriation for the Department of Commerce for the fiscal year nineteen hundred and fifteen, or from the departmental printing fund for the fiscal year nineteen hundred and fifteen, shall become funds and appropriations available to be expended by the commission in the exercise of the powers, authority, and duties conferred on it by this Act.

Principal office in Washington, but Commission may meet elsewhere.

The principal office of the commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The commission may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

May prosecute any inquiry anywhere in United States.

Sec. 4.—DEFINITIONS.

SEC. 4. That the words defined in this section shall have the following meaning when found in this Act, to wit:

"Commerce."

"Commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any

such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

"Corporation" means any company or association incorporated or unincorporated, which is organized to carry on business for profit and has shares of capital or capital stock, and any company or association, incorporated or unincorporated, without shares of capital or capital stock, except partnerships, which is organized to carry on business for its own profit or that of its members. ^{"Corporation."}

"Documentary evidence" means all documents, papers, and correspondence in existence at and after the passage of this Act. ^{"Documentary evidence."}

"Acts to regulate commerce" means the Act entitled "An Act to regulate commerce," approved February fourteenth, eighteen hundred and eighty-seven, and all Acts amendatory thereof and supplementary thereto. ^{"Acts to regulate commerce."}

"Antitrust acts" means the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety;² also the sections seventy-three to seventy-seven, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," approved August twenty-seventh, eighteen hundred and ninety-four; and also the Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February twelfth, nineteen hundred and thirteen. ^{"Antitrust acts."}

Sec. 5. UNFAIR COMPETITION. COMPLAINTS, FINDINGS, AND ORDERS OF COMMISSION. APPEALS. SERVICE.³

SEC. 5. That unfair methods of competition in commerce are hereby declared unlawful. ^{Unfair methods unlawful.}

The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce. ^{Commission to prevent. Banks and common carriers excepted.}

² For text of Sherman Act, see footnote on pp. 649-651.

³ Jurisdiction of Commission under this section limited by sec. 406 of the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159. See second paragraph of footnote on p. 635.

Sec. 5. UNFAIR COMPETITION. COMPLAINTS, FINDINGS, AND ORDERS OF COMMISSION. APPEALS. SERVICE.—Continued.

Commission to issue complaint when unfair method used and to public interest.

To serve same on respondent with notice of hearing.

Respondent to have right to appear and show cause, etc.

Intervention allowed on application and good cause.

Testimony to be reduced to writing and filed.

If method prohibited, Commission to make written report stating findings, and to issue and serve order to cease and desist on respondent.

Modification or setting aside by the Commission of its order.

Disobedience of order. Application to Circuit Court of Appeals by Commission.

Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the commission, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its applica-

tion a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person, partnership, or corporation and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Action by Court. Notice to respondent. Decree affirming, modifying, or setting aside Commission's order.

Commission's findings. Conclusive if supported by testimony.

Introduction of additional evidence, if reasonable grounds for failure to adduce theretofore.

May be taken before Commission.

Commission may make new or modified findings by reason thereof.

Judgment and decree subject to review upon certiorari, but otherwise final.

Petition by respondent to review order to cease and desist.

To be served on Commission.

Jurisdiction of Court of Appeals same as on application by Commission, and Commission's findings similarly conclusive.

Any party required by such order of the commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission as in the case of an application by the commission for the enforcement of its order, and the findings of the commission as to the facts, if supported by testimony, shall in like manner be conclusive.

Sec. 5. UNFAIR COMPETITION, COMPLAINTS, FINDINGS, AND ORDERS OF COMMISSION. APPEALS. SERVICE—Continued.

<p>Jurisdiction of Court exclusive.</p>	<p>The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission shall be exclusive.</p>
<p>Proceedings to have precedence over other cases.</p>	<p>Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or judgment of the court to enforce the same</p>
<p>Liability under antitrust acts not affected.</p>	<p>shall in any wise relieve or absolve any person, partnership, or corporation from any liability under the antitrust acts.⁴</p>
<p>Service of Commission's complaints, orders, and other processes.</p>	<p>Complaints, orders, and other processes of the commission under this section may be served by anyone duly authorized by the commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person, partnership, or corporation; or (c) by registering and mailing a copy thereof addressed to such person, partnership, or corporation at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.</p>
<p>Personal; or</p>	
<p>At office or place of business; or</p>	
<p>By registered mail.</p>	
<p>Verified return by person serving, and return post-office receipt, proof of service.</p>	

Sec. 6. FURTHER POWERS.⁵

<p>To gather and compile information, and to investigate with reference to organization, business, etc., of corporations, except banks and common carriers.</p>	<p>SEC. 6. That the commission shall also have power—</p> <p>(a) To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks, and common carriers subject to the Act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships.</p>
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⁴ For text of Sherman Act, see footnote on pp. 649-651. As enumerated in last paragraph of sec. 4 of this act, see p. 639.

⁵ Provisions and penalties of secs. 6, 8, 9, and 10 of this act made applicable to the jurisdiction, powers, and duties conferred and imposed upon the Secretary of Agriculture by sec. 402 of the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat., 159.

(b) To require, by general or special orders, corporations engaged in commerce, excepting banks, and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the commission in such form as the commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise as the commission may prescribe, and shall be filed with the commission within such reasonable period as the commission may prescribe, unless additional time be granted in any case by the commission.

To require annual or special reports from corporations, except banks and common carriers.

Such reports to be under oath, or otherwise, and filed within such reasonable period as commission may prescribe.

(c) Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the antitrust Acts,⁶ to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney General it shall be its duty to make such investigation. It shall transmit to the Attorney General a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public in the discretion of the commission.

To investigate, either on own initiative or application of Attorney General, observance of final decree entered under antitrust acts.

To transmit findings and recommendations to Attorney General.

(d) Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust Acts⁶ by any corporation.

To investigate, on direction President or either House, alleged violations of antitrust acts.

(e) Upon the application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust Acts⁶ in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.

To investigate and make recommendations, on application of Attorney General, for readjustment of business of alleged violator of antitrust acts.

(f) To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient

To make public, as it deems expedient, portions of information obtained.

⁶ For text of Sherman Act, see footnote on pp. 649-651. As enumerated in last paragraph of sec. 4 of this act, see p. 639.

Sec. 6. FURTHER POWERS—Continued.

To make reports to Congress, together with recommendations for new legislation. To provide for publication of its reports and decisions.

in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

To classify corporations, and make rules and regulations incidental to administration of Act.

(g) From time to time to classify corporations and to make rules and regulations for the purpose of carrying out the provisions of this Act.

To investigate foreign trade conditions involving foreign trade of United States, reporting to Congress with recommendations deemed advisable.

(h) To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

Sec. 7. SUITS IN EQUITY UNDER ANTITRUST ACTS. COMMISSION AS MASTER IN CHANCERY.

Court may refer suit to Commission.

SEC. 7. That in any suit in equity brought by or under the direction of the Attorney General as provided in the antitrust Acts,⁷ the court may, upon the conclusion of the testimony therein, if it shall be then of opinion that the complainant is entitled to relief, refer said suit to the commission, as a master in chancery, to ascertain and report an appropriate form of decree therein. The commission shall proceed upon such notice to the parties and under such rules of procedure as the court may prescribe, and upon the coming in of such report such exceptions may be filed and such proceedings had in relation thereto as upon the report of a master in other equity causes, but the court may adopt or reject such report, in whole or in part, and enter such decree as the nature of the case may in its judgment require.

To ascertain and report an appropriate form of decree.

Commission to proceed on notice to parties and as prescribed by court. Exceptions. Proceedings as in other equity causes.

Court may adopt or reject report in whole or in part.

Sec. 8. COOPERATION OF OTHER DEPARTMENTS AND BUREAUS.⁸

To furnish, when directed by President, records, papers, and information, and to detail officials and employees.

SEC. 8. That the several departments and bureaus of the Government when directed by the President shall furnish the commission, upon its request, all records, papers, and information in their possession relating to any corporation subject to any of the provisions of this Act, and

⁷ For text of Sherman Act, see footnote on pp. 649-651. As enumerated in last paragraph of sec. 4 of this act, see p. 639.

⁸ Provisions and penalties of secs. 6, 8, 9, and 10 of this act made applicable to the jurisdiction, powers, and duties conferred and imposed upon the Secretary of Agriculture by sec. 402 of the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159.

shall detail from time to time such officials and employees to the commission as he may direct.

Sec. 9. EVIDENCE. WITNESSES. TESTIMONY. MANDAMUS TO ENFORCE OBEDIENCE TO ACT.*

SEC. 9. That for the purposes of this Act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any members of the commission may sign subpoenas, and members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Upon the application of the Attorney General of the United States, at the request of the commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the commission made in pursuance thereof.

The commission may order testimony to be taken by deposition in any proceeding or investigation pending under this Act at any stage of such proceeding or investi-

Commission to have access to documentary evidence and right to copy same.

May require attendance of witnesses and production of evidence.

Subpoenas, oaths, affirmations, examination of witnesses. Reception of evidence.

Witnesses and evidence may be required from any place in United States.

Disobedience to a subpoena. Commission may invoke aid of any United States court.

In case of contumacy or disobedience of subpoena, any district court in jurisdiction involved may order obedience.

Disobedience thereafter punishable as contempt.

Mandamus from district courts on application of Attorney General to enforce compliance with Act.

Commission may order depositions at any stage.

* Provisions and penalties of secs. 6, 8, 9, and 10 of this act made applicable to the jurisdiction, powers, and duties conferred and imposed upon the Secretary of Agriculture by sec. 402 of the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159.

Sec. 9. EVIDENCE. WITNESSES. TESTIMONY. MANDAMUS TO ENFORCE OBEDIENCE TO ACT—Continued.

May be taken before person designated by Commission.

Testimony to be reduced to writing, etc.

Appearance, testimony, and production of evidence may be compelled as in proceedings before Commission

Witness fees, same as paid for like services in United States courts.

Incriminating testimony or evidence no excuse for failure to testify or produce.

But natural person shall not be prosecuted with respect to matters involved.

Perjury excepted

Failure to testify or to produce documentary evidence. Offender subject to fine or imprisonment, or both.

gation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided.

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpoena of the commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the commission in obedience to a subpoena issued by it: *Provided*, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

Sec. 10. PENALTIES.¹⁰

SEC. 10. That any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than \$1,000 nor more than \$5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

¹⁰ Provisions and penalties of secs. 6, 8, 9, and 10 of this Act made applicable to the jurisdiction, powers, and duties conferred and imposed upon the Secretary of Agriculture by sec. 402 of the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159.

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Act, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to this Act, or who shall willfully neglect or fail to make, or cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall willfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than \$1,000 nor more than \$5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

False entries, statements, or tampering with accounts, records, or other documentary evidence, or willful failure to make entries, etc., or

Willful refusal to submit documentary evidence to Commission.

Offender subject to fine or imprisonment, or both.

If any corporation required by this Act to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Failure of corporation to file required report.

Forfeiture for each day's continued failure.

Recoverable in civil suit in district where corporation has principal office, or does business.

Various district attorneys to prosecute for recovery.

Any officer or employee of the commission who shall make public any information obtained by the commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding \$5,000,

Unauthorized divulgence of information by employee of Commission punishable by fine or imprisonment or both.

Sec. 10. PENALTIES—Continued.

or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

Sec. 11. ANTITRUST ACTS AND ACT TO REGULATE COMMERCE.

Not affected by
this act

SEC. 11. Nothing contained in this Act shall be construed to prevent or interfere with the enforcement of the provisions of the antitrust Acts ¹¹ or the Acts to regulate commerce, nor shall anything contained in the Act be construed to alter, modify, or repeal the said antitrust Acts or the Acts to regulate commerce or any part or parts thereof.

Approved, September 26, 1914.

 THE CLAYTON ACT ¹

[Approved Oct. 15, 1914]

[PUBLIC—No. 212—63^D CONGRESS]

[H. R. 15657]

AN ACT To supplement existing laws against unlawful restraints and monopolies, and for other purposes

Sec. 1. DEFINITIONS.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That "antitrust laws," as used herein, includes the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved

¹¹ For text of Sherman Act, see footnote on pp. 649-651. As enumerated in last paragraph of sec. 4 of this act, see p. 630.

¹ Reported decisions for the period covered by the preceding volumes (Mar. 15, 1915, to May 4, 1930, inclusive) and bearing on the provisions of this act affecting the Commission, may be found, with a few exceptions to be noted, reported in whole or in part, in the Commission publication entitled "Statutes and Decisions—Federal Trade Commission—1914-1929."

Decisions in which the Commission was a party and which were handed down during the period above referred to may also be found reported in their chronological order in Appendix II of the different volumes of the Commission's reports.

Exceptions above referred to follow: *Parker v. New England Oil Corporation*, 8 F. (2d) 392, 418; *Radio Corporation of America v. United Radio & Electric Corporation, et al.*, 50 F. (2d) 206; *Swift & Co. v. United States*, 276 U. S. 311, 319; *United States v. Bates Valve Bag Corporation, et al.*, 39 F. (2d) 162; *Sidney Morris & Co. v. National Association of Stationers, etc.*, 40 F. (2d) 620 (C. C. A.).

Decisions of the character referred to, but handed down subsequent to the sforesaid period and during the period covered by this volume, i. e., May 5, 1930, to Mar. 23, 1931, inclusive, follow: *Pittsburgh & W. Va. Ry. v. U. S.*, 281 U. S. 479, 483, 484, 488; *American Can Co. v. Ladoga*, 44 F. (2d) 763 (C. C. A.); *Radio Corporation of America v. DeForest Radio Co.*, 47 F. (2d) 606 (C. C. A.); and *Carbice Corporation of America v. American Patents Development Corporation, et al.*, 283 U. S. 27.

July second, eighteen hundred and ninety;² sections seventy-three to seventy-seven, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," of August twenty-seventh, eighteen hundred and ninety-four; an Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh,

It should be noted that this law is limited to some extent by certain provisions of other acts, as follows:

SHIPPING BOARD

The so-called Shipping Board Act (sec. 15, ch. 451, 64th Cong., 1st sess., 39 Stat. 723, 734) provides that "every agreement, modification, or cancellation lawful under this section shall be excepted from the provisions of the Act approved July 2, 1890, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' and amendments and acts supplementary thereto * * *";

PACKERS AND STOCKYARDS ACT

The jurisdiction of the Commission is limited by the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159, sec. 406 of said Act providing that "on and after the enactment of this Act and so long as it remains in effect the Federal Trade Commission shall have no power or jurisdiction so far as relating to any matter which by this Act is made subject to the jurisdiction of the Secretary [of Agriculture], except in cases in which, before the enactment of this Act, complaint has been served under sec. 6 of the Act entitled 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved Sept. 26, 1914, or under sec. 11 of the Act, entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved Oct. 15, 1914, and except when the Secretary of Agriculture, in the exercise of his duties hereunder, shall request of the said Federal Trade Commission that it make investigations and report in any case"; and

TRANSPORTATION ACT

By the last paragraph of sec. 407 of the Transportation Act, approved Feb. 28, 1920, ch. 91, 41 Stat. 456 at 482, the provisions of the Clayton Act and of all other restraints or prohibitions, State or Federal, are made inapplicable to carriers, in so far as the provisions of the section in question, which relate to division of traffic, acquisition by a carrier of control of other carriers and consolidation of railroad systems or railroads, are concerned.

AGRICULTURAL ASSOCIATIONS

Public No. 146, Sixty-seventh Congress, approved Feb. 18, 1922 (42 Stat. 388), permits, subject to the provisions set forth, associations of producers of agricultural products for the purpose of "preparing for market, handling, and marketing in interstate and foreign commerce such products * * *." See also, in this general connection, the Cooperative Marketing Act, approved July 2, 1926, 44 Stat. 803.

SHERMAN ACT

² The Sherman Act (26 Stat. 209), which, as a matter of convenience is printed herewith on pages 650 and 651.

Sec. 1. DEFINITIONS—Continued.

eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,' approved February twelfth, nineteen hundred and thirteen; and also this Act.

"Commerce."

"Commerce," as used herein, means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided*, That nothing in this Act contained shall apply to the Philippine Islands.

"Person" or "persons."

The word "person" or "persons" wherever used in this Act shall be deemed to include corporations and as-

The act, omitting the usual formal "*Be it enacted*," etc., follows:

CONTRACTS, COMBINATIONS, ETC., IN RESTRAINT OF TRADE ILLEGAL.

SECTION 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

PERSON MONOPOLIZING TRADE GUILTY OF MISDEMEANOR—PENALTY.

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

COMBINATIONS IN TERRITORIES OR DISTRICT OF COLUMBIA ILLEGAL—PENALTY.

SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

sociations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

Sec. 2. PRICE DISCRIMINATION.³

SEC. 2. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly to discriminate in price between different purchasers of commodities, which commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of com-

Unlawful where effect may be to substantially lessen competition or tend to create a monopoly.

ENFORCEMENT.

SEC. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act, and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

ADDITIONAL PARTIES.

SEC. 5. Whenever it shall appear to the court before which any proceeding under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

FORFEITURE OF PROPERTY.

SEC. 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

SUITS—RECOVERY.

SEC. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared unlawful by this act, may sue therefor in any circuit court of the United States, in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

"PERSON" OR "PERSONS" DEFINED.

SEC. 8. That the word "person," or "persons," wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State or the laws of any foreign country.

³ On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on p. 691.

Sec. 2. PRICE DISCRIMINATION—Continued.

But permissible if based on difference in grade, quality, or quantity, or in selling or transportation cost, or if made to meet competition. and

Vendor may select own customers if not in restraint of trade.

merce: *Provided*, That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade.

Sec. 3. TYING OR EXCLUSIVE LEASES, SALES OR CONTRACTS.⁴

Unlawful where effect may be to substantially lessen competition.

SEC. 3. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

May sue in any United States district court, and recover threefold damages, including cost of suit

Sec. 4. VIOLATION OF ANTITRUST LAWS—DAMAGES TO PERSON INJURED.

SEC. 4. That any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws⁵ may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect

⁴ On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on p. 649.

⁵ For text of Sherman Act, see footnote on pp. 649-651. As enumerated in Clayton Act, see first paragraph thereof on p. 648.

to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

Sec. 5. PROCEEDINGS BY OR IN BEHALF OF UNITED STATES UNDER ANTITRUST LAWS. FINAL JUDGMENTS OR DECREES THEREIN AS EVIDENCE IN PRIVATE LITIGATION. INSTITUTION THEREOF AS SUSPENDING STATUTE OF LIMITATIONS.

SEC. 5. That a final judgment or decree hereafter rendered in any criminal prosecution or in any suit or proceeding in equity brought by or on behalf of the United States under the antitrust laws ^o to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any suit or proceeding brought by any other party against such defendant under said laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: *Provided*, This section shall not apply to consent judgments or decrees entered before any testimony has been taken: *Provided further*, This section shall not apply to consent judgments or decrees rendered in criminal proceedings or suits in equity, now pending, in which the taking of testimony has been commenced but has not been concluded, provided such judgments or decrees are rendered before any further testimony is taken.

Prima facie evidence against same defendant in private litigation.

Consent judgments or decrees excepted.

Whenever any suit or proceeding in equity or criminal prosecution is instituted by the United States to prevent, restrain or punish violations of any of the antitrust laws, the running of the statute of limitations in respect of each and every private right of action arising under said laws and based in whole or in part on any matter complained of in said suit or proceeding shall be suspended during the pendency thereof.

Running of statute of limitations with respect to private rights suspended pending proceeding by the United States under antitrust laws.

Sec. 6. LABOR OF HUMAN BEINGS NOT A COMMODITY OR ARTICLE OF COMMERCE.

SEC. 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws ^o shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects

Labor, agricultural, or horticultural organizations and their members, organized for mutual help and without capital stock, not affected by antitrust laws with respect to their legitimate objects.

^o For text of Sherman Act, see footnote on pp. 649-651. As enumerated in Clayton Act, see first paragraph thereof on p. 648.

Sec. 6. LABOR OF HUMAN BEINGS NOT A COMMODITY OR ARTICLE OF COMMERCE—Continued.

thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

Sec. 7. ACQUISITION BY CORPORATION OF STOCK OR OTHER SHARE CAPITAL OF OTHER CORPORATION OR CORPORATIONS.¹

Of other corporation. Prohibited where effect may be to substantially lessen competition, restrain commerce, or tend to create a monopoly.

SEC. 7. That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

Of two or more other corporations. Prohibited where effect may be to substantially lessen competition, restrain commerce, or tend to create a monopoly.

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

Purchase solely for investment accepted.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Formation of subsidiary corporations for immediate lawful business also accepted.

¹ On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on p. 649.

It should be noted also that corporations for export trade are exempted from the provisions of this section. (See p. 672, sec. 3.)

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other such common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws,⁸ nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Sec. 8. DIRECTORS, OFFICERS, OR EMPLOYEES OF BANKS, BANKING ASSOCIATIONS, OR TRUST COMPANIES OPERATING UNDER LAWS OF UNITED STATES AND DIRECTORS OF OTHER CORPORATIONS.⁹

SEC. 8. That from and after two years from the date of the approval of this Act no person shall at the same time be a director or other officer or employee of more than one bank, banking association or trust company organized or operating under the laws of the United States, either of which has deposits, capital, surplus, and undivided profits aggregating more than \$5,000,000; and no private banker or person who is a director in any bank or trust company, organized and operating under the laws of a State, having deposits, capital, surplus, and

Common carriers excepted with reference to branch or tap lines where no substantial competition.

Existing rights heretofore lawfully acquired not affected.

Not to serve more than one bank, banking association, or trust company if deposits, capital, surplus, and undivided profits aggregate over \$5,000,000.

⁸ For text of Sherman Act, see footnote on pp. 649-651. As enumerated in Clayton Act see first paragraph thereof on p. 648.

⁹ By the last paragraph of the Act of Sept. 7, 1916, amending the Federal Reserve Act, ch. 461, 39 Stat. 752 at 756, it is provided that the provisions of sec. 8 shall not apply to "A director or other officer, agent, or employee of any member bank" who may, "with the approval of the Federal Reserve Board be a director or other officer, agent or em-

Sec. 8. DIRECTORS, OFFICERS, OR EMPLOYEES OF BANKS, BANKING ASSOCIATIONS, OR TRUST COMPANIES OPERATING UNDER LAWS OF UNITED STATES AND DIRECTORS OF OTHER CORPORATIONS—Contd.

How eligibility determined.

undivided profits aggregating more than \$5,000,000, shall be eligible to be a director in any bank or banking association organized or operating under the laws of the United States. The eligibility of a director, officer, or employee under the foregoing provisions shall be determined by the average amount of deposits, capital, surplus, and undivided profits as shown in the official statements of such bank, banking association, or trust company filed as provided by law during the fiscal year next preceding the date set for the annual election of directors, and when a director, officer, or employee has been elected or selected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter under said election or employment.

Not to serve more than one bank, banking association or trust company located in city or incorporated town or village of more than 200,000 inhabitants.

Certain savings banks, land banks, and noncommercial banking institutions excepted.

Where entire stock of one bank, etc., owned by stock holders of other, also excepted.

No bank, banking association or trust company, organized or operating under the laws of the United States, in any city or incorporated town or village of more than two hundred thousand inhabitants, as shown by the last preceding decennial census of the United States, shall have as a director or other officer or employee any private banker or any director or other officer or employee of any other bank, banking association or trust company located in the same place: *Provided*, That nothing in this section shall apply to mutual savings banks not having a capital stock represented by shares, to joint-stock land banks organized under the provisions of the Federal Farm Loan Act, or to other banking institutions which do no commercial banking business:^a *Provided further*, That a director or other officer or employee of such bank, banking association, or trust company may be a director or other officer or employee of not more than one other bank or trust company organized under the laws of the United States or any State where the entire capital stock of one is owned by stockholders in the other: *And provided further*, That nothing contained in this section shall forbid

ployee of any" bank or corporation, "chartered or incorporated under the laws of the United States or of any State thereof, and principally engaged in international or foreign banking, or banking in a dependency or insular possession of the United States," in the capital stock of which such member bank may have invested under the conditions and circumstances set forth in the Act.

On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on p. 649.

^a That part of the preceding clause beginning with "to joint-stock land banks" added by Act of Mar. 2, 1929, ch. 581.

a director of class A of a Federal reserve bank, as defined in the Federal Reserve Act from being an officer or director or both an officer and director in one member bank: *And provided further*, That nothing in this Act shall prohibit any private banker from being an officer, director, or employee of not more than two banks, banking associations, or trust companies, or prohibit any officer, director, or employee of any bank, banking association, or trust company, or any class A director of a Federal reserve bank, from being an officer, director, or employee of not more than two other banks, banking associations, or trust companies, whether organized under the laws of the United States or any State, if in any such case there is in force a permit therefor issued by the Federal Reserve Board; and the Federal Reserve Board is authorized to issue such permit if in its judgment it is not incompatible with the public interest, and to revoke any such permit whenever it finds, after reasonable notice and opportunity to be heard, that the public interest requires its revocation.

Class A director of Federal reserve bank excepted and

Private banker or officer, etc., of member bank, or class A director may serve, with consent of Federal Reserve Board, not more than two other banks, etc., where no substantial competition.

The consent of the Federal Reserve Board may be procured before the person applying therefor has been elected as a class A director of a Federal reserve bank or as a director of any member bank.¹⁰

Consent may be secured before applicant elected director.

That from and after two years from the date of the approval of this Act no person at the same time shall be a director in any two or more corporations, any one of which has capital, surplus, and undivided profits aggregating more than \$1,000,000, engaged in whole or in part in commerce, other than banks, banking associations, trust companies and common carriers subject to the Act to regulate commerce approved February fourth, eighteen hundred and eighty-seven, if such corporations are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws.¹¹ The eligibility of a director under the foregoing provision shall be determined by the aggregate amount of the capital, surplus, and undivided profits, exclusive of dividends declared but not paid to stockholders, at the end of the fiscal year of said corpora-

Not to serve two or more presently or previously competing corporations if capital, surplus, and undivided profits aggregate more than \$1,000,000, and elimination of competition by agreement would violate antitrust laws.

How eligibility determined.

¹⁰ The part of the section immediately preceding beginning with, "*And provided further*, That nothing in this Act" to this point, amendments made by act May 15, 1916, ch. 120, act May 26, 1920, ch. 208, and Act Mar. 9, 1923, ch. 165.

¹¹ For text of Sherman Act, see footnote on pp. 649-651. As enumerated in Clayton Act, see first paragraph thereof on p. 649.

Sec. 8. DIRECTORS, OFFICERS, OR EMPLOYEES OF BANKS, BANKING ASSOCIATIONS, OR TRUST COMPANIES OPERATING UNDER LAWS OF UNITED STATES AND DIRECTORS OF OTHER CORPORATIONS—Contd.

tion next preceding the election of directors, and when a director has been elected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter.

Eligibility at time of election or selection not changed for one year.

When any person elected or chosen as a director or officer or selected as an employee of any bank or other corporation subject to the provisions of this Act is eligible at the time of his election or selection to act for such bank or other corporation in such capacity his eligibility to act in such capacity shall not be affected and he shall not become or be deemed amenable to any of the provisions hereof by reason of any change in the affairs of such bank or other corporation from whatsoever cause, whether specifically excepted by any of the provisions hereof or not, until the expiration of one year from the date of his election or employment.

Sec. 9. WILLFUL MISAPPLICATION, EMBEZZLEMENT, ETC., OF MONEYS, FUNDS, ETC., OF COMMON CARRIER A FELONY.

SEC. 9. Every president, director, officer or manager of any firm, association or corporation engaged in commerce as a common carrier, who embezzles, steals, abstracts or willfully misapplies, or willfully permits to be misapplied, any of the moneys, funds, credits, securities, property or assets of such firm, association or corporation, arising or accruing from, or used in, such commerce, in whole or in part, or willfully or knowingly converts the same to his own use or to the use of another, shall be deemed guilty of a felony and upon conviction shall be fined not less than \$500 or confined in the penitentiary not less than one year nor more than ten years, or both, in the discretion of the court.

Penalty, fine, or imprisonment, or both.

May prosecute in district court of United States for district where offense committed.

Prosecutions hereunder may be in the district court of the United States for the district wherein the offense may have been committed.

Jurisdiction of State courts not affected. Their judgments a bar to prosecution hereunder.

That nothing in this section shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof; and a judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution hereunder for the same act or acts.

Sec. 10. LIMITATIONS UPON DEALINGS AND CONTRACTS OF COMMON CARRIERS.

SEC. 10. That after two years from the approval of this Act no common carrier engaged in commerce shall have any dealings in securities, supplies or other articles of commerce, or shall make or have any contracts for construction or maintenance of any kind, to the amount of more than \$50,000, in the aggregate, in any one year with another corporation, firm, partnership or association when the said common carrier shall have upon its board of directors or as its president, manager or as its purchasing or selling officer, or agent in the particular transaction, any person who is at the same time a director, manager, or purchasing or selling officer of, or who has any substantial interest in, such other corporation, firm, partnership or association, unless and except such purchases shall be made from, or such dealings shall be with, the bidder whose bid is the most favorable to such common carrier, to be ascertained by competitive bidding under regulations to be prescribed by rule or otherwise by the Interstate Commerce Commission. No bid shall be received unless the name and address of the bidder or the names and addresses of the officers, directors and general managers thereof, if the bidder be a corporation, or of the members, if it be a partnership or firm, be given with the bid.

Dealings in securities, etc., and contracts for construction or maintenance, aggregating more than \$50,000 a year to be by bid in case director, etc., of common carrier, also director, etc., of other party or has a substantial interest therein.

Bidding to be competitive under regulations prescribed by Interstate Commerce Commission, and to show names and addresses of bidder, officers, etc.

Any person who shall, directly or indirectly, do or attempt to do anything to prevent anyone from bidding or shall do any act to prevent free and fair competition among the bidders or those desiring to bid shall be punished as prescribed in this section in the case of an officer or director.

Penalty for preventing or attempting to prevent free and fair competition in bidding.

Every such common carrier having any such transactions or making any such purchases shall within thirty days after making the same file with the Interstate Commerce Commission a full and detailed statement of the transaction showing the manner of the competitive bidding, who were the bidders, and the names and addresses of the directors and officers of the corporations and the members of the firm or partnership bidding; and whenever the said commission shall, after investigation or hearing, have reason to believe that the law has been violated in and about the said purchases or transactions it shall transmit all papers and documents and its own views or findings regarding the transaction to the Attorney General.

Carrier to report transactions hereunder to Interstate Commerce Commission.

Commission to report violations, and its own findings to Attorney General.

Sec. 10. LIMITATIONS UPON DEALINGS AND CONTRACTS OF COMMON CARRIERS—Continued.

Misdemeanor for director, etc., to knowingly vote for, direct, aid, etc., in violation of this section.

If any common carrier shall violate this section it shall be fined not exceeding \$25,000; and every such director, agent, manager or officer thereof who shall have knowingly voted for or directed the act constituting such violation or who shall have aided or abetted in such violation shall be deemed guilty of a misdemeanor and shall be fined not exceeding \$5,000, or confined in jail not exceeding one year, or both, in the discretion of the court.

Penalty.

Effective date extended to Jan. 1, 1921.

The effective date on and after which the provisions of section 10 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October fifteenth, nineteen hundred and fourteen, shall become and be effective is hereby deferred and extended to January first, nineteen hundred and twenty-one: *Provided*, That such extension shall not apply in the case of any corporation organized after January twelfth, nineteen hundred and eighteen.¹²

Except as to corporations organized after Jan. 12, 1918.

Sec. 11. JURISDICTION TO ENFORCE COMPLIANCE. COMPLAINTS, FINDINGS, AND ORDERS. APPEALS. SERVICE.¹³

Jurisdiction as respectively applicable vested in—

Interstate Commerce Commission;

Federal Reserve Board; and

Federal Trade Commission.

SEC. 11. That authority to enforce compliance with sections two, three, seven and eight of this Act by the persons respectively subject thereto is hereby vested: in the Interstate Commerce Commission where applicable to common carriers, in the Federal Reserve Board where applicable to banks, banking associations and trust companies, and in the Federal Trade Commission where applicable to all other character of commerce, to be exercised as follows:

Commission or board to issue complaint if believes sec. 2, 3, 7, or 8 violated, and serve same with notice of hearing on respondent or defendant.

Whenever the commission or board vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections two, three, seven and eight of this Act, it shall issue and serve upon such person a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so

¹² Above paragraph, sec. 501 of the Transportation Act, Feb. 23, 1920, ch. 91, 41 Stat. 456 at 499.

¹³ On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on p. 649.

complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission or board requiring such person to cease and desist from the violation of the law so charged in said complaint. Any person may make application, and upon good cause shown may be allowed by the commission or board, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission or board. If upon such hearing the commission or board, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock held or rid itself of the directors chosen contrary to the provisions of sections seven and eight of this Act, if any there be, in the manner and within the time fixed by said order. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission or board may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

Respondent to have right to appear and show cause, etc.

Intervention may be permitted for good cause.

Transcript of testimony to be filed.

In case of violation commission or board to make written report stating findings, and to issue and serve order to cease and desist on respondent.

Commission or board may modify or set aside its order until transcript of record filed in Circuit Court of Appeals.

In case of disobedience of its order, commission or board may apply to Circuit Court of Appeals for enforcement of its order, and file transcript of record.

Court to cause notice thereof to be served on respondent and to have power to enter decree affirming, modifying or setting aside order of commission or board.

If such person fails or neglects to obey such order of the commission or board while the same is in effect, the commission or board may apply to the circuit court of appeals of the United States, within any circuit where the violation complained of was or is being committed or where such person resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission or board. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commis-

Sec. 11. JURISDICTION TO ENFORCE COMPLIANCE. COMPLAINTS, FINDINGS, AND ORDERS. APPEALS. SERVICE—Continued.

Findings of commission or board conclusive if supported by testimony.

Introduction of additional evidence may be permitted on application, and showing of reasonable ground for failure to adduce theretofore.

Commission or board may make new or modified findings by reason thereof.

Judgment and decree subject to review upon certiorari, but otherwise final.

Petition by respondent to review order to cease and desist.

To be served on commission or board which thereupon to certify and file transcript of record in the court.

Jurisdiction of Court of Appeals same as on application by commission or board and commission's or board's findings similarly conclusive.

Jurisdiction of Court of Appeals exclusive.

mission or board. The findings of the commission or board as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission or board, the court may order such additional evidence to be taken before the commission or board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission or board may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Any party required by such order of the commission or board to cease and desist from a violation charged may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission or board be set aside. A copy of such petition shall be forthwith served upon the commission or board, and thereupon the commission or board forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission or board as in the case of an application by the commission or board for the enforcement of its order, and the findings of the commission or board as to the facts, if supported by testimony, shall in like manner be conclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission or board shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or board or the judgment of the court to enforce the same shall in any wise relieve or absolve any person from any liability under the antitrust Acts.¹⁴

Proceedings to have precedence over other cases, and to be expedited.

Liability under antitrust acts not affected.

Complaints, orders, and other processes of the commission or board under this section may be served by anyone duly authorized by the commission or board, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person; or (c) by registering and mailing a copy thereof addressed to such person at his principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

Service of commission's or board's complaints, orders, and other processes. Personal; or

At office or place of business; or

By registered mail.

Verified return of person serving, and return post-office receipt, proof of service.

Sec. 12. PLACE OF PROCEEDINGS UNDER ANTITRUST LAWS. SERVICE OF PROCESS.

SEC. 12. That any suit, action, or proceeding under the antitrust laws¹⁴ against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

Proceeding may be instituted or process served in district of which corporation an inhabitant or wherever it may be found.

Sec. 13. SUBPENAS FOR WITNESSES IN PROCEEDINGS BY OR ON BEHALF OF THE UNITED STATES UNDER ANTITRUST LAWS.

SEC. 13. That in any suit, action, or proceeding brought by or on behalf of the United States subpoenas for witnesses who are required to attend a court of the United States in any judicial district in any case, civil or crimi-

¹⁴ For text of Sherman Act, see footnote on pp. 649-651. For antitrust Acts as enumerated in Clayton Act, see first paragraph thereof on p. 648.

Sec. 13. SUBPŒNAS FOR WITNESSES IN PROCEEDINGS BY OR ON BEHALF OF THE UNITED STATES UNDER ANTITRUST LAWS—Continued.

May run into any district, but permission of trial court necessary in civil cases if witness lives out of district and more than 100 miles distant.

nal, arising under the antitrust laws¹⁵ may run into any other district: *Provided*, That in civil cases no writ of subpœna shall issue for witnesses living out of the district in which the court is held at a greater distance than one hundred miles from the place of holding the same without the permission of the trial court being first had upon proper application and cause shown.

Sec. 14. VIOLATION BY CORPORATION OF PENAL PROVISIONS OF ANTITRUST LAWS.

Deemed also that of individual directors, officers, etc.

SEC. 14. That whenever a corporation shall violate any of the penal provisions of the antitrust laws,¹⁵ such violation shall be deemed to be also that of the individual directors, officers, or agents of such corporation who shall have authorized, ordered, or done any of the acts constituting in whole or in part such violation, and such violation shall be deemed a misdemeanor, and upon conviction therefor of any such director, officer, or agent he shall be punished by a fine of not exceeding \$5,000 or by imprisonment for not exceeding one year, or by both, in the discretion of the court.

A misdemeanor.

Penalty, fine or imprisonment, or both.

Sec. 15. JURISDICTION OF UNITED STATES DISTRICT COURTS TO PREVENT AND RESTRAIN VIOLATIONS OF THIS ACT.

District attorneys, under direction of Attorney General, to institute proceedings.

Proceedings may be by way of petition setting forth the case, etc.

After due notice, Court to proceed to hearing and determination as soon as may be.

Pending petition instituting proceeding Court may make temporary restraining order or prohibition.

SEC. 15. That the several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. Whenever it shall appear to the court before which any such proceeding may be pending that the ends

¹⁵ For text of Sherman Act, see footnote on pp. 649-651. For antitrust Acts as enumerated in Clayton Act, see first paragraph thereof on p. 648.

of justice require that other parties should be brought before the court, the court may cause them to be summoned whether they reside in the district in which the court is held or not, and subpoenas to that end may be served in any district by the marshal thereof.

Court may summon other parties.

Sec. 16. INJUNCTIVE RELIEF AGAINST THREATENED LOSS BY VIOLATION OF ANTITRUST LAWS.

SEC. 16. That any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws,¹⁶ including sections two, three, seven and eight of this Act, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: *Provided*, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of the Act to regulate commerce approved February fourth, eighteen hundred and eighty-seven, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission.

Open to any person, firm, etc., on same conditions and principles as other injunctive relief by courts of equity against threatened conduct that will cause loss or damage.

Preliminary injunction may issue upon proper bond and showing.

But United States alone may sue for injunctive relief against common carrier subject to Act to Regulate Commerce.

Sec. 17. PRELIMINARY INJUNCTIONS. TEMPORARY RESTRAINING ORDERS.

SEC. 17. That no preliminary injunction shall be issued without notice to the opposite party.

No preliminary injunction without notice.

No temporary restraining order shall be granted without notice to the opposite party unless it shall clearly appear from specific facts shown by affidavit or by the verified bill that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every such temporary restraining order shall be indorsed with the date and hour of issuance, shall be forthwith filed in the clerk's office and entered of record, shall define the in-

No temporary restraining order in absence of a showing of immediate and irreparable injury or loss.

Temporary restraining order, to show date and hour of issue, define injury, etc.

¹⁶ For text of Sherman Act, see footnote on pp. 649-651. For Antitrust Acts as enumerated in Clayton Act, see first paragraph thereof on p. 648.

Sec. 17. PRELIMINARY INJUNCTIONS. TEMPORARY RESTRAINING ORDERS—Continued.

If without notice, issuance of preliminary injunction to be disposed of at earliest possible moment.

jury and state why it is irreparable and why the order was granted without notice, and shall by its terms expire within such time after entry, not to exceed ten days, as the court or judge may fix, unless within the time so fixed the order is extended for a like period for good cause shown, and the reasons for such extension shall be entered of record. In case a temporary restraining order shall be granted without notice in the contingency specified, the matter of the issuance of a preliminary injunction shall be set down for a hearing at the earliest possible time and shall take precedence of all matters except older matters of the same character; and when the same comes up for hearing the party obtaining the temporary restraining order shall proceed with the application for a preliminary injunction, and if he does not do so the court shall dissolve the temporary restraining order. Upon

Opposite party may move dissolution or modification on two days' notice.

two days' notice to the party obtaining such temporary restraining order the opposite party may appear and move the dissolution or modification of the order, and in that event the court or judge shall proceed to hear and determine the motion as expeditiously as the ends of justice may require.

Sec. 263 of Judicial Code repealed.

Section two hundred and sixty-three of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, is hereby repealed.

Sec. 266 not affected.

Nothing in this section contained shall be deemed to alter, repeal, or amend section two hundred and sixty-six of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven.

Sec. 18. NO RESTRAINING ORDER OR INTERLOCUTORY ORDER OF INJUNCTION WITHOUT GIVING SECURITY.

Except as provided in sec. 16 of this act.

SEC. 18. That, except as otherwise provided in section 16 of this Act, no restraining order or interlocutory order of injunction shall issue, except upon the giving of security by the applicant in such sum as the court or judge may deem proper, conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained thereby.

Sec. 19. ORDERS OF INJUNCTION OR RESTRAINING ORDERS—REQUIREMENTS.

SEC. 19. That every order of injunction or restraining order shall set forth the reasons for the issuance of the same, shall be specific in terms, and shall describe in reasonable detail, and not by reference to the bill of complaint or other document, the act or acts sought to be restrained, and shall be binding only upon the parties to the suit, their officers, agents, servants, employees, and attorneys, or those in active concert or participating with them, and who shall, by personal service or otherwise, have received actual notice of the same.

Must set forth reasons, be specific, and describe acts to be restrained.

Binding only on parties to suit, their officers, etc.

Sec. 20. RESTRAINING ORDERS OR INJUNCTIONS BETWEEN AN EMPLOYER AND EMPLOYEES, EMPLOYERS AND EMPLOYEES, ETC., INVOLVING OR GROWING OUT OF TERMS OR CONDITIONS OF EMPLOYMENT.

SEC. 20. That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

Not to issue unless necessary to prevent irreparable injury.

Threatened property or property rights must be described with particularity.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute,

Not to prohibit any person or persons from terminating any relation of employment, recommending others by peaceful means so to do, etc.

Sec. 20. RESTRAINING ORDERS OR INJUNCTIONS BETWEEN AN EMPLOYER AND EMPLOYEES, EMPLOYERS AND EMPLOYEES, ETC., INVOLVING OR GROWING OUT OF TERMS OR CONDITIONS OF EMPLOYMENT—Contd.

Acts specified in this paragraph not to be considered violations of any law of the United States.

any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

Sec. 21. DISOBEDIENCE OF ANY LAWFUL WRIT, PROCESS, ETC., OF ANY UNITED STATES DISTRICT COURT, OR ANY DISTRICT OF COLUMBIA COURT.

If not done also a criminal offense under laws of United States or of State in which committed, person to be proceeded against as hereinafter provided.

SEC. 21. That any person who shall willfully disobey any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of the District of Columbia by doing any act or thing therein, or thereby forbidden to be done by him, if the act or thing so done by him be of such character as to constitute also a criminal offense under any statute of the United States, or under the laws of any State in which the act was committed, shall be proceeded against for his said contempt as hereinafter provided.

Sec. 22. RULE TO SHOW CAUSE OR ARREST. TRIAL PENALTIES.

Court or judge may issue rule to show cause why person charged should not be punished.

SEC. 22. That whenever it shall be made to appear to any district court or judge thereof, or to any judge therein sitting, by the return of a proper officer on lawful process, or upon the affidavit of some credible person, or by information filed by any district attorney, that there is reasonable ground to believe that any person has been guilty of such contempt, the court or judge thereof, or any judge therein sitting, may issue a rule requiring the said person so charged to show cause upon a day certain why he should not be punished therefor, which rule, together with a copy of the affidavit or information, shall be served upon the person charged, with sufficient promptness to enable him to prepare for and make return to the order at the time fixed therein. If upon or by such return, in the judgment of the court, the alleged contempt be not sufficiently purged, a trial shall be directed at a time and place fixed by the court: *Provided, however,*

Trial if alleged contempt not sufficiently purged by return.

That if the accused, being a natural person, fail or refuse to make return to the rule to show cause, an attachment may issue against his person to compel an answer, and in case of his continued failure or refusal, or if for any reason it be impracticable to dispose of the matter on the return day, he may be required to give reasonable bail for his attendance at the trial and his submission to the final judgment of the court. Where the accused is a body corporate, an attachment for the sequestration of its property may be issued upon like refusal or failure to answer.

Failure of natural person to make return. Attachment against person.

If body corporate, attachment for sequestration of its property.

In all cases within the purview of this Act such trial may be by the court, or, upon demand of the accused, by a jury; in which latter event the court may impanel a jury from the jurors then in attendance, or the court or the judge thereof in chambers may cause a sufficient number of jurors to be selected and summoned, as provided by law, to attend at the time and place of trial, at which time a jury shall be selected and impaneled as upon a trial for misdemeanor; and such trial shall conform, as near as may be, to the practice in criminal cases prosecuted by indictment or upon information.

Trial may be by court, or upon demand of accused, by jury.

Trial to conform to practice in criminal cases prosecuted by indictment or upon information.

If the accused be found guilty, judgment shall be entered accordingly, prescribing the punishment, either by fine or imprisonment, or both, in the discretion of the court. Such fine shall be paid to the United States or to the complainant or other party injured by the act constituting the contempt, or may, where more than one is so damaged, be divided or apportioned among them as the court may direct, but in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of \$1,000, nor shall such imprisonment exceed the term of six months: *Provided*, That in any case the court or a judge thereof may, for good cause shown, by affidavit or proof taken in open court or before such judge and filed with the papers in the case, dispense with the rule to show cause, and may issue an attachment for the arrest of the person charged with contempt; in which event such person, when arrested, shall be brought before such court or a judge thereof without unnecessary delay and shall be admitted to bail in a reasonable penalty for his appearance to answer to the charge or for trial for the contempt; and thereafter the proceedings shall be the same as provided herein in case the rule had issued in the first instance.

Penalty, fine or imprisonment, or both.

Fine paid to United States or complainant or other party injured. If accused natural person, fine to United States not to exceed \$1,000.

Court or judge may dispense with rule and issue attachment for arrest.

Accused to be brought before judge promptly and admitted to bail. Proceedings thereafter same as if rule had issued.

Sec. 23. EVIDENCE. APPEALS.

Evidence may be preserved by bill of exceptions.

Judgment reviewable upon writ of error.

Granting of writ to stay execution, and

Accused to be admitted to bail.

SEC. 23. That the evidence taken upon the trial of any persons so accused may be preserved by bill of exceptions, and any judgment of conviction may be reviewed upon writ of error in all respects as now provided by law in criminal cases, and may be affirmed, reversed, or modified as justice may require. Upon the granting of such writ of error, execution of judgment shall be stayed, and the accused, if thereby sentenced to imprisonment, shall be admitted to bail in such reasonable sum as may be required by the court, or by any justice, or any judge of any district court of the United States or any court of the District of Columbia.

Sec. 24. CASES OF CONTEMPT NOT SPECIFICALLY EMBRACED IN SEC. 21 NOT AFFECTED.

Committed in or near presence of court, or

In disobedience of any lawful writ or process in suit or action by or in behalf of United States.

And other cases not in sec. 21.

Punished in conformity with prevailing usages at law and in equity.

SEC. 24. That nothing herein contained shall be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States, but the same, and all other cases of contempt not specifically embraced within section twenty-one of this Act, may be punished in conformity to the usages at law and in equity now prevailing.

Sec. 25. PROCEEDINGS FOR CONTEMPT. LIMITATIONS.

Must be instituted within one year.

Not a bar to criminal prosecution.

Pending proceedings not affected.

SEC. 25. That no proceeding for contempt shall be instituted against any person unless begun within one year from the date of the act complained of; nor shall any such proceeding be a bar to any criminal prosecution for the same act or acts; but nothing herein contained shall affect any proceedings in contempt pending at the time of the passage of this Act.

Sec. 26. INVALIDITY OF ANY CLAUSE, SENTENCE, ETC., NOT TO IMPAIR REMAINDER OF ACT.

But to be confined to clause, sentence, etc., directly involved.

SEC. 26. If any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Approved, October 15, 1914.

WEBB ACT ¹

[Approved Apr. 10, 1918]

[PUBLIC—NO. 126—65TH CONGRESS]

[H. R. 2316]

AN ACT To promote export trade, and for other purposes

Sec. 1. DEFINITIONS.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the words "export trade" wherever used in this Act mean solely trade or commerce in goods, wares, or merchandise exported, or in the course of being exported from the United States or any Territory thereof to any foreign nation; but the words "export trade" shall not be deemed to include the production, manufacture, or selling for consumption or for resale, within the United States or any Territory thereof, of such goods, wares, or merchandise, or any act in the course of such production, manufacture, or selling for consumption or for resale.

"Export trade."

That the words "trade within the United States" wherever used in this Act mean trade or commerce among the several States or in any Territory of the United States, or in the District of Columbia, or between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or between the District of Columbia and any State or States.

"Trade within the United States."

That the word "Association" wherever used in this Act means any corporation or combination, by contract or otherwise, of two or more persons, partnerships, or corporations.

"Association."

¹ In this general connection, i. e., regulation and promotion of export trade, mention should perhaps be made of the so-called antidumping legislation, prohibiting, penalizing, and affording relief for systematic importation and sale of articles into the United States at prices substantially less than their actual market value or their wholesale price, as in the act specified, where done with the intent of destroying or injuring a domestic industry, preventing the establishment thereof, or of restraining or monopolizing any part of trade and commerce in the articles concerned, in the United States. Act of Sept. 8, 1916, ch. 403, sec. 801, 39 Stat. 798.

As regards cases, see reference to act in *United States v. United States Steel Corporation*, 251 U. S. 417 at 453, in *Ex Parte Lamar*, 274 Fed. 160 at 171, and in *American Export Door Corporation v. John A. Gauger Co.*, 283 Pac. 462 (Wash.), in which the court, in a suit by a Webb Law association against a member, to enforce the membership contract, held the contract void as a restraint of trade at the common law and violative of the State constitution, the act inoperative to regulate such intrastate matters as therein concerned, as beyond the Federal jurisdiction, and, as regards the exemptions provided by the act, from the antitrust laws, as not intended to reach such situations as disclosed by the facts of said case. Except as above noted, the act does not appear to have been involved in reported cases.

Sec. 2. ASSOCIATION FOR OR AGREEMENT OR ACT MADE OR DONE IN COURSE OF EXPORT TRADE—STATUS UNDER SHERMAN ANTITRUST LAW.

Association not illegal if organized for and engaged in export trade solely.

Not agreement nor act, if not in restraint of trade within the United States, or of the export trade of any domestic competitor, and

If such association does not artificially or intentionally enhance or depress prices of, or substantially lessen competition, or restrain trade in commodities of class exported.

SEC. 2. That nothing contained in the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety,² shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade and actually engaged solely in such export trade, or an agreement made or act done in the course of export trade by such association, provided such association, agreement, or act is not in restraint of trade within the United States, and is not in restraint of the export trade of any domestic competitor of such association: *And provided further*, That such association does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy, or do any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein.

Sec. 3. ACQUISITION BY EXPORT TRADE CORPORATION OF STOCK OR CAPITAL OF OTHER CORPORATION.

Lawful under Clayton Act unless effect may be to restrain trade or substantially lessen competition within United States.

SEC. 3. That nothing contained in section seven of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October fifteenth, nineteen hundred and fourteen,³ shall be construed to forbid the acquisition or ownership by any corporation of the whole or any part of the stock or other capital of any corporation organized solely for the purpose of engaging in export trade, and actually engaged solely in such export trade, unless the effect of such acquisition or ownership may be to restrain trade or substantially lessen competition within the United States.

Sec. 4. FEDERAL TRADE COMMISSION ACT EXTENDED TO EXPORT TRADE COMPETITORS.

SEC. 4. That the prohibition against "unfair methods of competition" and the remedies provided for enforcing said prohibition contained in the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September

² For text of Sherman Act, see footnote on pp. 649-651.

³ See *ante*, p. 654 et seq.

twenty-sixth, nineteen hundred and fourteen,⁴ shall be construed as extending to unfair methods of competition used in export trade against competitors engaged in export trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States.

Even though acts involved done without territorial jurisdiction of United States.

Sec. 5. OBLIGATIONS OF EXPORT TRADE ASSOCIATIONS UNDER THIS ACT. PENALTIES FOR FAILURE TO COMPLY. DUTIES AND POWERS OF COMMISSION.

SEC. 5. That every association now engaged solely in export trade, within sixty days after the passage of this Act, and every association entered into hereafter which engages solely in export trade, within thirty days after its creation, shall file with the Federal Trade Commission a verified written statement setting forth the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members, and if a corporation, a copy of its certificate or articles of incorporation and by-laws, and if unincorporated, a copy of its articles or contract of association, and on the first day of January of each year thereafter it shall make a like statement of the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members and of all amendments to and changes in its articles or certificate of incorporation or in its articles or contract of association. It shall also furnish to the commission such information as the commission may require as to its organization, business, conduct, practices, management, and relation to other associations, corporations, partnerships, and individuals. Any association which shall fail so to do shall not have the benefit of the provisions of section two and section three of this Act, and it shall also forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the association has its principal office, or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of the forfeiture. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Export trade associations or corporations to file statement with Federal Trade Commission showing location of offices, names, and addresses of officers, etc., and also articles of incorporation or contract of association, etc.

To furnish also information as to organization, business, etc.

Penalties, loss of benefit, of secs. 2 and 3, and fine.

District attorneys to prosecute for recovery of forfeiture.

⁴ See ante, p. 635 et seq.

Sec. 5. OBLIGATIONS OF EXPORT TRADE ASSOCIATIONS UNDER THIS ACT. PENALTIES FOR FAILURE TO COMPLY. DUTIES AND POWERS OF COMMISSION—Continued.

Federal Trade Commission to investigate restraint of trade, artificial or intentional enhancement or depression of prices or substantial lessening of competition by association.

Whenever the Federal Trade Commission shall have reason to believe that an association or any agreement made or act done by such association is in restraint of trade within the United States or in restraint of the export trade of any domestic competitor of such association, or that an association either in the United States or elsewhere has entered into any agreement, understanding, or conspiracy, or done any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein, it shall summon such association, its officers, and agents to appear before it, and thereafter conduct an investigation into the alleged violations of law. Upon investigation, if it shall conclude that the law has been violated, it may make such association recommendations for the readjustment of its business, in order that it may thereafter maintain its organization and management and conduct its business in accordance with law. If such association fails to comply with the recommendations of the Federal Trade Commission, said commission shall refer its findings and recommendations to the Attorney General of the United States for such action thereon as he may deem proper.

May recommend readjustment in case of violation.

To refer findings and recommendations to Attorney General if association fails to comply with recommendation.

Commission given same powers as under Federal Trade Commission Act so far as applicable.

For the purpose of enforcing these provisions the Federal Trade Commission shall have all the powers, so far as applicable, given it in "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."¹

Approved, April 10, 1918.

¹ See *ante*, p. 635 et seq.

APPENDIX II

DECISIONS OF THE COURTS IN CASES INSTITUTED
AGAINST OR BY THE COMMISSION ¹

FEDERAL TRADE COMMISSION *v.* BALTIMORE PAINT &
COLOR WORKS, INC.²

(Circuit Court of Appeals, Fourth Circuit. June 10, 1930)

No. 2958

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY—No. 80½.

Federal Trade Commission ordering respondent to desist from practices constituting unfair methods of competition must be presumed acting in good faith (Federal Trade Commission Act sec. 5; 15 USCA sec. 45).

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY—No. 80½.

In proceeding to enforce Federal Trade Commission's order relating to unfair methods of competition, question of violation should be referred to Commission (Federal Trade Commission Act sec. 5; 15 USCA sec. 45).

(The syllabus is taken from 41 F. (2d) 474)

Proceeding by Commission for enforcement of its order, requiring respondent to cease and desist from certain practices found by Commission to constitute unfair methods of competition.³ Order affirmed. Question of violation referred to Commission with directions.

James T. Clark, of Washington, D. C., Attorney for Federal Trade Commission (*Robert E. Healy*, chief counsel, Federal Trade Commission, and *Martin A. Morrison*, assistant chief counsel, both of Washington, D. C., on the brief), for petitioner.

Harry O. Levin, of Baltimore, Md., for respondent.

Before NORTHCOTT, Circuit Judge, and McCLINTIC and HAYES, District Judges.

NORTHCOTT, *Circuit Judge*:

This is a proceeding under the provisions of the Federal Trade Commission Act, section 5 (38 Stat. 717, U. S. Code, Tit. 15, sec. 45),

¹ The period covered is that of this volume, namely, May 5, 1930, to Mar. 23, 1931, inclusive.

² It should be noted that prior to decision herein, but subsequent to that in the case of *Federal Trade Commission v. Cassoff*, handed down by the Circuit Court of Appeals for the Second Circuit on February 17 last (see 38 F. (2d) 790 and 13 F. T. C. 612), the Supreme Court of the District of Columbia on May 26 last handed down, without opinion, decision adverse to the Commission in the case of *Millers National Federation et al. v. Federal Trade Commission*, in which case that court had theretofore, on September 22, 1926, granted a motion for temporary injunction restraining the Commission from enforcing certain subpoenas (see 10 F. T. C. 739), and in which, on the question of jurisdiction only, it was sustained by the Court of Appeals of the District on January 21, 1928 (see 23 F. (2d) 968), and the case remanded for disposal on the merits.

³ See 9 F. T. C. 242.

for the enforcement of an order issued by the Commission June 30, 1925, requiring the respondent, Baltimore Paint & Color Works, Inc., to cease and desist from certain practices found by the Commission to constitute unfair methods of competition forbidden by the act.

The Act provides:

Sec. 5. That unfair methods of competition in commerce are hereby declared unlawful.

The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks and common carriers subject to the acts to regulate commerce, from using unfair methods of competition in commerce.

Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would [475] be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed, at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application and upon good cause shown may be allowed by the Commission to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission. If upon such hearing the Commission shall be of the opinion that the method of competition in question is prohibited by this act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such methods of competition. * * *

If such person, partnership, or corporation fails or neglects to obey such order of the Commission while the same is in effect, the Commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the Commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person, partnership, or corporation and thereupon shall have jurisdiction of the proceeding and of the questions determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the Commission. The findings of the Commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem

proper. The Commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code. * * *

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the Commission shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited.

The Commission's order was entered after a compliance with provisions of the statute, and was entered upon a stipulated statement of facts, with which statement the Commission's findings are practically identical.

At the October, 1929, term of this court, the Commission filed an application for enforcement of its order, which application, after stating the facts and setting out the order, contains the following allegation.

Said respondent has failed and neglected to obey said order of the Commission, and has continued, and is continuing, to conduct its business in violation thereof.

The Commission then prays that this court, after notice to the respondent—

shall take jurisdiction of the proceeding and of the questions determined therein, and make and enter upon the pleadings and proceedings set forth in such transcript a decree affirming said order of the Commission, and commanding the respondent, its officers, agents, representatives, and employees, to cease and desist from the acts and methods charged in said complaint and against which said order of the commission is directed.

The respondent filed an answer to the application of the Commission, in which answer the respondent admits the validity of the Commission's order, but denies "that it has [476] failed and neglected to obey the order of the Commission, and denies that since the passage of said order that it has conducted its business in violation thereof".

The question presented is as to the method of procedure that should be followed by the Circuit Courts of Appeals after the Federal Trade Commission has entered an order with which it alleges the respondent is not complying, but where the respondent has had no opportunity to present evidence that it is not violating the order, and where no proof had been taken before the Commission on that question. This same question has been decided by two circuit courts of appeals. In the Seventh Circuit, in *Federal Trade Commission v. Standard Education Society* (14 F. (2d) 947) it is held that the

court will not take jurisdiction until after proof of violation of the Commission's order, and in the Second Circuit, in *Federal Trade Commission v. Balmé* (23 F. (2d) 615) it is held that the court will take jurisdiction and refer the question of whether the respondent is violating the order to the Federal Trade Commission for a finding of fact on that point.

The Commission alleges in its petition that its order is being violated, and the respect due by the courts to an independent agency of the Government forbids the presumption that this allegation of the Commission is not made in good faith and based upon substantial grounds. It is inconceivable that the Commission could make this application to this court without having good ground upon which to make it, and the Commission is certainly to be presumed to be acting in good faith.

The order of the Commission is not enforceable until affirmed by this court, and it would be a useless thing for the Commission to try the question of whether its order is being violated before affirmation of the order by this court. In event of a trial before affirmation, no penalty could be imposed upon the respondent, because there is no way to enforce the order until it is affirmed. If a trial were necessary before affirmation, another trial would be necessary after affirmation, because no punishment could be inflicted, except by this court, and only in the event that the order was violated after it had been affirmed. Why should there be a trial at a time when there is no ruling of the court making the practice complained of a violation of law? Until the court has spoken in a particular case as to whether or not the order of the Commission is valid, there is no violation of law punishable in any way.

We agree with the conclusion of the Circuit Court of Appeals of the Second Circuit, in case of *Federal Trade Commission v. Balmé*, *supra*.

This court has no machinery for investigating or ascertaining the fact as to the compliance or noncompliance with an order of the Commission. The Commission has such machinery and is the proper body to pass upon that question.

It is, therefore, the conclusion of the court that the order of the Federal Trade Commission requiring the respondent, Baltimore Paint & Color Works, Inc., to cease and desist from certain practices found by the Commission to constitute unfair methods of competition, be and the same is affirmed. The question of the violation of the order, the enforcement of which is asked in the petition, is referred to the Federal Trade Commission, with opportunity for the respondent to answer and submit proof, and with direction to the Commission to report its conclusion to this court.

Ordered accordingly.

BERKEY & GAY FURNITURE CO. ET AL. v. FEDERAL
TRADE COMMISSION¹

(Circuit Court of Appeals, Sixth Circuit. June 28, 1930)

Nos. 5290-5314

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 78.

Order against false labeling, notwithstanding absence of showing of effect on competition, may be justified on assumption that deception necessarily tends to promote unfair competition (15 USCA, sec. 45).

[428] TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

Unfair competition, to warrant action by Federal Trade Commission, must be shown by substantial evidence (15 USCA, sec. 45).

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

Order to cease and desist selling laminated and veneered furniture without labeling it as "veneered" held not warranted under evidence falling to show resulting unfair competition (15 USCA, sec. 45).

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 67.

Manufacturers can be charged only with reasonably anticipated acts of dealers, and subjected to restraint only if anticipated action creates reasonable expectation of tendency to deceive (15 USCA, sec. 45).

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

Remedy and order of Federal Trade Commission to cease and desist should be appropriate to avoid existing evil (15 USCA, sec. 45).

(The syllabus is taken from 42 F. (2d) 427)

Petitions by the Berkey & Gay Furniture Co. and others to review orders of Commission² requiring petitioners to cease and desist from selling furniture, unless properly described and labeled, set aside.

S. E. Knappen and *F. D. Campau*, both of Grand Rapids, Mich., for petitioners.

James M. Brinson, of Washington, D. C. (*Robert E. Healy* and *Martin A. Morrison*, both of Washington, D. C., on the brief), for respondent.

Before MOORMAN, MACK and HICKENLOOPER, Circuit Judges.

HICKENLOOPER, *Circuit Judge*:

The petitioners are manufacturers of furniture, located in the city of Grand Rapids, Mich., and distributing their products to and

¹ It should be noted that prior to the above decision, but subsequent to that in the case of *Federal Trade Commission v. Baltimore Paint & Color Works*, handed down by the Circuit Court of Appeals for the Fourth Circuit on June 10 last (see 41 F. (2d) 474 and *ante*, p. 675), the Circuit Court of Appeals for the Third Circuit on June 14 last, in the case of *Bayuk Cigars, Inc. v. Federal Trade Commission*, entered its decree, on the petition of the Bayuk Cigars, Inc., modifying, without opinion, the order of the Commission relating to improper application of the word "Havana", use of the word "Mapacuba", and other Spanish or Cuban insigaa and phrases in connection with the sale of domestic cigars (see 12 F. T. C. 19). Petition for rehearing, granted on November 5 and decree modified on November 21. See *infra*, p. 708.

² See 12 F. T. C. 227, 234 et seq.

through dealers only. Complaint was filed before the Federal Trade Commission charging that the three respondents, here petitioners, built their furniture principally of other woods and caused the same to be veneered with a thin coating of mahogany or walnut, without disclosing that such furniture was veneered; that numerous persons had been induced by such means to purchase veneered furniture in the belief that the exposed portions of such furniture were made of solid mahogany or solid walnut; and that the practices of said respondents had caused and was causing trade to be unfairly diverted to respondents from competitors.

The record discloses, without dispute, that the finest of all modern furniture, having exposed flat surfaces, such as tables, desks, and the like, are constructed of laminated wood, with the grains of the various layers running in different directions so as to prevent cracking and warping, and with a layer of walnut or mahogany veneer secured to the exposed surface. Indeed, such is the only practical way of constructing flat surfaces of large area, and all of the beautiful effects of matched graining may be obtained only in this manner. The practice is substantially universal. The record contains no evidence that any of the dealers to whom the present petitioners sold furniture were in any wise deceived; that the practice of such petitioners cheapens the product or affects its durability; or that any trade whatsoever was thereby diverted to such petitioners from the very few competitors who still attempted the manufacture of furniture of solid or unlaminated woods. The sole question is whether, under these circumstances, there is any evidence to support the order of the Commission that the petitioners cease and desist from selling furniture, so constructed, unless such furniture be described, labeled or designated as "veneer", or from using the word "mahogany" or the word "walnut" in advertisements, catalogues, price lists, invoices or otherwise, in connection with the sale or offering for sale in interstate commerce of furniture so made, unless accompanied by the word or term "veneer".

The record contains testimony to the effect that some retailers are accustomed to follow the invoices in tagging furniture, not only in affixing symbols to the tag indicative of cost, but also in adding the description. It is thus urged on behalf of the Commission that the petitioners must be charged with knowledge of this practice, that they are responsible for the probable results of their actions, that the labeling of furniture in this manner by the retailer has a tendency to deceive the ultimate purchaser, and that, in any event, no objection can reasonably be taken to the requirement that all manufacturers fully describe their products as and for what they truly are.

In the present case it is unnecessary to determine the elsewhere much-mooted question whether the jurisdiction of the Federal Trade

Commission extends to each and all cases of insufficient or false labeling, whereby the public may be led to purchase products which may be harmful, or which are of inferior, or even simply of different, quality, construction or ingredients, from those which it was intended to purchase, without other showing of the effect of this upon competition.² In such a case, the action by the Commission may be justified, under the terms of the act, only upon the assumption, or inference, that deception necessarily tends to promote unfair competition with those who are selling the true article or the genuine product called for by the false label. Compare: *Federal Trade Commission v. Winsted Hosiery Co.*, 258 U. S. 483; *Masland Durable Leather Co. v. Federal Trade Commission*, 34 F. (2d) 733 (C. C. A. 3); *L. B. Silver Co. v. Federal Trade Commission*, 289 Fed. 985 (C. C. A. 6); *Procter & Gamble Co. v. Federal Trade Commission*, 11 F. (2d) 47 (C. C. A. 6). Unfair competition must either appear or be clearly inferable from the circumstances of the case, and the resulting injury to the public must be specific and substantial. *Federal Trade Com'n v. Klesner*, 280 U. S. 19, 28. Section 5 of the act (act of September 26, 1914, c. 311, sec. 5, 38 stat. 719; act of February 13, 1925, c. 229, sec. 2, 43 stat. 939; 15 USCA sec. 45) declares only "unfair methods of competition" unlawful, and empowers the Commission, in the public interest, to prevent persons engaging in such commerce from using unfair methods of competition therein. As said in *Federal Trade Commission v. Gratz*, 253 U. S. 426, 427: "If, when liberally construed, the complaint is plainly insufficient to show unfair competition within the proper meaning of these words there is no foundation for an order to desist—the thing which may be prohibited is the method of competition specified in the complaint." To the same effect, if the record wholly fails to reveal any substantial evidence of such unfair competition, or facts from which it may be clearly inferred, the charge is unsustainable and the order must be set aside.

Here the record affirmatively discloses, without dispute, that all furniture of the better quality has its flat surfaces constructed of plywood, or laminated and veneered woods, that only the cheaper and poorer grades of less valuable material are constructed of solid woods. There is a complete lack of evidence that the petitioners' products were ever expressly sold as "solid" or unlaminated furniture, but only, at best, as "mahogany" or "walnut", with the barely possible inference therefrom that they were unlaminated. This, we think, is wholly insufficient to support a finding of unfairness in competition with the manufacturers of solid furniture as a whole, even if, indeed, a finer and more costly product may be said at all to be sold in competition, in the proper acceptation of the terms,

² See our opinion in *Raladam Co. v. Fed. Trade Commission*, this day delivered. [42 F. (2d) 480; also *infra*, p. 683.]

with that of cheaper and inferior grade. Unfair methods of competition being entirely excluded from the case, it is the duty of the court to reverse the decision of the Commission as wholly unsupported by any substantial evidence.

We do not consider that it is a confession of misbranding or false labeling to urge the invalidity of the Commission's order, or to assert an unwillingness to comply therewith. If that order be invalid, the petitioner should not be burdened by its issuance. Petitioners are entitled to be heard upon this question, and there may also be questions of costs, as well as the natural aversion of all honest manufacturers to the maintenance of charges of deception, fraud, and unfair practice.

Lastly, the petitioners are to be charged only with those acts of their dealers which might reasonably be anticipated, and then subjected to restraint by the Commission only if such anticipated action creates a reasonable expectation of tendency to deceive. In the present case the petitioners have no reasonable ground for believing that the retailer will mark the goods as "solid" or "genuine" mahogany, implying by the latter phrase that no other wood is used, where the catalogues, cost sheets, correspondence, and invoices refer only to mahogany, and where [430] the retailer clearly understands the use of laminated woods. Nor, if the tags follow the invoices and state that the article is "mahogany", have the petitioners reasonable ground for believing that such marking has a tendency to deceive, cheat, or defraud. To us it implies no such result. To all but the grossly uninformed of the public it has no such tendency. It does not reasonably follow that, even as to this small fraction of the uninformed, the ignorance and mistake, which results in their getting a better article—a more beautiful, more durable, and more serviceable piece of furniture—should be characterized as deception, fraud, or even unfairness; or that injury to the public interest is thereby shown.

Again, the remedy and order to cease and desist should be appropriate to avoid the evil, if any such exists. For the manufacturer and wholesaler to mark furniture as "veneered" in its catalogues and invoices, if any stigma could possibly attach to the word, would in no degree assure the public that the retailer would also use the word "veneered" or would not simply, as theretofore, label the furniture upon the floor, as "walnut" or "mahogany". Not only is the order of the Commission wholly unsupported by the evidence, but it is inappropriate to remedy the alleged evil. It is an interference with freedom of action on the part of petitioners of which they may justly complain. *Federal Trade Commission v. Sinclair Co.*, 261 U. S. 463, 476.

For the reasons stated, such order is set aside and held for naught.

RALADAM CO. v. FEDERAL TRADE COMMISSION¹

(Circuit Court of Appeals, Sixth Circuit. June 28, 1930)

No. 5429

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

Findings of trial examiner, in proceedings before Federal Trade Commission, need not be included in record on petition to review.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

On review of Federal Trade Commission order, questions of fraud or bad faith in advertising must be disregarded, where not raised before Commission.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

Jurisdiction of Federal Trade Commission does not go beyond limits of fair relationship to enforcement of general antitrust and antimonopoly policy.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 68(1).

"Unfair competition" only, is forbidden, and can not exist unless there is "competition," and there can not be competition unless there is something to compete with.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 68(1).

Federal Trade Commission held without jurisdiction to issue cease and desist order against advertisement for patent medicine² which contained mere expressions of manufacturer's opinion.

(The syllabus is taken from 42 F. (2d) 430)

Petition by the Raladam Company to review order of the Commission requiring petitioner to cease and desist from certain advertising.³ Petition granted, and respondent's cross bill for injunction denied.

L. W. McCandless and R. T. Gust, both of Detroit, Mich. (*Stevenson, Butzel, Eaman & Long*, of Detroit, Mich., on the brief), for petitioner.

M. A. Morrison, of Washington, D. C. (*Robert E. Healy*, and *Edward J. Hornibrook*, both of Washington, D. C., on the brief), for respondent.

Before DENISON and HICKS, Circuit Judges, and COCHRAN, District Judge.

DENISON, *Circuit Judge*:

The so-called patent medicine habit has a traditional hold upon masses of the American people. The medical profession

¹ Petition for writ of certiorari to review the judgment of the court in this matter granted by the Supreme Court on November 8, the court's order, however, limiting the review to the question of the Commission's jurisdiction. Following decision of Supreme Court, on May 25, 1931, in affirming lower court (283 U. S. 643) and in denying Commission motion to modify its judgment, without prejudice to making of similar application to lower court, Commission on Nov. 12, 1931, petitioned such court so to modify its decree in instant case as to permit the remanding of the case to the Commission, for the taking of additional testimony on the question of competition and injury to competitors resulting from the practices involved; the Supreme Court having based its decision upon the lack of satisfactory evidence on the foregoing points.

² Preparation "Marmola," advertised as a scientific and safe remedy for obesity.

³ See 12 F. T. C. 803.

has always contended that autodiagnosis, drug store purchases, and self-medication are dangerous to the public health and ought to [431] be suppressed or minimized. The evil, at least in some degree, is not to be denied; but how it should be stopped has been considered an insoluble problem. This record reveals the solution. The type of advertising which has long been customary for the commercial promotion of these remedies^{2a} is to be scrutinized and perhaps condemned by the Federal Trade Commission; and thereupon, the appropriate United States Circuit Court of Appeals is to stop it by injunction. The proprietor of the particular remedy here involved challenges the power and right of the Commission in these respects, and brings this petition for review.

For many years, and particularly of recent years, vast numbers of persons have desired to reduce their weight. Whether there was accumulation of fatty tissue beyond the normal standard for that person—a real obesity—or whether there was a mere desire to be more slender, the tendency went to such an extent as to become a craze or fad. Everyone knew that a diminution of food intake—diet—or an increase of muscular effort—exercise—would tend to bring reduction. These things were prescribed and controlled by doctors and institutions, and were promoted by propaganda unmeasured. More than twenty years ago scientific research developed the theory that the consumption of fatty tissue which brought weight reduction was a process of oxidization—the excess could by analogy be considered as burned in the body tissue cycle. The theory was also developed that the normal secretion of the thyroid gland was an effective agent in bringing about or accelerating this oxidization. Still later, it was found that the medicinal use, by mouth or subcutaneously, of the substance of this same gland taken from food animals would supplement and so increase the effect of the human thyroid gland. Still later, it was learned—or at least came to be and still is believed by the medical profession—that the rate of such tissue consumption in a particular patient can be measured by observing the amount of oxygen used by that patient in a given period of breathing. Experiments indicate the average or normal rate, appropriate to a particular age, height, etc., and this has been named the basic metabolic rate—for short, the doctors call it the B. M. R. The use of the devices which have been ingeniously contrived for measuring this oxygen consumption by the patient they call the metabolism test. So much for background and scenery.

Some 20 years ago, and while the underlying theory of the thyroid gland action was known rather exclusively to men of science and was not the subject of much popular knowledge, the predecessors of the Raladam Co., which was the respondent before the Federal

^{2a} We use "remedy" in the common, though not accurate, sense as meaning an article to be used as a treatment for an ailment, and tending to relieve or cure.

Trade Commission, and is the petitioner in this review, devised what they called a remedy, or treatment, for obesity. The primary active agent was a preparation of the thyroid gland of animals, either in extract or desiccated form. The remedy contained also drugs, for their collateral effect, and other substances for body, flavor, etc. They named it Marmola. Their advertising and other methods of promotion progressively varied, but when this proceeding was commenced petitioner and they had been, for some years, furnishing the article only for ultimate sale by the retail drug trade and not selling directly to the user. They were doing very extensive advertising, both in the so-called national magazines and periodicals and in the daily and weekly local newspapers. The result had been a very large and profitable business. Each package as sold contained a considerable number of these Marmola tablets, and upon the package and in the inclosed leaflet were directions and advice in regard to the use of the treatment. The specifically important points in this advertising and these directions will be developed later.

The Commission filed this complaint. It alleged that the Raladam Co. was using unfair methods of competition in that its advertising contained a considerable number of false statements and claims. The Raladam Co. answered. Testimony was taken before a trial examiner. In accordance with the rules of the Commission, he made his report, stating conclusions of fact and of law like a master in chancery; and, also pursuant to the rules, each party filed exceptions, and the exceptions were argued before the Commission. Without reference to, or mention of the examiner's findings or the exceptions thereto, the Commission thereupon made its findings of fact, to the effect that the advertising claims were false and injurious to the public in certain particulars, and thereupon made its order that the Raladam Co. should desist and refrain in the particulars specified. Within due time, the respondent before the Commission brought this petition for review, alleging that the Commission's findings were not sup[432]ported by the evidence, and that it lacked jurisdiction for the reasons and in the particulars specified. Raladam prayed that the order to desist and refrain be vacated. The Commission filed an answer, taking issue on the petition. It then proceeded, by analogy to equity practice, to add a cross bill, and pray that the court enjoin the petitioner from such advertising and other conduct as the Commission had forbidden.

The petitioner has asked that this *quasi* cross bill be dismissed because not authorized by any rule or by general equity practice. This motion was continued until final hearing; and we now find it unnecessary to make any ruling thereon but, for present purposes, we assume that it was rightly filed.

The Commission's order to desist and refrain contains six specific prohibitions against advertising. Taken together, they reduce to two; they forbid the representation that Marmola is a scientific remedy for obesity; and, thereupon, they forbid advertising Marmola as a remedy for obesity unless the statement is added that it is not safe to be taken except under the supervision of a competent physician.

Before taking up the merits, we notice a matter of practice. The record showed that the proofs were taken before a trial examiner. He acted as a master or trial judge does. He ruled upon testimony, admitting or excluding; he frequently asked questions and directed and controlled counsel; he obviously felt that responsibility was upon him for the primary decisions which would stand unless overturned; then he made his findings, which he returned to the Commission with the evidence. In making up the record for this review the Commission did not include these findings. Petitioner insists that since the statute contemplates rules of practice by the Commission, and since the Commission has made rules assigning these duties and functions to the trial examiners, and since the Commission does not ordinarily itself see the witnesses, such findings became a proper part of the record for review. In reply, it is said that, since the Commission's findings of fact must stand, if supported by any evidence, the development of the matter before the Commission in this particular is immaterial. There are no circuit court of appeals rules on this subject. Lacking them, it has been held that such findings need not be included; and we think that exclusion is supported by the better reason and so we deny the motion to include; but we direct that if the record is prepared for review by the Supreme Court, this motion to bring in the examiner's findings and the findings themselves be included in that record. In the margin we give these findings, both to illustrate the question of practice presented and because they make a clear summary of one view of the question in dispute.*

The first question raised is whether the advertising representations as to the scientific character and the safety of the remedy are state-

* Eleven physicians have testified in this cause. These men, so far as can be gathered from seeing and hearing them testify, from weighing their qualifications as given in evidence, appear all of them to be of high standing in their profession. They are all members of the American Medical Association, and of other medical associations in their respective States, and all of them appear to be acquainted with thyroïd as a medicament, but there is a sharp variation in their testimony, five of them testifying that (Marmola is unscientific and unsafe). Six of them testify that: (To the contrary.) With such conflict as is shown by the record, it becomes extremely difficult to determine what is the fact in connection with the statements alleged to have been made by the respondent that the Marmola Prescription Tablets are a scientific method based on long scientific research, that its medicinal properties are safe, pleasant, and effective; that said tablets may be used by purchasers thereof without discomfort, inconvenience, or danger of harmful results to the physical health of such users; that the said tablets are a scientific method for the treatment of obesity. We appear to be involved in a scientific dispute the determination of which can not be safely or justly predicated upon the evidence contained in this record.

ments of fact or are opinions. If the latter, it is conceded that the Commission could not transform them into matters of fact, and it is said that as they were matters of opinion and the opinions were held in good faith and were not unreasonable, the prohibitions in the Commission's order can not be sustained. There is, in the petition filed by the Commission, no claim that the representations as to science and safety, were fraudulent and not made in good faith, or were so obviously and clearly unsound that they could not plausibly be held by any intelligent persons. There being no issue as to fraud or bad faith, no proofs were taken on either side and such suggestions as are now made with that aspect must be disregarded.

Coming to this question, "fact or opinion": It is clear that the adjectives "scientific" and "safe" have ordinarily no absolute meaning. Nothing is always entirely safe, not even water to drink; nothing is so scientific to-day that it may not be discarded to-morrow; little is so chimerical to-day that it may [433] not be scientifically accepted to-morrow. It was long a "scientific" fact that the world was flat; travel under the sea or in the air, was long a scientific impossibility; Darius Green was the archetype of credulous ignorance. These merely illustrate that whether any particular plan or theory is scientific, in a fair sense of the word, is typically and generally a matter of opinion. If sometimes it is a matter of fact, that is exceptional.

Upon observing the disputes between doctor-witnesses as to whether this remedy may properly be dubbed scientific, it is at once seen that there is no particular conflict between them except as to the meaning of the word as here used. The witnesses for the Raladam Co. refer to accepted medical theories—scientific theories, by proper definition—and to the fact—somewhat mysterious but now accepted by scientists—that the thyroid extract supplements the effect of the patient's own thyroid gland, and that this causes an increase in the metabolic rate and so increases the fat elimination. They see also that an additional burden is put upon the organs of ultimate elimination, that laxative drugs are therefore "indicated", and are found in the Marmola composition. For these and other reasons they regard it as "scientific"; and it is, we think, plain beyond dispute that, if we use a considerable breadth of definition, they are right. The witnesses for the Commission insist that no treatment for obesity—or in fact for anything else—is "scientific" and no remedy can be scientifically prescribed or be considered itself scientific, unless there is first a thorough examination of the patient, to learn his condition in all respects, lest some treatment indicated by one symptom fail to do good, or indeed, do harm because of the patient's condition in some other respect. Particularly as to obesity,

they insist that there should be a metabolism test, in order to make a scientific basis for deciding how much thyroid extract it is proper to give, or indeed, to decide—as far as diagnosticians do decide—whether the obesity is due to a thyroid deficiency or to a deficiency in some other gland, or to no cause at all except eating too much. Undoubtedly these doctors also are right, if we give to the adjective “scientific” the particular and extreme construction which they do.

Considering and contrasting these views, it seems to us quite impossible to say that the problem whether this remedy, in the environment of these advertisements, is or is not “scientific”, presents a question of fact capable of being dogmatically fixed, in one way or the other, as disputed facts are decided. We think that it was at the beginning of the proceeding and continued to the end to be a matter of opinion; and, in final analysis, a matter of opinion as to what definition of the word was more appropriate to the circumstances.

The same conclusions prevail in the matter of “safety”. The Raladam Co. advertised that Marmola tablets were safe to take. It is difficult to see that the form of this representation, so long as it is merely general, is of much importance. Within wide limits, there would be an implied assurance of safety in taking any food or drug placed on the general market; but the assurance, whether expressed or implied, would always need construction and could mean only—while kept in general terms—that if it were used reasonably, or in accordance with instructions, it would be reasonably safe. To illustrate: Much is said in the testimony and the proofs about the toxic or poisonous quality of thyroid extract. There is no reason to doubt that it could be given in such quantity, or in the presence of such conditions of bodily disease, that the effect would be very deleterious, whether “toxic” or not; but it is equally clear, and is admitted by the Commission’s counsel, that there is no drug or active agent in the entire bounds of materia medica which is not, by the same definition, poisonous.⁵ No active drug is known which will not produce very dangerous results if taken in extreme quantity, or under certain abnormal conditions. It is, we think, apparent beyond dispute from this record that if these Marmola tablets were to be taken at such a rate that the patient would get half a grain of thyroid per day, there would be no serious contention that there would usually be any substantial danger of any lack of ordinary safety; while if the quantity of extract to be administered were 20 grains a day, there would be no denial that a substantial degree of danger was commonly created. The quantity taken, therefore, must be the vital thing upon which the doctors base their opinion as to danger. The commonly accepted

⁵ It “may be described as a deadly poison or as a valuable item of the pharmacopœia, according to the rhetorical purposes in view.” Mr. Justice Holmes in *Coca-Cola Co. v. Koke Co.*, 254 U. S., at p. 145.

standard as to the whole subject of materia medica is the United States Pharmacopœia, which, in its current edition, expresses what is thought to be the current professional view. It defines the various drugs and their medi[434]cinal effects and states a dosage, which is understood to be the ordinary or average dose for adults where the drug is "indicated." The stated dosage contemplates repetition to get three or four doses a day. The dosage given for thyroid extract was, in the earlier editions, 4 grains, and a later edition 2 grains, and in the current edition 1 grain, thus now contemplating a daily dosage of 3 to 4 grains. Each Marmola tablet contains $\frac{1}{2}$ grain and the directions are to take 3 or 4 per day. The patient, therefore, receives $1\frac{1}{2}$ or 2 grains per day, and the treatment is directed to continue for 60 days unless, within that time, sufficient reduction should occur or unless unusual conditions develop. In the latter instance, the user is directed to consult a physician. The specific question, therefore, is whether this amount of thyroid taken in this way is so inherently and characteristically dangerous to the patient as to make that danger a fact, as distinguished from a debatable opinion.

It seems to us that the Commission has itself decided this question upon the theory of opinion rather than of fact, when it has found that it is all right for the public to take Marmola if the taking is under the supervision of a physician. This necessarily means that there is no inherent or certain danger, but that the professional opinion of the physician, as to whether administration or continuance is wise, ought to be always at hand.

The nature of the controversy is further indicated by the nature of the supposed danger and the professionally advised precautions. Obesity is very commonly the result, at least in part, of hypothyroidism. Of such a case the doctors say that the patient has a minus B. M. R. of 20 or 40, or whatever the rate may be. To such a patient they would properly give thyroid extract until he reached at least the normal B. M. R.; but they say that if the patient has a rate well above normal metabolism—hyperthyroidism—giving this remedy will increase the hyperthyroidism, and that may bring bad results. No one disputes this, but the first answer—as bearing upon general, typical danger—is first, that people who have hyperthyroidism—or tuberculosis or any other specified disease where thyroid extract would be contra indicated—are not usually looking for obesity remedies; they are already too thin; the advertisement is not to or for them. The second is, that the results produced by too much thyroid are those which are generally called nervousness, including overtension, loss of sleep, etc. Whenever these unusual conditions develop, the directions are to stop the treatment and consult a physician. An unknown fraction of those in whom these symptoms develop might persist in the treatment with the result

of aggravating the symptoms; but, even then, it would be pointed out that the harmful results might be due to the starvation diet or the excessive exercise which these reducers were tempted to employ. Any study of the evidence, however casual or however thorough, leads to and compels the conclusion that the whole subject of "safety" stands upon the same basis as that of "science". The Commission's witnesses believe that this extract should not be given to a patient until after a metabolism test to make sure (or rather to make probable) that the patient has a thyroid deficiency rather than an excess. Equally important, they think, is a complete examination to indicate that there is no heart lesion or kidney disease or other serious condition; for if there is, there should be consideration as to the advisability of stimulating the thyroid action—it might or might not be wise. These same witnesses frankly agree that they have the same view about all other active drugs or agents. They think that such things do harm sometimes and hence that none should ever be administered excepting after a professional study of the case—as one doctor frankly put it, "as thorough an examination as the patient can pay for". All this merely comes to saying that they think the drug store sale of Marmola is unsafe because they think no active drug or agent should be by the public self-prescribed or self-administered. The same conclusion, if from a strict standpoint, is inevitable as to numerous so-called standard remedies sold over the counter to everyone who wants them; not one of them is, according to the standard of safety thus advocated, safe for popular use and consumption. Very likely every member of this court will personally fully agree with this professional opinion that such public self-medication is unwise; and then go out and buy quinine or aspirin, or anything else that he is told will help his particular ailment.

These various considerations merely confirm what to us is clear, even upon first glance, that whether it is "safe" for the public to buy and take Marmola according to instructions is not a matter of fact. It is a matter of expert opinion, as to which there are as many shades and degrees as there are experts who discuss it, and as to which a non[435]expert board can hardly have been intended to be umpire. We concede, of course, that questions of fact must often be decided upon conflicting opinion or expert evidence; and that, too, by a tribunal of laymen; but questions so to be decided admit of categorical answer; scientific (?) and safe (?) do not.

Three Supreme Court cases are urged upon us, as controlling or important, and they should have attention. We think no one of them has anything like the scope here claimed for it. In the *McCannully* case, 187 U. S. 94, there is a discussion as to the difference between fact and opinion and it was held that, for the purposes of

that case, the falsity of an opinion was not sufficient. There, however, the criterion was fraud; and there was no showing that the speaker did not honestly hold the opinion which he stated, and, the thing not being impossible on its face, fraud was not made out. In *Seven Cases v. U. S.* 239 U. S. 510, and *Leach v. Carlisle*, 258 U. S. 138, the question also was one of fraud. The holdings were merely in complement to the McAnnulty case, that if an opinion was not, in truth, held, or if it was of such character that it could not be honestly held by the speaker, the charge of fraud might be maintained, although the expression was only one of opinion. We can not see in these cases any particular bearing on the question here.

Argument is made and cases cited to the effect that when a claim or statement of therapeutic value is shown to be false, the mere belief by the utterer in its truth will not protect the statement against suppression, nor necessarily protect the utterer against punishment. Such cases are wide of the mark. If, in the present case, the petitioner had claimed that Marmola would tend to reduce fat, and this claim had been proved untrue—even though the proof were only from a fair consensus of expert opinion—it would not be important, for some purposes, that the petitioner believed the claim to be true. We have nothing of that kind here. There is no denial of the therapeutic effect of Marmola as a treatment for obesity. Thyroid furnishes the recognized treatment, approved by all physicians; the complaint is not that Marmola has no therapeutic effect but that it may have too much; and we come directly back to the question whether we may say, not as expressing an opinion but as stating a fact, that it is neither scientific nor safe to advertise and sell Marmola as an effective remedy to be taken without medical supervision; and we come again to the conclusion that this is a matter of expert opinion determined by the particular expert's conception of science and of safety.

Before leaving the subject of "safety", it should be pointed out that there is no finding, nor any evidence, that any substantial part, or any particular part, of that public to which these statements are addressed—the obese public—the average or usual or ordinary obese person—would be reasonably likely to be harmed by the advised use of these tablets. The fair inference is that the actual harm would be occasional and rather exceptional. There is only the chance that the user may be of the exceptional class; upon that contingent basis rests the finding of general danger.

Another contention should be noticed: Petitioner says to the public—whether the statement happens to be in a printed form or orally—that this remedy is safe to be taken according to directions by the average person; the Commission orders that the petitioner shall not make this statement unless modified in form to suit the Commission; that is, unless accompanied by the statement that it is safe

only when medically supervised. Thereupon, the court, acting as a court of equity, is asked to enjoin the publication. Petitioner contends that such injunction would be a violation of the first amendment, and that its constitutional right to freedom of speech prevents such suppression. This contention is forcibly made; but we find it unnecessary to pass upon it.

A broader question of the jurisdiction of the Commission underlies. In the *Silver* case, 289 Fed. 985, p. 992, one member of the court took occasion to study the history of the creation and purposes of the Federal Trade Commission. The conclusion was reached that the Commission came into being as an aid to the enforcement of the general governmental antitrust and antimonopoly policy, and that its lawful jurisdiction did not go beyond the limits of fair relationship to that policy. Since that opinion, there has been no decision of the Supreme Court inconsistent therewith, nor any Circuit Court of Appeals decision which expressly denies that theory.⁶ Doubtless there [436] have been opinions from these latter courts which are more or less inconsistent with its full acceptance;⁷ but the accuracy of the historical study then made has never, so far as we know, been particularly challenged, either by judicial opinion or in the periodical literature of the law. This court, as now constituted, is prepared to and does adopt the general view there stated, as to the foundation of the Commission's jurisdiction. See, also, our opinion in *Berkey & Gay v. Federal Trade Commission*, 42 F. (2d) 427, this day filed.^{7a}

⁶ Counsel cite the comment which the Supreme Court, in its opinion in *Federal Trade Commission v. Klesner* (280 U. S. 19, 26-27), made upon the *Beechnut* case, 257 U. S. 441, and the *Winsted* case, 258 U. S. 483. The comment is that in neither case did the private right of any competing trader appear to have been invaded. As we noted in our opinion in the *Toledo Pipe-Threading Co.* case (11 Fed. (2d) 837, 843), the *Beechnut* case needed no evidence of unfair competition with anyone. The practice involved and condemned was the price-restriction policy. This had been expressly found illegal under the antitrust act (*Miles Medical Co.* case, 220 U. S. 373), and expressly declared illegal by the Clayton Act. The whole ground of illegality of price restriction is that it restrains competition between trade competitors. To have considered this ground in making application to the *Beechnut* case, would have been supererogation. The opinion in the *Winsted* case expressly declares (p. 493 of 258 U. S. 483): "The practice constitutes an unfair method of competition as against manufacturers of all wool knit underwear and as against those manufacturers of mixed wool and cotton underwear, who brand their product truthfully. For when misbranded goods attract customers by means of fraud which they perpetrate, trade is diverted from the producer of truthfully marked goods." And again (p. 494 of 258 U. S. 483), after finding that the public had an interest in stopping the practice as wrongful: "And since the business of its trade rivals who mark their goods truthfully was necessarily affected by that practice, the Commission was justified," etc. It seems quite clear that the *Klesner* opinion in making reference to the *Beechnut* case and the *Winsted* case as not involving invasion of the private right of any trader competed against, intended to put the emphasis upon the right of a *private* or *individual* complaining competitor; and is not inconsistent with the necessity of injury to the class of "honest manufacturers" who were named and directly protected in the *Winsted* case, and who were in the background in the *Beechnut* case.

⁷ We do not so regard *Procter & Gamble Co. v. F. T. C.* (C. C. A. 6-11 Fed. (2d), 47). The direct and large scale competition between petitioner's Naphtha soap and the brand of soap long on the market under that descriptive name, was unquestioned.

^{7a} See *ante*, p. 679.

The thing forbidden by the statute is *unfair* competition. This can not exist unless there is competition, and there can not be competition unless there is something to compete with. It must be evident that the trade which was to be protected against restraint (and unfair competition is a kind of restraint) was that legitimate trade which was entitled to hold its own in the trade field without embarrassment from unfair competition. The first thought might be that the one invoking protection should be a particular trader; but the *Winsted case* (258 U. S. 483) teaches that protection will also be given under this statute to the entire class of trade which is having its former customers taken away from it by false representations that the competing goods are of the same descriptive qualities as those put out by the complaining class. It is apparent from this record, as well as from other recent or pending cases in this court and other decisions of the Commission and from announcements by its members shown in this record—that the Commission does not take this limited view of its jurisdiction, but that it believes itself authorized to issue its “desist and refrain” orders in any case where it concludes that sales methods may mislead a substantial part of the purchasing public, in a way and to an extent that, in the judgment of the Commission, is injurious to the purchaser. The general law of unfair competition uses the misleading of the ultimate retail purchaser as *evidence* of the primarily vital fact—injury to the lawful dealer; the Commission uses this ultimate, presumed injury to the final user as *itself* the vital fact. The result is a realization of what was suggested in the former opinion as the opened vista (*Silver case* [C. C. A.], 289 Fed. 992–993) and a *pro tanto* censorship by the Commission of all advertising. This particular case relates to medicine advertising, and of a class doubtless disapproved by the “best people”—who can afford to employ good doctors; but that disapproval can not create jurisdiction. The record here shows, without dispute or by implication which would hardly be denied, that the American Medical Association is engaged in a campaign against those proprietary remedies which it believes ought to be used by the public either not at all or only under supervision. It has a bureau for that and other purposes, and the bureau employs a director. When it is thought that a particular advertisement should be stopped, this director takes the matter up with the Commission and with the association of “better business bureaus”, which are scattered over [437] the country. Thereupon, the Commission, if it approves, files a complaint and eventually, if it is convinced of the truth of its complaint, makes the order to desist and refrain. The better business bureaus explain to their local newspapers and to the general periodicals, that it would be wise to refuse this advertising. The chairman of the Commission, in

public addresses, and in correspondence, advises the newspapers that they will be subject to prosecution by the Commission as defendants, to be joined with the advertisers, if they do not desist from such publications; and the newspapers may suspect that if they do not comply with the advice of the better business bureaus, their general advertising patronage from the membership of these bureaus will fall off. It appears that these methods of influence, carried on in this case before this cross suit for enforcement was commenced and while it has been pending, have destroyed a large part of petitioner's business through refusals to accept this advertisement, and only the injunction of this court is needed to make the elimination complete. We have no occasion to deny, nor indeed, reason to doubt, that this elimination would tend to the public good; but we can not think that Congress had any conception that it was creating a tribunal for that kind of action. Its failure for many sessions to pass a proposed "pure fabric" law, and others of similar character, is familiar; but if the Commission's view of its own jurisdiction is right, these laws are unnecessary.

When we search this record to find the legitimate activities which are to be protected against this unfair competition, we observe only two such possible beneficiaries. One is the medical profession. It can not be seriously contended that the act was intended to protect any profession against encroachment—the aid of the Commission might be as logically given to physicians and surgeons as against chiropractors, or to lawyers as against incompetent will draftsmen.

The other possible beneficiary is found in the list which the American Medical Association Bureau has made up, comprising a number of other commercially exploited remedies for obesity, which have been advertised or found in the drug stores within recent years. Some of them are perhaps still being sold in substantial quantities, though that is left very vague. It is fairly to be inferred, not only that these are on the same *index expurgatorius* as Marmola, but that they are relatively disreputable.⁸ Again, it can not be seriously contended that the machinery of the Commission was intended to give governmental aid to the protection of this kind of trade and commerce.

We conclude therefore that the record does not show any basis for the action of the Commission. The prayer of the petition will be granted and that of the cross bill denied.

⁸ A question intended to develop this positively, rather than to leave it inferential, was ruled out by the examiner. This was error, but the situation is too plain to require reference for further proofs.

FEDERAL TRADE COMMISSION *v.* GOOD-GRAPE CO.

(Circuit Court of Appeals, Sixth Circuit. November 10, 1930)

No. 5349

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

Weight to be given facts tending to establish alleged unfair competition and inferences to be reasonably drawn therefrom are for Trade Commission (15 USCA sec. 45).

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

Representing and labeling imitation grape concentrate to falsely imply it was composed wholly or partly of natural grape juice *held* unfair competition, within cognizance of Trade Commission.

Such methods and practices were unfair to competitors selling genuine grape juice and also those selling imitation grape juice, but who marked their goods truthfully, since they necessarily diverted or tended to divert trade and injure business of such competitors.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

Trade Commission *held* authorized to issue modified cease and desist order on original record.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

Allegation that respondent had meantime changed practice forming basis of Trade Commission's order to cease and desist did not preclude Commission from modifying order.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

Acceptance or exclusion of testimony of witness violating rule excluding witnesses before examiner during hearing *held* within discretion of Trade Commission.

(The syllabus is taken from 45 F. (2d) 70)

Application by Commission to enforce its modified order requiring respondent Good-Grape Co. to cease and desist from certain practices,¹ granted to extent indicated.

E. J. Hornibrook and *J. T. Clark*, both of Washington, D. C. (*Robert E. Healy*, *Adrien F. Busick*, *James W. Nichol*, and *E. J. Hornibrook*, all of Washington, D. C., on the brief), for petitioner.

James L. Fort, of Washington, D. C. (*Bloodworth & Fort*, of Washington, D. C., *Hauer, Spraul, Topmoeller & Arnold*, of Cincinnati, Ohio, on the brief), for respondent.

Before MOORMAN, HICKS and HICKENLOOPER, Circuit Judges.

¹ See 12 F. T. C. 83.

[71]

HICKS, Circuit Judge:

This is an original proceeding instituted by the Federal Trade Commission against the Good-Grape Co. to enforce a modified order^{1a} issued by the Commission which, with the original order² it modifies, is set out in the margin. There is no pretense that respondent obeyed the order. The contention is that it was invalid. Respondent's business consisted of manufacturing concentrates and selling them to bottlers. The bottlers produced therefrom and bottled a soft drink beverage which they sold to retailers and which in turn was dispensed to the consuming public. The complaint of the Commission was that respondent violated section 5 of the act of 1914, chapter 311 (U. S. C. Tit. 15, ch. 2, sec. 45), by causing the beverage to be manufactured and sold in interstate commerce under the name, brand, or label "Good-Grape" and by advertising this product as

^{1a} It is ordered that the respondent, the Good-Grape Co., its officers, representatives, agents, servants, and employees, cease and desist from—

(1) Using or authorizing the use by others, in interstate commerce, of "Good-Grape", the phrase or slogan "Fruit of the vine", or the word "grape" either alone or in conjunction or combination with any other word or words, letter, or letters as a corporate or trade name, or as a trade brand or designation in advertising, or on business stationery, or on labels or bottles or other containers, or the caps, crowns, or stoppers thereof, in connection with the sale or distribution of a product which is not composed wholly of the natural juice or fruit of grapes, except and unless such product is composed in substantial part of the natural juice or fruit of grapes, and "Good-Grape", "Fruit of the vine", or the word "grape", wherever used as above described, is accompanied with a word or words, equally conspicuous with it in character or type, clearly indicating that such product is composed in part of material or materials other than the natural juice or fruit of grapes.

(2) Using or authorizing the use by others, in interstate commerce, in advertising or upon business stationery or on bottles or other containers or on labels, crowns, stoppers, or otherwise, of any word or words, picture, or symbol falsely representing or suggesting that a product is made from or contains the natural juice or fruit of grapes.

² It is ordered that the respondent, Good-Grape Co., its officers, representatives, agents, servants, and employees, do cease and desist from directly or indirectly—

(1) Using or authorizing the use of the name "Good-Grape" whether on advertising matter relating to the concentrated "Good-Grape" or the beverage "Good-Grape" or on bottles or other containers thereof, or on labels or crowns or stoppers of such bottles or containers, or otherwise, unless and until the name "Good-Grape" is in every instance accompanied with an explanation in close proximity to the name "Good-Grape" in letters at least one-half as high and one-half as wide as the letters used in the accompanying name "Good-Grape", and of heaviness of color and style of lettering which will render them at least equally as conspicuous in proportion to their height and width as the letters in the accompanying name "Good-Grape", which explanation shall contain the statement that the concentrate "Good-Grape", or the beverage "Good-Grape" is an imitation and is not grape juice. The following may be used for this explanation: "Imitation grape—not grape juice."

(2) Using or authorizing the use by others in advertising or upon business stationery or on bottles or other containers or on labels, crowns, stoppers, or otherwise, or at all, the phrase or slogan "Fruit of the vine", in connection with the sale of (a) a concentrate or concentrates not made from grapes and not containing the juice from the natural fruit of grapes from which a beverage is made, or (b) a beverage, not made from grapes and not containing juice from the natural fruit of grapes.

(3) Using or authorizing the use by others in advertising or upon business stationery or on bottles or other containers or on labels, crowns, stoppers, or otherwise, or at all, any word or words, pictures, or symbols falsely representing or suggesting (a) that a concentrate or concentrates from which a beverage is made is made from grapes and contains the juice from the natural fruit of grapes, or (b) that a beverage is made from grapes and contains the juice from the natural fruit of grapes.

“Good-Grape”, “Grape”, and “Fruit of the vine” and by otherwise falsely asserting and implying that it was composed wholly or in part of the natural juice of the grape. The complaint further charged that the beverage produced from the concentrates manufactured by respondent was sold in interstate commerce in competition with grape juice and other grape products and imitation grape products. These allegations are sustained by findings of fact which are in turn supported by evidence and are conclusive. (U. S. C. Tit. 15, ch. 2, sec. 45, par. 3.)

The Commission also found that although the beverage produced from the concentrates sold by respondent was only an imitation grape product, artificially colored and flavored and not made from the natural fruit of the grape, yet the respondent extensively advertised it by means of publications, circulating in interstate commerce and otherwise, as the juice from the natural fruit of the grape; that respondent designed and approved the labels attached to the bottles containing the beverage; that there appeared on some of these labels the name “Good-Grape” and upon others, in addition to this hyphenated word, the phrase or slogan “Fruit of the vine”; that prior to June, 1923, respondent furnished to bottlers crowns or bottle caps bearing the name “Good-Grape”; that since that date it had furnished crowns or caps bearing the name “Good-Grape” and in addition thereto the phrase “Imitation, artificially colored and flavored” in very small letters, difficult to read; that the bottles used were designed and approved by respondent and had the name “Good-Grape” blown therein and that except upon the bottle crowns or caps as indicated respondent made no reference in its advertising to the fact that the beverage was an imitation, artificially colored and flavored.

[72] These findings are supported by the evidence. The weight to be given to the facts and circumstances as well as the inference to be reasonably drawn therefrom was for the Commission. *Fed. Tr. Comm. v. Pac. Paper Ass'n*, 273 U. S. 52, 63. The open question is, whether the methods and practices of respondent amount to unfair competition to the detriment of a particular and substantial public interest. *Fed. Tr. Comm. v. Klesner*, 280 U. S. 19, 28; *Fed. Tr. Comm. v. Gratz*, 253 U. S. 421, 427; *Fed. Tr. Comm. v. Balmé*, 23 Fed. (2d) 615, 619 (C. C. A. 2).

This court holds that such methods and practices are unfair to both classes of respondent's competitors, to wit, those who sell genuine grape juice and those who frankly sell imitations thereof but mark their goods truthfully. They necessarily divert or tend to divert the trade and injure the business of such competitors. *Fed. Tr. Comm. v. Winsted Co.*, 258 U. S. 483, 493; *Procter & Gamble*

Co. v. Fed. Tr. Comm., 11 F. (2d) 47, 48 (C. C. A. 6); *Fed. Tr. Comm. v. Balmé, supra*; *Guar. Vet. Co. v. Fed. Tr. Comm.*, 285 Fed. 853, 860 (C. C. A. 2); *Royal Bak. Powd. Co. v. Fed. Tr. Comm.*, 281 Fed. 744, 752 (C. C. A. 2); *Fed. Tr. Comm. v. Kay*, 35 F. (2d) 160, 162 (C. C. A. 7); *Amer. Tob. Co. v. Fed. Tr. Comm.*, 9 F. (2d) 570, 575 (C. C. A. 2). It serves no worthwhile purpose to elaborate upon these cases. It is enough that they establish the position taken. In this particular the case presents an aspect entirely different from that shown in *Raladam Co. v. Commission* (C. C. A.), 42 F. (2d) 430, or in *Berkey & Gay Furniture Co. v. Commission* (C. C. A.), 42 F. (2d) 427, both decided June 28, 1930.^a

It is equally clear that a substantial public interest is involved. The beverage is sold for human consumption and ordinarily for immediate use, the labeled cap or crown having been first removed. The average purchaser makes for himself only a casual if any examination of the real character of this five-cent drink. About seventy million bottles of it were consumed in each of the years 1923 and 1924.

Respondent insists that the Commission erroneously declined to permit it to show that in the interval between the issuance of the original and the modified order it had adopted a new formula and was using an amount of grape juice substantially greater than that originally used. It is noted that respondent did not reveal to the Commission or to this court the real amount of juice used in the new formula. However, the Commission was authorized to issue the modified order upon the original record, *Fed. Tr. Comm. v. Kay, supra*; and the allegation that respondent has in the meantime changed its practice did not strip the Commission of this power. *Guar. Vet. Co. v. Fed. Tr. Comm., supra*; *Fox Film Corp'n v. Fed. Tr. Comm.*, 296 Fed. 353, 357 (C. C. A. 2); *Moir v. Fed. Tr. Comm.*, 12 F. (2d) 22, 27 (C. C. A. 1); *Ark. Wholesale Groc. Ass'n v. Fed. Tr. Comm.*, 18 F. (2d) 866, 871 (C. C. A. 8). It was not compelled to assume that respondent had for all time ceased its original methods.

Respondent's brief complains that the witnesses before the examiner were excluded during the hearing; that one Sale, a chemist in the Department of Agriculture, and a witness for the Commission, violated this rule by reading a portion of the testimony of another witness and that Sale's testimony should therefore be excluded. Whether Sale knew of the rule and violated it willfully is not shown. However, the weight of authority is that the acceptance or exclusion of such testimony is a matter of discretion. Respondent did not bring the action of the examiner to the attention of the Commission or seek a review of it here in the manner provided.

^a See *ante*, p. 683 and 679, respectively.

Upon the whole we conclude that the prayer of the petition should be granted but not to the broad extent of the modified order. To do so would require respondent to change its formula as a prerequisite to the use of the words "Good-Grape" or "Grape" altogether and would place respondent upon an unequal footing with other soft drink or soda-water manufacturers who are permitted to apply to their products the name of a fruit or some variety thereof indicative of flavor only rather than of a claim that such beverage was in fact produced from such fruit.

The modified order will therefore be amended so as to add to clause (1) thereof the following, to wit: Or if the beverage produced is composed substantially as found by the Commission then respondent, its officers, representatives, agents, servants and employees, shall cease and desist altogether from the use of the phrase "Fruit of the Vine" and also from the use of the words "Good-Grape" or "Grape" in the connection indicated in this paragraph except and unless in the same connection it is made prominently to appear that the product is an imitation artificially colored and flavored.

[73] An injunction will be granted restraining the respondent from indulging in any of the practices forbidden by the modified order of the Commission as the same is amended in this opinion.

OHIO LEATHER COMPANY v. FEDERAL TRADE COMMISSION

(Circuit Court of Appeals, Sixth Circuit. November 12, 1930)

No. 5393

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½

Federal Trade Commission's order that leather company selling to shoe manufacturers desist from using trade-name "Kaffor-Kid" on calfskin leather *held* not warranted, where there was no proof that ultimate purchasers were misled.

The Commission filed its complaint at the request of manufacturers who thought their trade was endangered by leather company's practice. It was conceded that no shoe manufacturer or shoe dealer had ever been in any way misled, and there was evidence that the entire associated trade which was complaining and which the Commission was intending to protect was using term "kid shoe" for shoes made from the skin of goats, either old or young, and from some sheep, and there was no evidence that ultimate purchasers knew that the term was so used, rather than for leather made from skins of kids only.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 75.

If ultimate purchaser was induced by leather manufacturer's trade-name to buy calfskin, when he intended to buy kid leather, manufacturer must carry responsibility.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½

Federal Trade Commission has no jurisdiction to make order to desist from using alleged misleading trade-name unless there is legitimate trade which equitably deserves protection.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80¼

Federal Trade Commission's order to desist from using trade-name was not inappropriate remedy merely because some trade competitors were using same unfair method.

(The syllabus is taken from 45 F. (2d) 39)

Petition to review and vacate order made by Federal Trade Commission^a; answer by Commission in nature of cross bill. Commission order vacated, prayer of cross bill denied, and case remanded.

C. F. Smith, of Youngstown, Ohio (*Harrington, DeFord, Huwley & Smith*, of Youngstown, Ohio, on the brief), for appellant.

E. J. Hornibrook, of Washington, D. C. (*Robert E. Healy* and *James W. Nichol*, both of Washington, D. C., on the brief), for appellee.

Before DENISON and HICKS, Circuit Judges, and JONES, District Judge.

DENISON, Circuit Judge:

The petitioner, the Leather Co., began, in 1922, to put upon the market a certain kind or brand of leather under the trade name of "Kaffor-Kid," and, at the time of the filing of the complaint by the Commission, a large trade therein had been developed. This leather is made only from the skins of calves, not more than 12 days old and called "deacons" which have been fed entirely on milk and have not begun to eat grass. The leather so made is softer in its texture and more delicate and pliable than that which is made from the skin of older calves—the standard calfskin. This leather is sold only to shoe manufacturers, and the shoes made therefrom by the various manufacturers are sent out to the retail trade. This trade name "Kaffor-Kid" is used by the Leather Co. in its trade journal advertising, and the rolls of leather sent to the shoe manufacturers have this name stamped upon the wrapper. Occasionally, though rarely, the shoe manufacturer has stamped the name upon the carton containing shoes made therefrom, and, in this way in a small degree, but mainly by the advertising and through salesmen, the name reaches the shoe retailer. The Leather Co. has also put out display cards, intended to stand on the retailer's counters or in his [40] windows, containing the trade name in an attractive form. Upon these display cards, as well as in practically all the advertising

^a Reported in 12 F. T. C. 823.

^b Said to be developed through "Calf-for-Kid".

of the Leather Co., the article was further described as "a distinctive calf leather", or by a more complete account of its advantages as a special type of calf.

Upon the request of manufacturers who thought their trade was injured by this practice, the Commission filed its complaint, alleging that the Leather Co. was guilty of unfair competition with its competitors, in that the use of this trade name induced the belief that the leather was kid when, in fact, it was not. After answer and the taking of proofs, the Commission made its findings of fact, and an order that the Leather Co. desist and refrain from the use of this name. The Leather Co. filed in this court its petition to review and vacate, and the Commission filed an answer in the nature of a cross bill, asking the enforcement of its order.

The case is unique in some particulars, which appear as the history of the matter is examined. We assume from the record that originally kid leather and kid shoes were made from the skin of a young goat, properly called a kid. At an early period, when the skin of older goats, which were not kids, was used for this purpose, it was under names which were more or less arbitrary, as "Morocco", "Dongola", etc. In 1878, one Foerderer devised and patented a process, by which he could tan the older and tougher goat skins so as to have the appearance and qualities of the true kid; and, giving this a glazed finish, he called it Vici-kid. After his patent monopoly expired, his competitors put out a similar product from the same skins and leather, which they called glazed kid. These products met with a large adoption. During the war, and about 1918, the various manufacturers' associations, making different kinds of leather, were brought together in one body, called the Tanners' Council, and an endeavor was made to standardize products and nomenclature. It was then agreed among those so associated that they would consider as kid leather that which was made from the skin of a goat, young or old, and not that made from any other animal.² The record shows also that those who buy leather—that is, the shoe manufacturers—have adopted the same term, and, to them, kid shoe, is the proper descriptive name for shoes made from the skin of a goat, old or young (or some sheep). This is plainly not the primary, but rather a secondary meaning; but its adoption by tanners and shoe manufacturers has been general and long enough to justify it as the natural meaning to them. Whether this secondary meaning also prevails among the shoe buying public—the ultimate consumers—is not shown by the record. Finding No. 7 contains the express statement that this meaning is known to and gener-

² Though they do include as a source of kid leather, the cabretta or cavrette skins—this animal being a sheep. (See note 6.)

ally accepted by both the shoe and leather trade, and the public. If by public is meant the shoe manufacturers who buy the leather, the finding is not to be challenged; if the shoe retailer is intended to be included, the finding is supported by evidence, though there is much conflict; but if by this phrase is meant the ultimate buying public who purchase the shoes over the counter, the finding is to that extent not supported by any substantial evidence, and can not be accepted. We have examined the record with care with this point in mind, and we find nothing indicating that any ultimate consumer understands that kid leather may be, and most of it is, made from the skins of animals which are not kids.^a There is much tending to the contrary. (See note 6.) Certainly the initial presumption must be that the purchaser at a retail store, when he buys kid shoes, or kid gloves, would suppose that he was getting precisely what the word indicated and not something else; but if, in the absence of any proof, this initial presumption is not to prevail, we find much to indicate that the ordinary purchasers, of ordinary intelligence, would have in mind chiefly the appearance, feel and quality of the leather, and would understand that they were asking for these qualities rather than for any specific skin ancestry. There well may be a common, if not general, understanding among the shoe wearers that the leather on the market called kid is made from many different raw materials, and that its proper designation depends upon the methods of treatment and manufacture. Reference may be had to kid gloves. The cases are not parallel, but there is close analogy. It would seem that the public understanding and opinion as to the materials to be found in kid gloves and in kid slippers, or shoes, would take similar form; and yet there is considerable available information, though it is summarily covered by casual references in the record, to the effect that the retail buying public under[41]stands well enough that the ordinary grades of so-called kid gloves on the market are not kid at all, or even goat, but are made of different leathers, subjected to manufacturing processes which give them the feel and quality of kid, and that when it asks for kid gloves it is indifferent as to the origin of the leather. (Note 6 at end of opinion.)

Upon this subject—what the retail shoe-buying public understands by kid, and whether it is, in fact, misled to its prejudice by the use of this term “Kaffor-Kid”, the record is very unsatisfactory; and we think no final disposition of the controversy should be based upon it. The order can not be sustained unless there is an affirmative finding, based upon substantial evidence, to the effect that the consuming public, asking for kid shoes, desires and expects to get shoes made from the skin of a kid, or of a goat, as the case may be. The

^a Ninety per cent of the all kid shoes, under the trade definition, are made from the skins of older goats.

present record being insufficient, it should be remanded, in order that all parties interested may take further proofs and have a finding made—if indeed, the proofs may then justify any definite conclusion.

The misleading of the ultimate public to its prejudice does not, of course, depend upon whether the substitute is equally as good as the original; the purchaser is entitled to get what he asks for, even if he is put off with something as good or better;⁴ but the qualities of the two articles are not immaterial in determining the purchaser's real intention and desire. It is said here that the leather in question, made from a very young calf, closely corresponds to the true kid leather in every quality—more closely than do many of the goat skins, sold by the Leather Co.'s competitors under the name of kid. The Commission has not thought this to be material and has not made findings thereon; but if the purchaser expects to get only a certain type of leather, then the correspondence in qualities becomes important.

The misleading of the ultimate purchaser depends upon his understanding, and is, in this case, vital; the lack of proof or finding can not be overlooked. All witnesses agree that while the leathers are very similar in most qualities—perhaps in all essential qualities—there is a difference in the grain, or appearance, which a leather or shoe expert would notice at once. It therefore is conceded that no shoe manufacturer or shoe dealer has ever been in any way misled, but that, in every instance, he has fully understood that he was buying a particular and special tannage of calfskin; and it is equally clear that no such manufacturer or dealer will be so misled in the future. There is, therefore, no basis for any charge of unfairness, excepting as the mere use of the name "Kaffor-Kid" may carry to the nonexpert, the final purchaser, a false implication that the material is not what he understands by the term "kid".

The petitioner, Leather Co., urges that even if the ultimate purchaser is induced to buy calfskin when he intends to get that something else which he believes is indicated by the term "kid", yet the petitioner's connection is too remote to justify compelling it to discard the name. If there is misrepresentation to the final buyer in the use of "kid" for this leather, and in connection with any noncorrective word, it is inherent in the very term. In our recent opinion in *Berkey & Gay Co. v. F. T. C.*, 42 F. (2d) 427, we found that the use by the manufacturer of the word "walnut" carried no implication that the wood was solid walnut rather than laminated; there was no inherent misrepresentation to be put before the final purchaser; the manufacturer was not to be held for any intentionally false statement the retail salesman might make. Here, if the final purchaser

⁴ The Kaffor-Kid is said to have all the qualities of the true kid, and in addition, the greater strength of the calfskin.

does not understand that to say a shoe is kid means that it is goat skin, no case is made out; if he does so understand, then misrepresentation would be implied in the name; and if that name, unexplained, is intended to and does reach the typical retail customer, the manufacturer of the leather who puts out the article with that name, must carry the responsibility. So much depends upon what the ultimate consumers understand—if anything—by the word "kid" in connection with footwear, that we are not inclined to consider, upon this record, whether or not sufficient precautions have been taken, or may be taken, to prevent or make improbable any serious misleading of this class.

There is in this record no worthwhile proof of any actual deception of the purchaser by the retailer;⁵ but that may not be necessary; the inherent tendency and opportunity may be enough—if the tendency exists and the opportunity is left effectively open.

[42] We must also accept the Commission's conclusion that the differences between the Kaffor-Kid and that goatskin leather, which is said to be rightly called kid, are not sharp and plain enough to insure that the ordinary purchaser would recognize each for what it is—calf or goat. Perhaps the preponderance of evidence is against this conclusion. It is supported by the personal judgment of a few selected individuals, who may or may not be fairly representative of the class of ordinary purchasers; it is opposed by the opinion of a large number of retailers, who ought to know the general view of buyers; but the physical exhibits before the Commission and the Leather Co.'s claims of similar qualities, must also be considered. Undoubtedly there is substantial evidence supporting the finding; and we can look no further. (*Winsted Hosiery case*, 258 U. S. 483, 491.)

We recently had occasion to reaffirm our belief that there is no jurisdiction in the Commission to make an order of this kind unless there is a legitimate trade which equitably deserves protection in order that the defendant's unfair methods may not tend to restrain the trade of the fair and legitimate competitors. (*Raladam Co. v. F. T. C.*, 42 F. (2d) 430, 435; certiorari now allowed.⁶) The present record presents this question in a peculiar form. The manufacturers of what they call kid leather, and possibly, in some measure, the manufacturers of calfskin, may suffer from this method of competition—the former, if trade is diverted from the goatskin by the

⁵ A purchaser says she asked at a certain store for kid shoes, and was sold a pair made from Kaffor-Kid, with the explanation that it was "a new kind of kid". It appears, with seeming certainty, that at the time fixed this store did not have any Kaffor-Kid shoes. As to such an incident, occurring several years back, human recollection is too uncertain and the exact details are too important to give such proof of a single instance substantial weight, as tending to show any general probability of a frequent or serious practice.

⁶ See decision of Supreme Court handed down May 25, 1931. 288 U. S. 648.

supposition that Kaffor-Kid is the same thing, and the latter, if trade is diverted from the regular calfskin by advertising something as if better but perhaps at the same price. We do not suppose that the Commission's typical order to desist and refrain is made an inappropriate remedy, merely because some of a respondent's trade competitors are using the same unfair method which is charged against it; the Commission could not stop all these things at once; but, in that aspect of the Commission's future action in this case which may rest upon the theory that the ultimate purchaser supposes that kid is kid, and that kid shoes are made from kid leather which is made from kid skins, and thus is misled because the defendant is tacking the name to leather not made of those skins at all, we find that the entire associated trade, which is complaining and which the Commission is intending to protect, is also misleading the ultimate purchaser in a similar way. Lacking any proof that the purchaser did know anything about the secondary meaning which prevails among the experts, the result would be that the Commission stops the defendant from misleading the purchaser, and does so with the sole purpose and sole result of aiding and abetting a much greater volume of misleading practice by the rest of the trade. We can confidently say that no such result, coming from such construction of the act, can have been intended by Congress. Upon that other aspect of this case which may rest on the supposition that the shoe users think kid means goat, this comment just made would of course not be justified.

The order will be that the desist and refrain order of the Commission be vacated, without prejudice to its further future orders in the matter, that the prayer of the cross-bill-answer be denied, and that the case be remanded to the Commission for the taking of further proofs and, if the Commission desires, further findings—all in accordance with this opinion.[†]

[†] Uncertainty as to whether a purchaser who calls for kid shoes expects to get goatskin leather is indicated by direct testimony in the record to the effect that buyers have no intelligent desire in this respect, and by the proofs that, perhaps continuously, for thirty years, other skins than goat have been specially treated and sold under some broad name, including kid, in considerable volume. Aristo kid, calfkid, Novilla kid, Royal kid, Rue kid, Kangaroo kid, Mat kid—these terms must have tended to establish a generic meaning. This indication finds, in the mind of the writer of this opinion, additional plausibility because, though he has worn vicⁱ kid shoes for thirty years, he has taken it for granted, and because of the obviously insufficient supply, that they could not be from true kidskin, has never known that they were made from goatskin, but has assumed that, whatever the original leather, they were the product of some treatment which gave the qualities for which kid was a generic name. Others may have the same supposition. Research among available information (of some of which—but not all—judicial notice could be taken) tends to support this impression—very strongly as to kid gloves—and substantially as to kid shoes.

WEBSTER'S IMPERIAL DICTIONARY: *Kid*.—"5. Leather made from the skin of a young goat, or an imitation of it made of various other skins"; and the adjective is defined as "made of leather called kid."

FINAL DECREE

And now said cause coming on to be heard before this court upon the joint motion of the petitioner and the respondent for a final disposition of this cause by a final decree, as upon mutual consent of the parties, which proposed final decree was submitted by the parties to the court, and the court, having considered the same and being fully advised in the premises:

On consideration whereof, it is now here ordered, adjudged, and decreed by this court:

1. That said motion be, and the same hereby is, sustained.

2. That the body of the order to cease and desist issued by the Federal Trade Commission herein be, and the same hereby is, modified to read as follows, to wit:

It is now ordered, That respondent, The Ohio Leather Co., its officers, agents, representatives, and employees, in connection with the advertising, offering for sale and sale, in commerce among the several States of the United States, of leather made from calfskins, shall cease and desist:

From using the word "Kid" alone or in combination with the word "Kaffor" or other word or words, as a trade name, brand,

CENTURY DICTIONARY: *Kid*.—"3. Leather made from the skin of a kid, used in making shoes and gloves. Much of the leather so used and sold as kid, is made from other skins * * *. *Plural*—Gloves made of kid, or of the leather so-called"; and under the corresponding adjective definition, it is said: "*Kid gloves*.—A glove made of kid leather, or, in trade use, of other soft leather resembling kid."

MURRAY'S OXFORD DICTIONARY: *Kid*.—"3. The skin of a kid, or leather made from kid-skins, or from lambskins or other substitutes; chiefly used in the manufacture of gloves and shoes. *Plural*—Gloves or boots made of this leather." *Kid gloves*.—"A glove made of kidskin, lambskin or other similar leather * * *. Men and women's fine gloves, or those that pass in the shops under the denomination of kid gloves, but which are really made from lamb [43] skins." *Kidskin*.—"The skin of a kid, especially such skin tanned and used for gloves; also applied to skins of lambs and other animals used for that purpose."

ENCYCLOPAEDIA BRITANNICA: *Leather* (subhead).—"Sources and qualities of hides and skins," sub-head, "light leathers." In discussing sheep, this is said [skins of] "lambs not over a month old are worth much more than when they have lived for three months; they are used for the manufacture of best kid gloves and must be milk skins. Once the lambs have taken to graze the skins supply a harsher leather." (The same is true of calfskins at the age of about two weeks.) *Gloves* (subhead), *Manufacture*, "For leather gloves skins of various animals are employed, deer, calves, sheep, and lambs, goats and kids, etc., but kids have had nothing to do with the production of many of the kid gloves of commerce."

ENCYCLOPEDIA AMERICANA: *Leather and Shoe Trade Technical Terms*.—*Castor*.—Suede finished kid, for gloves, usually in lighter weight than is used for shoes. *Dongola*.—Heavy plump goatskin * * *. The terms Dongola, kid and Morocco, are sometimes used interchangeably. *Elkskin*.—A term applied usually to soft tanned calfskin * * *, called elk, because supposed to resemble elk in appearance. *Kid*.—Shoe leather made from the skins of mature goats. The skin of the young goat or kid is made into the thin flexible leather used in the making of kid gloves, being too delicate for use in shoes. *Mat kid*.—A thin calfskin used for shoe uppers. *Morocco* * * * applied in general to heavy goatskin of any vegetable tannage, used for shoes. *Pebbled Goat*.—Tanned goatskin, finished with a pebbled surface.

Much instructive material is found in the DICTIONARY OF LEATHER TERMINOLOGY, published by a joint committee of the tanners and leather goods industries, and "dedicated to the public in the interest of truth in merchandising." In the introduction on page 3, it is said: "Many leathers are known commercially or popularly by names of hides or

label, or as a heading for advertising matter, unless immediately in conjunction therewith there are used conspicuously apt and adequate words showing it to be made of calfskin, and otherwise using said name or names unless accompanied by descriptive language easily legible and readily discernible, clearly showing it to be a product of calfskin.

3. That said order of the Federal Trade Commission, as so modified, be, and hereby is, affirmed.

4. That respondent, The Ohio Leather Co., its officers, agents, representatives, and employees desist and refrain from violating said order as so modified and affirmed, or any portion or portions thereof.

5. That respondent, The Ohio Leather Co., shall within 60 days after the day on which this decree is made and entered file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which it has complied with the modified order to cease and desist hereinabove set forth.

6. That no judgment for costs be awarded herein.

All of which is finally ordered, adjudged, and decreed by the court.⁸

skins of which they are not actually made. Some of the names may have originated in an attempt to describe the article and most of them to-day are kept alive by trade custom. Names of some skins (like chamols) have come to mean a finish as much as a kind of leather. It has even become necessary to insert the word 'genuine' before some kinds of leather (like buck) to distinguish it from its imitators." The producing skins are in groups. One is the sheep and lamb group, in which are included the woolled skins and cabrettes [the Tanners' Council now thinks it rightful to include the cabretta skins as kid]; and this group is the producing leather for, among other things, chamols. Another group is the goat and kid group [with no intimation that goatskins are kidskins]. On page 8 we find: "In describing various classes of leather, the name of the animal from which the skin was taken is generally used. Therefore, cowhide, goatskin, and similar names infer that the leather is actually made from skins of those animals. Certain exceptions to this have become established trade practice, and comment is made thereon in the definitions which follow": On page 9: "*Chamols leather*.—A soft leather originally made from the skins of the Alpine antelope, or chamols, now practically extinct, but at the present time from the fleshers or underskins of sheepskin, oil-dressed, sueded-finished, principally used for cleaning and polishing purposes and for gloves." On page 10: "*Elk*.—A purely trade term for cattle-hide shoe leather of a special tannage and finish. Genuine elk leather is designated by the term 'buckskin'." On page 11: "*Glove leathers—Kid*.—Term commonly applied to grain glove leathers from sheep or lamb skins or wool or hair types. This is an instance of the public deceiving itself, as the name clings to the product merely in popular use, and is never used by manufacturers, except for stock actually made of immature goatskins." On page 12: "*Kid*.—In general trade and popular usage it has come to refer to shoe upper leather tanned from either goat or kid skins and to glove leather tanned from sheep and lamb skins." On page 13: "*Morocco leather*.—Term applied to distinctive natural grain or vegetable-tanned fancy goatskin, to which the name is properly restricted. The name originally indicated leather from Morocco, later was applied to all goatskin leather. Its application to any but fancy goatskin is incorrect, but has been so commonly used in the past that it has become necessary to use the word 'genuine' to define the true leather. As a commercial classification 'Morocco grain' is applied to embossed imitations of the natural goat grain or other kinds of leather." On page 21: "*French kid or French kid finish*.—As the name implies, the original French kid was made in France, and since it was a distinctive finish, the term in time was applied to a special class of leather made in other countries. To-day it means leather tanned from kidskin by an alum or vegetable process. In the glove trade it is usually called genuine kid."

It is to be noted that in this Dictionary of Terminology, in the leather statistics published by the Department of Commerce, and in those published by the Tanners' Council, goat and kid skins are included to-day in one group for statistical purposes, but there is nothing to indicate their merger under the name of kid.

⁸ Entered April 7, 1981.

BAYUK CIGARS, INC. *v.* FEDERAL TRADE COMMISSION

(Circuit Court of Appeals, Third Circuit. June 14, 1930. On rehearing November 21, 1930.)

No. 3788

Decrees modifying and affirming cease and desist order of Federal Trade Commission, on petition for review thereof, cross bill by Commission for enforcement, and Commission petition for rehearing.¹

Petition by the Bayuk Cigars, Inc., for review of a cease and desist order directed against said company by the Federal Trade Commission, and cross bill by the Commission for the enforcement of its order. Decree by the court, and amended decree, modifying and affirming said order.²

Mr. C. Andrade, jr., of New York City, and *Fox, Rothschild, O'Brien & Frankel*, of Philadelphia, Pa., for petitioner.

Mr. Robert E. Healy, chief counsel, *Mr. Martin A. Morrison*, assistant chief counsel, and *Mr. Henry Miller*, of Washington, D. C., for respondent.

¹ See footnote on p. 679.

² Bayuk Cigars, Inc., respondent in Commission proceeding docket 1391, as found by the Commission (see 12 F. T. C. 19 et seq.), designated, described, banded, labeled, and sold a 5 cent and 8 cent cigar containing none of the famed Havana or Cuban tobacco, as "Havana Ribbon," featuring said words upon the bands and containers of said cigar, and extensively so advertised such cigar under said name and designation in magazines, daily newspapers of general circulation and in signs, placards, etc.

Respondent Bayuk Cigars, Inc., further, as found, similarly designated, described, banded, labeled, advertised and sold a 10 cent, 2 for a quarter, and 15 cent cigar, containing Havana or Cuban tobacco only in a minor proportion, under the designation "Mapacuba," featuring such word upon the brand, together with the Cuban shield or coat of arms, pictures of Havana and Havana scenes, the Cuban flag, Cuban tobacco fields, and a Spanish legend vouching for the high quality of the article because coming from the famous Vuelta Abajo District of Cuba.

Such practices, as above set forth, as found by the Commission had the capacity and tendency to mislead and deceive the purchasing public to believe the cigar first referred to to be composed in whole or in part of Havana tobacco, and the second cigar to be wholly or principally so composed, and did in fact so mislead and deceive many of the purchasing public. Said practices had the further capacity and tendency to induce purchase of aforesaid cigars in such erroneous beliefs, and to divert trade unfairly from and otherwise injure and prejudice, and did so unfairly divert trade from and otherwise injure and prejudice the business of competitors rightfully and truthfully selling and distributing cigars composed in whole, and cigars composed in part only, of Havana or Cuban tobacco, and competitors selling and distributing cigars composed of other tobacco, without in anywise representing their cigars as containing such Cuban or Havana tobacco.

Order of the Commission required respondent to cease and desist, in connection with sale and distribution of sales in interstate commerce—

DECREES

ORIGINAL DECREE

In the United States Circuit Court of Appeals for the Third Circuit,
No. 3788. March term, 1928

BAYUK CIGARS, INC., PETITIONER

v.

FEDERAL TRADE COMMISSION, RESPONDENT

On Petition for Review of an Order of the Federal Trade Commission

This cause came on to be heard on the transcript of record from the Federal Trade Commission of the United States and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the order of the said Federal Trade Commission in this cause be modified by requiring that Bayuk Cigars, Inc., shall use on the boxes of its two brands of cigars labels designed, colored, worded, and printed as follows [see opposite p. 710]:

(1) From using the word "Havana," or other word or words of similar import, alone or in conjunction with the word "Ribbon," or other word or words, as or in a brand name for or as descriptive of any such cigars which are not composed entirely of tobacco grown on the Island of Cuba;

(2) From using the word "Mapacuba," or other word or words of similar import, as or in a brand name for or as descriptive of any such cigars which are not composed in whole or in part of tobacco grown on the Island of Cuba;

(3) From using the word "Mapacuba," or other word or words of similar import, as or in a brand name for or as descriptive of any such cigars which are composed in part only of tobacco grown on the Island of Cuba, unless said word be immediately followed and accompanied by a word or words in letters equal or greater in size, visibility and conspicuousness, clearly and unequivocally indicating or stating that such cigars are not composed wholly, but in part only, of tobacco grown on the Island of Cuba;

(4) From using a depiction simulating the flag, emblem, insignia, or coat of arms of the Republic of Cuba, map of Cuba, Cuban tobacco fields, city or harbor of Havana, Cuba, or depiction of similar import, in the advertising, branding, or labeling of any such cigars which are not composed in whole or in part of tobacco grown on the Island of Cuba;

(5) From using a depiction simulating the flag, emblem, insignia or coat of arms of the Republic of Cuba, map of Cuba, Cuban tobacco fields, city or harbor of Havana, Cuba, or depiction of similar import, in the advertising, branding or labeling of any such cigars which are composed in part only of tobacco grown on the Island of Cuba, unless such depiction be accompanied by a word or words of equal or greater visibility and conspicuousness, clearly and unequivocally indicating or stating that such cigars are not composed wholly, but in part only, of tobacco grown on the Island of Cuba;

(6) From representing in any other manner whatsoever that any of said cigars contain or are composed in whole or in part of tobacco grown on the Island of Cuba, when such is not true in fact.

and that the order of the said Federal Trade Commission, when made to conform to the above modification, is in all respects affirmed.

Per Curiam:

BUFFINGTON, *Circuit Judge.*

PHILADELPHIA, *June 14, 1930.*

DECREE ON REHEARING

In the United States Circuit Court of Appeals for the Third Circuit.
No. 3788. March term, 1928

BAYUK CIGARS, INC., PETITIONER

v.

FEDERAL TRADE COMMISSION, RESPONDENT

The decree in the above-entitled case is, on this 21st day of November, 1930, amended by striking out the second paragraph and substituting in lieu thereof the following:

“On consideration whereof, it is now here adjudged and decree[d] that the order of the Federal Trade Commission in this case be modified by requiring that Bayuk Cigars, Inc., shall use on the boxes of its two brands of cigars under consideration labels designed, colored, worded, and printed in the manner shown by the labels made a part of this decree; that it shall use on its placards advertising those two brands the words, printing, and coloring of the said labels, excepting the gilded effect of the words ‘Havana Ribbon’ and excepting also, should it desire, the picture of a tobacco plant with its accompanying words, and the concluding words of guaranty; and that it shall use in its magazine, newspaper, and other advertisements of those brands, when not capable of coloring, the words of the said labels with the optional exceptions aforesaid.”

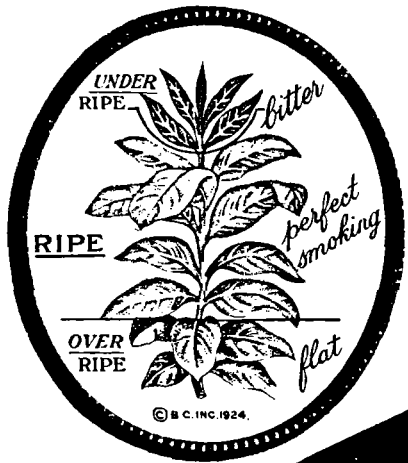
Without withdrawing, limiting, or otherwise disturbing the jurisdiction of the Federal Trade Commission over this case under the modified order, this court will retain jurisdiction of the case to act within its powers in any exigencies that may arise by reason of the premises.

Per curiam:

BUFFINGTON, *Circuit Judge.*

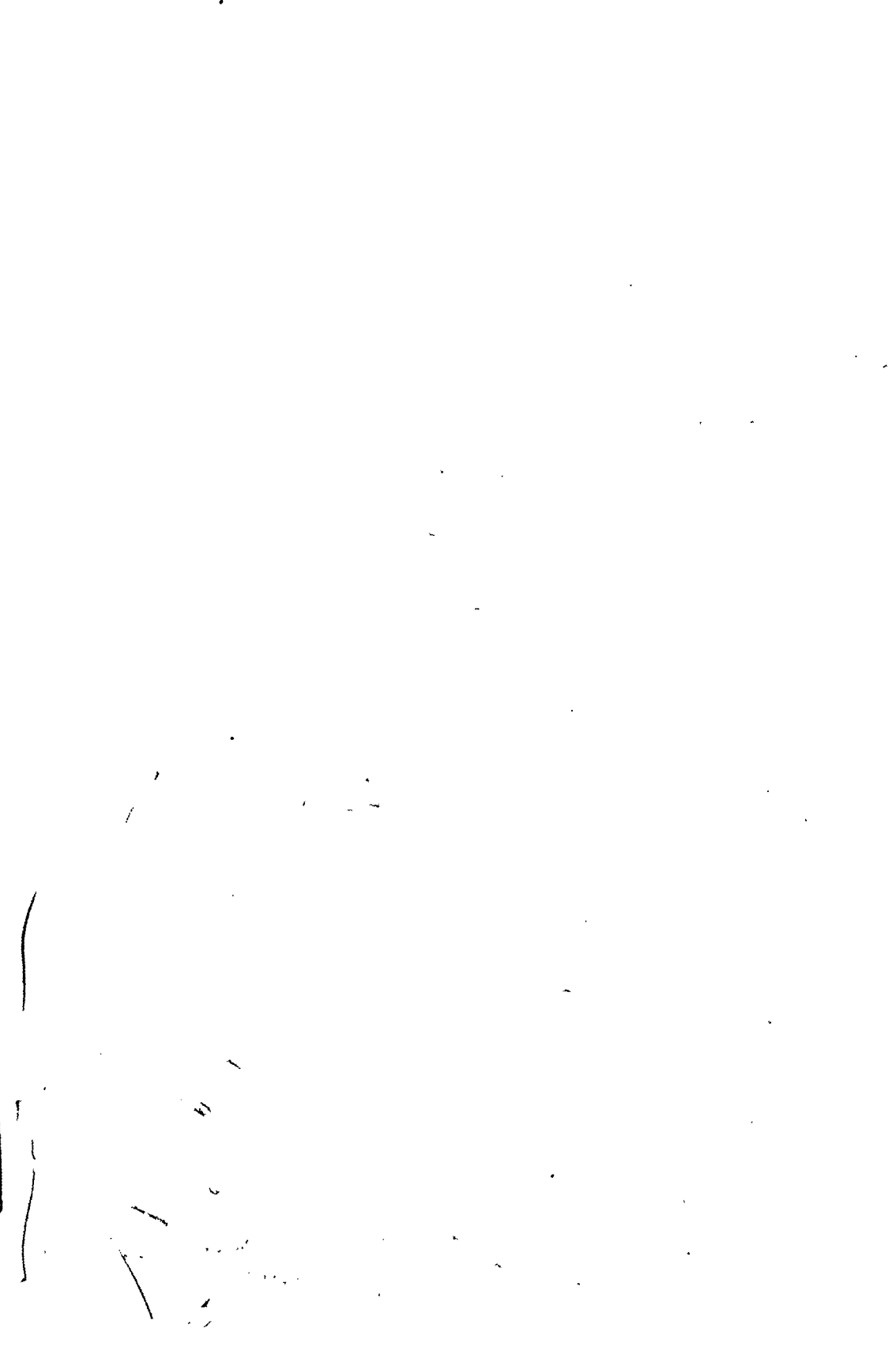
-It's Ripe Tobacco!

5¢



NOTICE
 THESE CIGARS ARE MADE
 IN THE UNITED STATES
 ENTIRELY AND ONLY OF RIFE
 DOMESTIC TOBACCO
 WITH AN IMPORTED
 SUMATRA WRAPPER.
 BAYUK CIGARS, INC.

THE BAYUK TOBACCO PLANT ON THE LABEL IS YOUR GUARANTEE
 OF A *Ripe Tobacco* CIGAR. ~ BAYUK CIGARS INC.



MAPACUBA

HAVANA & DOMESTIC FILLER
SUMATRA WRAPPER

It's Ripe Tobacco!

UNDER-RIPE

Bitter

RIPE

*perfect
smoking*

OVER-RIPE

flat

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REG. U.S. PAT. OFF. BAYUK CIGARS INC.

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FEDERAL TRADE COMMISSION v. HOBOKEN WHITE
LEAD & COLOR WORKS, INC.

(Circuit Court of Appeals, Second Circuit. January 19, 1931)

Order and decree affirming and enforcing order of Commission in 12 F. T. C. 495, requiring respondent to desist from the use of the words "White Lead" or "Zinc Lead," in connection with sale of its products, as therein set forth.

Application or petition by the Federal Trade Commission for the enforcement of its order against the respondent. Order affirmed and enforced.

Mr. Robert E. Healy, chief counsel, *Mr. Martin A. Morrison*, assistant chief counsel, and *Mr. Henry Miller* for the Federal Trade Commission.

Levenson, Comen, and Levenson, of Hoboken, N. J., for Hoboken White Lead & Color Works, Inc.

Before MANTON, SWAN, and A. N. HAND.

ORDER

This cause came on to be heard on the transcript of the record from the Federal Trade Commission, on the petition filed herein and on the answer of the respondent to such petition, waiving the filing of briefs and oral argument herein, and consenting to this order. On consideration whereof:

It is now ordered, adjudged, and decreed, That the order of the Federal Trade Commission set forth in said petition be, and hereby is, affirmed;

It is now further ordered, adjudged, and decreed, That the respondent, Hoboken White Lead & Color Works, Inc., its officers, agents, representatives, servants, and employees, cease and desist in the course or conduct of the sale of paint material or paint pigment in interstate commerce—

(1) From using the words "White Lead," or word or words of like import, upon the containers of, or with which to brand, label, represent, advertise, or describe, any such paint material or paint pigment which contains less than 50 per cent white lead, lead carbonate, or lead sulphate; and, if and when said paint material or paint pigment is not composed wholly of white lead or of lead carbonate or lead sulphate or of the two in combination, but contains white lead, lead carbonate, or lead sulphate as its principal and redominant ingredient to the extent of not less than 50 per cent by weight of the product, from similarly using said words "White Lead," or word or words of like import, unless immediately preceded in an equally conspicuous form and color by a word or words clearly

indicating that said paint material or paint pigment is not composed wholly of white lead.

(2) From using the words "Zinc Lead," or word or words of like import, upon the containers of, or with which to advertise, brand, label, represent, or describe any such paint material or paint pigment when said product is not in fact zinc lead or is not in fact wholly composed of zinc in combination with lead carbonate or lead sulphate.

It is further ordered, That respondent Hoboken White Lead & Color Works, Inc., shall within 30 days after service upon it of a copy of this order file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinabove set forth.

FEDERAL TRADE COMMISSION *v.* MILLERS' NATIONAL
FEDERATION AND SIMS MILLING COMPANY

(Court of Appeals of District of Columbia. Argued December 1,
1930. Decided February 2, 1931)

No. 5276

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

Federal Trade Commission's jurisdiction to issue subpoenas requiring production of documents in investigation directly by Senate resolution could not be determined in injunction suit (Federal Trade Commission Act, secs. 5, 6(a), 9; 15 USCA secs. 45, 46(a), 49).

Jurisdiction of the Commission could not be determined in suit for injunction, because, under Federal Trade Commission Act, sec. 9 (15 USCA sec. 49), Commission is empowered to issue subpoenas in any proceeding or investigation held under the general provisions of the act, and resolution of Senate directing investigation amounted to an order on Commission to conduct investigation for information of Congress in aid of exercise of its legislative function, and, if witness should refuse to produce documentary evidence described in subpoena, or to permit it to be used in evidence, matter could adequately be determined by applying to District Court to punish witness for contempt of court.

(The syllabus is taken from 47 F. (2d) 428)

Suit by Millers' National Federation and another against the Federal Trade Commission. From a decree enjoining enforcement of subpoenas issued Commission, Commission appeals. Reversed and remanded.¹

Robert E. Healy, Martin A. Morrison, and James T. Clark, all of Washington, D. C., for appellants.

¹ See also 23 F. (2d) 968, and footnote on p. 675.

K. D. Loos, of Washington, D. C., *Stephen A. Foster*, of Chicago, Ill., *E. Barrett Prettyman*, of Washington, D. C., and *Edward S. Rogers*, of Chicago, Ill., for appellee.

Before MARTIN, Chief Justice, ROBB and VAN ORSDEL, Associate Justices.

VAN ORSDEL, *Associate Justice*:

This appeal is from a decree of the Supreme Court of the District of Columbia enjoining the enforcement of subpoenas issued by the Federal Trade Commission.

In February, 1924, the United States Senate adopted the following resolution: "*Resolved*, That the Federal Trade Commission be, and it is hereby, directed to investigate the production, distribution, transportation, and sale of flour and bread, including by-products, and report its findings in full to the Senate, showing the costs, prices, and profits at each stage of the process of production and distribution from the time the wheat leaves the farm until the bread is delivered to the consumer; the extent and method of price fixing, price maintenance, and price discrimination; the developments in the direction of monopoly and concentration of control in the milling and baking industries; and all evidence indicating the existence of agreements, conspiracies, or combinations in restraint of trade."

Thereafter the Commission directed an investigation and issued subpoenas for witnesses, requiring the production of certain records and papers belonging to the Millers' National Federation. The jurisdiction of the Commission to issue the subpoenas in question in the conduct of the investigation authorized by the resolution of the Senate is assailed. The subpoenas issued in this case require two things: First, the attendance of the witness to testify; and, second, to bring with him certain papers described in the subpoena. It may here be suggested that in the agreed statement of facts it is conceded by appellee Federation that the documents and records named in the subpoenas are pertinent, relevant, and material to the matters concerning which the Commission was directed to make an investigation. Coming to the question of jurisdiction, we are of opinion that the matters referred to the Commission by the resolution of the Senate for investigation contemplates such an investigation as might have been pursued by a committee of the Senate for the procuring of facts and information in aid of possible legislation, since the subject matter of the investigation relates to commerce, and is therefore within the legislative jurisdiction of Congress.

Section 5 of the Federal Trade Commission Act confers upon the Commission quasi judicial authority to institute a proceeding against

any person, partnership or corporation that it has reason to [429] believe has been or is using any unfair method of competition in commerce. The statute then provides a method of procedure by which the person complained of and charged with the offense of using unfair methods of competition shall be accorded a hearing, and if found guilty, the Commission is authorized to issue an order requiring the person, partnership, or corporation to cease and desist from using such unfair methods of competition. The statute then provides for the enforcement of the order of the Commission, where the person charged fails or neglects to obey its order, by application to the proper Circuit Court of Appeals of the United States for the enforcement of its order. This action is referred to in the Statute as a "proceeding."

Under section 6 of the act the Commission has power—

"(a) to gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers subject to the Act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships.

* * * * *

"(d) Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust Acts by any corporation."

The power of investigation conferred upon the Commission by section 6 is different in character from the jurisdiction conferred by section 5. Section 6 contemplates an investigation for the collection of facts for the information of Congress in aid of the exercise of its legislative function, or for the President in aid of recommending necessary legislation. The validity of this act has been upheld in many cases, and for the purposes of this inquiry will be regarded as conceded.

Coming now to the power of the Commission to issue and enforce the subpoenas in question, section 9 of the act provides as follows: "That for the purposes of this act the Commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the Commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investiga-

tion. Any member of the Commission may sign subpoenas, and members and examiners of the Commission may administer oaths and affirmations, examine witnesses, and receive evidence."

The act then provides that the witnesses may be subpoenaed from any part of the United States to any place designated for the hearing, and in case of contumacy or refusal to obey a subpoena so issued, on application to the District Court of the United States within the jurisdiction of which the hearing is had an order may be obtained compelling the person so subpoenaed "to appear before the Commission or to produce documentary evidence if so ordered, or to give evidence touching the matter in question." For failure to obey such order, the party may be punished by the court for contempt.

It will be observed that under section 9 the Commission is empowered to issue subpoenas in any "proceeding" or "investigation" held under the general provisions of the Federal Trade Commission Act. Inasmuch, therefore, as the resolution of the Senate amounts to an order upon the Commission to conduct the investigation in question for the information of Congress, it is tantamount to a delegation of the power vested in the Senate itself to make such investigation to a subordinate agency of the Government clothed with that authority.

In the case of *McGrain v. Dougherty*, 273 U. S. 135, the authority of a committee of Congress conducting an investigation in aid of proposed or contemplated legislation to subpoena and compel the attendance of witnesses was upheld. The decision, however, in this case went no further than to uphold the power to compel the attendance of witnesses. The court avoided any expression as to the jurisdiction of such a committee to compel the production of documentary evidence. But that question is not necessarily involved in this case. The Commission has jurisdiction to compel the attendance of the witness. In the event of his refusal to produce the documentary evidence described in the subpoena or to permit it to be used in evidence, an adequate remedy is afforded the Commission by the terms of the statute. These are, therefore, not matters which are subject to investigation by a court of equity, or to restraint by injunction, as the whole matter can be determined in a proceeding [430] where the Commission invokes the aid of the proper District Court to enforce its order.

The decree is reversed with costs, and the cause is remanded for further proceedings not inconsistent with this opinion.

FEDERAL TRADE COMMISSION *v.* CHARLES T. MORRISSEY, DOING BUSINESS UNDER THE TRADE NAMES AND STYLES OF CHARLES T. MORRISSEY & COMPANY AND CHARLES ORANGEADE COMPANY

(Circuit Court of Appeals, Seventh Circuit. February 27, 1931)

No. 4364

TRADE-MARKS, TRADE-NAMES, AND UNFAIR COMPETITION KEY—No. 80½.

Circuit Court of Appeals will enter decree for enforcement of order of Federal Trade Commission shown to have been in some respects disregarded (Federal Trade Commission Act, sec. 5; 15 USCA sec. 45).

TRADE-MARKS, TRADE-NAMES, AND UNFAIR COMPETITION KEY—No. 80½.

Decree for enforcement of Federal Trade Commission's order *held* warranted, where answer failed to show complete compliance with order (Federal Trade Commission Act, sec. 5; 15 USCA sec. 45).

The Federal Trade Commission's order directed respondent to desist from using names of fruits as corporate or trade-names, or as trade brand or designation in advertising, or on labels, packages, or containers of imitation fruit juices, while the answer merely alleged compliance as to labels, placards, signs, and advertising. Moreover, a report filed by respondent with the Commission indicated that the order was not entirely complied with.

TRADE-MARKS, TRADE-NAMES, AND UNFAIR COMPETITION KEY—No. 80½.

Order prohibiting employment of name of fruit in sale of artificial fruit juices should be modified to permit statement that product resembled particular fruit (Federal Trade Commission Act, sec. 5; 15 USCA sec. 45).

(The syllabus is taken from 47 F. (2d) 101)

Petition by Federal Trade Commission for decree affirming an order directed to Charles T. Morrissey, doing business as Charles T. Morrissey & Co. and the Charles Orangeade Co. to cease and desist certain practices.¹ [102] Decree entered for enforcement of order, as modified.

James T. Clark, Robert E. Healy, and Martin A. Morrison, all of Washington, D. C., for petitioner.

Thomas J. Hickey, of Chicago, Ill., for respondent.

Before ALSCHULER and EVANS, Circuit Judges, and LINDLEY, District Judge.

ALSCHULER, *Circuit Judge*:

Petitioner filed here its petition, under section 5 of the Federal Trade Commission Act, for a decree affirming a certain order of petitioner commanding respondent to cease and desist from doing

¹ See 12 F. T. C. 147.

the things as therein stated,² alleging that "respondent has failed and neglected to obey said order of the Commission and has violated and is continuing to violate the terms thereof."

Respondent's answer to the petition is that as to all his labels, placards, signs, and advertising he has changed and modified them to meet the views of the Commission, and that those that were not changed were discontinued, and that he will not resume the use of any labels or advertising objected to by the Commission.

If nothing appeared in the proceedings to indicate that respondent had in some respect failed to comply with the Commission's order, we would feel compelled to follow the practice which we approved in *Federal Trade Commission v. Standard Education Soc.*, 14 F. (2d) 947, 948, by first causing inquiry to be made as to whether respondent had failed to comply with the order. We there so held pursuant to the words of the statute, "If such person * * * fails or neglects to obey such order of the Commission * * * the Commission may apply to the Circuit Court of Appeals," etc.

But if from proceedings following the entry of the order it is fairly apparent that in some respects the order has not been obeyed, an affirming decree by the court will be justified. Respondent's answer fails in an important respect to assert compliance with the order. It asserts compliance only as to labels, placards, signs, and advertising, but not as to the use of the name of any such fruit as a part of a corporate or trade name under which appellee transacted business—a practice which was specifically prohibited by the order.

²(1) Using or authorizing the use by others in interstate commerce of the words "cherry", "strawberry", "grape", "raspberry", "ras-o-berry", "pineapple", "lime", "lemon", or "orange", either independently or in conjunction or combination with any other word or words, letter or letters, as a corporate or trade name, or as a trade brand or designation in advertising or on labels, packages, or other containers or otherwise, in connection with the sale or distribution, in interstate commerce, of a product which is not composed wholly of the natural fruit, or juice of the fruit of the cherry, strawberry, grape, raspberry, pineapple, lime, lemon, or orange, respectively: *Provided*, That, when a product is composed in substantial part of any natural fruit, or the juice of such fruit, so as to derive its color and flavor from said fruit, and the name of the said fruit is used in a corporate or trade name, or as a trade brand or designation for said product, the name of said fruit shall not be used unless said name is immediately accompanied with some other word or words, letter or letters, displayed in type equally as conspicuous as that in which the name of the fruit is displayed clearly indicating that said product is not made wholly from the natural fruit or juice of the fruit designated, and that will otherwise indicate clearly that the product is composed in part of an ingredient or ingredients other than the natural fruit or juice of the fruit designated.

(2) Using or authorizing the use by others, in interstate commerce, in advertising or upon business stationery or on containers or on labels, or otherwise, of any word or words, picture or symbol falsely representing or suggesting that a product is made from or contains the natural juice or fruit of the cherry, strawberry, grape, raspberry, pineapple, lime, lemon, or orange, respectively.

It is further ordered, That respondent, Charles T. Morrissey, pursuant to the provisions of Rule XVI of the Commission's Rules of Practice, shall, within 60 days after the service upon him of a copy of the order hereinbefore set forth, file with the Commission a report, in writing, setting forth in detail the manner and form in which said order has been complied with.

It appears also, that pursuant to the order, respondent filed with the Commission a report or letter setting forth the manner in which the order had been complied with. Without entering into details, it seems that considerable of the report or letter is devoted to criticizing the scope of the order, and in some material respects indicates that the order was not, in its entirety, complied with—although perhaps not indicating any flagrant or willful disobedience. This, in our judgment, will warrant entry of an affirming decree.

We are of the opinion, however, that the order is somewhat too broad. It prohibits the employment of the words orange, lemon, grape, or other fruit therein named, where the product is not composed wholly of natural fruit or fruit juice, with proviso that when such product in substantial part derives its flavor from such fruit, the name of the fruit may be used either for the trade name or the product, if it is clearly indicated that the product is not wholly made from some such fruit or its juice. But there is total inhibition of the use of the fruit name if the product is wholly artificial, containing no fruit juice whatever.

[103] If a product is not in other respects violative of law, it is not to be banned merely because in taste and color it simulates a fruit. To deny to one making such product the right to use in any way the name of the fruit which it simulates would unduly restrict the opportunity or right to describe it. Let us say that in flavor and color it resembles the orange. This might not be fully describable unless the word "orange" was employed. Of course it would not be permissible falsely to represent it as containing the juice or color of the orange, but it would be entirely proper, and might even be necessary to say, in substance, that it has an orange flavor or color, but clearly indicating that fruit does not enter into its manufacture. Paragraph (1) of the order to desist should have a further proviso to that effect.

It is ordered that to paragraph (1) of the order to desist there be added the following: *Provided, further,* That if the product contains no ingredient of cherry, strawberry, grape, raspberry, raspberry, pineapple, lime, lemon, or orange, the use of the name of the fruit in any label or advertisement shall be limited to a statement, in substance, that the product resembles in taste or color, or both, as the case may be, the named fruit, but contains no juice or coloring matter of the fruit.

As thus modified a decree will be entered for enforcement of the order to cease and desist.

APPENDIX III

RULES OF PRACTICE BEFORE THE COMMISSION

I. SESSIONS

The principal office of the Commission at Washington, D. C., is open each business day from 9 a. m. to 4.30 p. m. The Commission may meet and exercise all its powers at any other place, and may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

Principal office.

Commission may exercise power elsewhere.

Sessions of the Commission for hearing contested proceedings will be held as ordered by the Commission.

Hearings as ordered.

Sessions of the Commission for the purpose of making orders and for the transaction of other business, unless otherwise ordered, will be held at the office of the Commission at Washington, D. C., on each business day at 10.30 a. m. Three members of the Commission shall constitute a quorum for the transaction of business.

Sessions for orders and other business.

Quorum.

All orders of the Commission shall be signed by the secretary.

Orders signed by secretary.

II. COMPLAINTS

Any person, partnership, corporation, or association may apply to the Commission to institute a proceeding in respect to any violation of law over which the Commission has jurisdiction.

Who may ask complaint.

Such application shall be in writing, signed by or in behalf of the applicant, and shall contain a short and simple statement of the facts constituting the alleged violation of law and the name and address of the applicant and of the party complained of.

Form of application.

The Commission shall investigate the matters complained of in such application, and if upon investigation the Commission shall have reason to believe that there is a violation of law over which the Commission has jurisdiction, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, the Commission shall issue and serve upon the party complained of a complaint stating its charges and containing a notice of a hearing upon a day and at a place therein fixed, at least 40 days after the service of said complaint.

Commission to investigate.

Issuance and service of complaint.

III. ANSWERS

- Time allowed for answer.** (1) In case of desire to contest the proceeding the respondent shall, within such time as the Commission shall allow (not less than 30 days from the service of the complaint), file with the Commission an answer to the complaint. Such answer shall contain a short and simple statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state, such statement operating as a denial.
- Form of answer.**
- Failure to deny any allegation.** Any allegation of the complaint not specifically denied in the answer, unless respondent shall state in the answer that respondent is without knowledge, shall be deemed to be admitted to be true and may be so found by the Commission.
- If respondent desires to waive hearing.** (2) In case respondent desires to waive hearing on the charges set forth in the complaint and not to contest the proceeding, the answer may consist of a statement that respondent refrains from contesting the proceeding or that respondent consents that the Commission may make, enter, and serve upon respondent an order to cease and desist from the violations of the law alleged in the complaint, or that respondent admits all the allegations of the complaint to be true. Any such answer shall be deemed to be an admission of all the allegations of the complaint, to waive a hearing thereon, and to authorize the Commission, without a trial, without evidence, and without findings as to the facts or other intervening procedure, to make, enter, issue and serve upon respondent an order to cease and desist from the method or methods of competition charged in the complaint.
- Failure to answer.** (3) Failure of the respondent to appear or to file answer within the time as above provided for shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.
- Number of copies; signature; etc.** (4) Three copies of answers must be furnished. All answers must be signed in ink by the respondent or by his duly authorized attorney and must show the office and post-office address of the signer. All answers must be typewritten or printed. If typewritten, they must be on paper not more than 8½ inches wide and not more than 11 inches long. If printed, they must be on paper 8 inches wide by 10½ inches long.

IV. SERVICE

Complaints, orders, and other processes of the Commission may be served by anyone duly authorized by the

Commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer, or a director of the corporation or association to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person, partnership, corporation, or association; or (c) by registering and mailing a copy thereof addressed to such person, partnership, corporation, or association at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process, setting forth the manner of said service, shall be proof of the same, and the return post-office receipt for said complaint, order, or other process, registered and mailed, as aforesaid, shall be proof of the service of the same.

Personal, or

By leaving copy

By registered mail.

Returns.

V. INTERVENTION

Any person, partnership, corporation, or association desiring to intervene in a contested proceeding shall make application in writing, setting out the grounds on which he or it claims to be interested. The Commission may, by order, permit intervention by counsel or in person to such extent and upon such terms as it shall deem just.

Form of application.

Permitted by order.

Applications to intervene must be on one side of the paper only, on paper not more than 8½ inches wide and not more than 11 inches long, and weighing not less than 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margin not less than 1½ inches wide, or they may be printed in 10 or 12 point type on good unglazed paper 8 inches wide by 10½ inches long, with inside margins not less than 1 inch wide.

Size of paper, margin, etc., used on application.

VI. CONTINUANCES AND EXTENSIONS OF TIME

Continuances and extensions of time will be granted at the discretion of the Commission.

In discretion of Commission.

VII. WITNESSES AND SUBPŒNAS

Witnesses shall be examined orally, except that for good and exceptional cause for departing from the general rule the Commission may permit their testimony to be taken by deposition.

Examination ordinarily oral.

Subpœnas requiring the attendance of witnesses from any place in the United States at any designated place of hearing may be issued by any member of the Commission.

Subpœnas for witnesses.

Subpoena for production of documentary evidence.

Subpoenas for the production of documentary evidence (unless directed to issue by a commissioner upon his own motion) will issue only upon application in writing, which must be verified and must specify, as near as may be, the documents desired and the facts to be proved by them.

Witness fees and mileage.

Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear.

VIII. TIME FOR TAKING TESTIMONY

Examination of witnesses to proceed as fast as practicable.

Upon the joining of issue in a proceeding by the Commission the examination of witnesses therein shall proceed with all reasonable diligence and with the least practicable delay. Not less than five days' notice shall be given by the Commission to counsel or parties of the time and place of examination of witnesses before the Commission, a commissioner, or an examiner.

Notice to counsel.

IX. OBJECTIONS TO EVIDENCE

To state grounds of objection, etc.

Objections to the evidence before the Commission, a commissioner, or an examiner shall, in any proceeding, be in short form, stating the grounds of objections relied upon, and no transcript filed shall include argument or debate.

X. MOTIONS

To briefly state nature of order applied for, etc.

A motion in a proceeding by the Commission shall briefly state the nature of the order applied for, and all affidavits, records, and other papers upon which the same is founded, except such as have been previously filed or served in the same proceeding, shall be filed with such motion and plainly referred to therein.

XI. HEARINGS ON INVESTIGATIONS

By single commissioner.

When a matter for investigation is referred to a single commissioner for examination or report, such commissioner may conduct or hold conferences or hearings thereon, either alone or with other commissioners who may sit with him, and reasonable notice of the time and place of such hearings shall be given to parties in interest and posted.

The general counsel or one of his assistants, or such other attorney as shall be designated by the Commission, shall attend and conduct such hearings, and such hearings may, in the discretion of the commissioner holding same, be public.

General counsel or assistant to conduct hearing.

XII. HEARING BEFORE EXAMINERS

When issue in the case is set for trial it shall be referred to an examiner for the taking of testimony. It shall be the duty of the examiner to complete the taking of testimony with all due dispatch, and he shall set the day and hour to which the taking of testimony may from time to time be adjourned. The taking of the testimony both for the Commission and the respondent shall be completed within 30 days after the beginning of the same unless, for good cause shown, the Commission shall extend the time. The examiner shall, within 20 days after the receipt of the stenographic report of the testimony (unless the time be extended by the Commission on application within that period by the chief trial examiner stating reasons for the delay), make his report on the facts, and shall forthwith serve copy of the same on the parties or their attorneys, who, within 10 days after the receipt of same, shall file in writing their exceptions, if any, and said exceptions shall specify the particular part or parts of the report to which exception is made, and said exceptions shall include any additional facts which either party may think proper. Seven copies of exceptions shall be filed for the use of the Commission. Citations to the record shall be made in support of such exceptions. Where briefs are filed, the same shall contain a copy of such exceptions. Argument on the exceptions, if exceptions be filed, shall be had at the final argument on the merits.

Examiner to take testimony.

Testimony to be completed within 30 days except for good cause.

Examiner to make and serve proposed findings and order.

Exceptions by parties.

Briefs and argument on exceptions.

When, in the opinion of the trial examiner engaged in taking testimony in any formal proceeding, the size of the transcript or complication or importance of the issues involved warrants it, he may of his own motion or at the request of counsel at the close of the taking of testimony announce to the attorneys for the respondent and for the Commission that the examiner will receive at any time before he has completed the drawing of the "Trial Examiner's Report upon the Facts" a statement in writing (one for either side) in terse outline setting forth the contentions of each as to the facts proved in the proceeding.

Examiner under certain circumstances to receive from each side statement of its contentions after testimony and before his report.

These statements are not to be exchanged between counsel and are not to be argued before the trial examiner.

Time allowance for submission of tentative findings.

Any tentative draft of finding or findings submitted by either side shall be submitted within 10 days after the closing of the taking of testimony and not later, which time shall not be extended.

XIII. DEPOSITIONS IN CONTESTED PROCEEDINGS

Commission may order.

The Commission may order testimony to be taken by deposition in a contested proceeding.

Before any person designated

Depositions may be taken before any person designated by the Commission and having power to administer oaths.

Applications for depositions.

Any party desiring to take the deposition of a witness shall make application in writing, setting out the reasons why such deposition should be taken, and stating the time when, the place where, and the name and post-office address of the person before whom it is desired the deposition be taken, the name and post-office address of the witness, and the subject matter or matters concerning which the witness is expected to testify. If good cause be shown, the Commission will make and serve upon the parties, or their attorneys, an order wherein the Commission shall name the witness whose deposition is to be taken and specify the time when, the place where, and the person before whom the witness is to testify, but such time and place, and the person before whom the deposition is to be taken, so specified in the Commission's order, may or may not be the same as those named in said application to the Commission.

Testimony of witness.

The testimony of the witness shall be reduced to writing by the officer before whom the deposition is taken, or under his direction, after which the deposition shall be subscribed by the witness and certified in usual form by the officer. After the deposition has been so certified it shall, together with a copy thereof made by such officer or under his direction, be forwarded by such officer under seal in an envelope addressed to the Commission at its office in Washington, D. C. Upon receipt of the deposition and copy the Commission shall file in the record in said proceeding such deposition and forward the copy to the defendant or the defendant's attorney.

Deposition to be forwarded.

And filed. Copy to defendant or his attorney

Size of paper, etc.

Such depositions shall be typewritten on one side only of the paper, which shall be not more than 8½ inches wide and not more than 11 inches long and weighing not

less than 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margin not less than 1½ inches wide.

No deposition shall be taken except after at least 6 days' notice to the parties, and where the deposition is taken in a foreign country such notice shall be at least 15 days. Notice

No deposition shall be taken either before the proceeding is at issue, or, unless under special circumstances and for good cause shown, within 10 days prior to the date of the hearing thereof assigned by the Commission, and where the deposition is taken in a foreign country it shall not be taken after 30 days prior to such date of hearing. Limitations as to time.

XIV. DOCUMENTARY EVIDENCE

Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant and not intended to be put in evidence, such document will not be filed, but a copy only of such relevant and material matter shall be filed. Relevant and material matter only to be filed.

XV. BRIEFS

All briefs must be filed with the secretary of the Commission, and briefs on behalf of the Commission must be accompanied by proof of the service of the same as hereinafter provided, or the mailing of same by registered mail to the respondent or its attorney at the proper address. Twenty copies of each brief shall be furnished for the use of the Commission unless otherwise ordered. The exceptions, if any, to the trial examiner's report must be incorporated in the brief. Every brief, except the reply brief on behalf of the Commission, hereinafter mentioned, shall contain in the order here stated: Filed with secretary.

(1) A concise abstract or statement of the case.

(2) A brief of the argument, exhibiting a clear statement of the points of fact or law to be discussed, with the reference to the pages of the record and the authorities relied upon in support of each point. Proof of service.

Every brief of more than 10 pages shall contain on its top fly leaves a subject index with page references, the subject index to be supplemented by a list of all cases referred to, alphabetically arranged, together with references to pages where the cases are cited. Number.

Briefs must be printed in 10 or 12 point type on good unglazed paper 8 by 10½ inches, with inside margins To contain exceptions to trial examiner's report.

Form.

Abstract of case.

Brief of argument.

Index.

Printing.

not less than 1 inch wide, and with double-ledged text and single-ledged citations.

Reply brief.

The reply brief on the part of the Commission shall be strictly in answer to respondent's brief.

Time for briefs.

The time within which briefs shall be filed is fixed as follows: For the opening brief on behalf of the Commission, 30 days from the day of the service upon the chief counsel or trial attorney of the Commission of the trial examiner's report; for brief on behalf of respondent, 30 days after the date of service upon the respondent or his attorney of the brief on behalf of the Commission; for reply brief on behalf of the Commission, 10 days after the filing of the respondent's brief. Reply brief on behalf of respondent will not be permitted to be filed. Applications for extension of time in which to file briefs shall be by petition in writing, stating the facts on which the application rests, which must be filed with the Commission at least 5 days before the time fixed for filing such briefs. Briefs not filed with the Commission on or before the dates fixed therefor will not be received except by special permission of the Commission. Appearance of additional counsel in a case shall not, of itself, constitute sufficient grounds for extension of time for filing brief or for postponement of final hearing.

Service of Commission brief.

Briefs on behalf of the Commission may be served by delivering a copy thereof to the respondent's attorney or to the respondent in case respondent be not represented by attorney, or by registering and mailing a copy thereof addressed to the respondent's attorney or to the respondent in case respondent be not represented by attorney, at the proper post-office address. Written acknowledgment of service, or the verified return of the party making the service, shall constitute proof of personal service as hereinbefore provided, and the return post-office receipt aforesaid for said brief when registered and mailed shall constitute proof of the service of the same.

Oral arguments.

Oral arguments may be had only as ordered by the Commission on written application of the chief counsel or of respondent filed not later than 5 days after expiration of time allowed for filing of reply brief of counsel for the Commission.

XVI. REPORTS SHOWING COMPLIANCE WITH ORDERS

Report of compliance.

In every case where an order is issued by the Commission for the purpose of preventing violations of law the respondent or respondents therein named shall file with

the Commission, within the time specified in said order, a report in writing setting forth in detail the manner and form in which the said order of the Commission has been complied with.

XVII. REOPENING PROCEEDINGS

In any case where an order to cease and desist, an order dismissing a complaint, or other order disposing of a proceeding is issued the Commission may, at any time within 90 days after the entry of such order, for good cause shown in writing and on notice to the parties, reopen the case for such further proceedings as to the Commission may seem proper.

Reopening of proceedings.

XVIII. ADDRESS OF THE COMMISSION

All communications to the Commission must be addressed to Federal Trade Commission, Washington, D. C., unless otherwise specifically directed.

Federal Trade Commission, Washington, D. C.



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Unfair methods of competition condemned. *See:*

- Advertising falsely or misleadingly;
- Appropriating trade name of competitor;
- Assuming or using misleading trade or corporate name;
- Bribing employees of customers or prospective customers;
- Claiming indorsements falsely or misleadingly;
- Claiming patent rights wrongfully;
- Collecting noncontractual charges unfairly;
- Combining or conspiring;
- Contracting on exclusive and tying basis;
- Disparaging or misrepresenting competitors or their products;
- Enforcing payments or claims coercively or unfairly;
- Granting use of business identity to others;
- Maintaining resale prices;
- Misbranding or mislabeling;
- Misrepresenting business status, operations, advantages, or connections;
- Misrepresenting prices;
- Misrepresenting product;
- Misrepresenting unit quantities;
- Naming product misleadingly;
- Offering deceptive inducements to purchase;
- Simulating;
- Using or selling lottery schemes, merchandise, or product.

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