

Complaint.

3 F. T. C.

FEDERAL TRADE COMMISSION

v.

LASKER & BERNSTEIN.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5
OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 374.—February 4, 1921.

SYLLABUS.

Where a corporation engaged in the sale of sponges by weight,

- (a) "Loaded" sponges by the addition of foreign substances which did not increase their usefulness or durability, but were added for the sole purpose of increasing their weight;
- (b) With the knowledge and expectation that the same would be resold to retailers and large consumers without disclosing the fact that their weight had been artificially increased, sold such "loaded" sponges to packers and wholesalers without disclosing the amount of such "loading," thereby enabling such packers and wholesalers to mislead and deceive retailers and consumers who unwittingly bore, in whole or in part, the cost of such "loading";

With the effect of aiding in the misleading and deception of retailers and consumers, of enabling it and its packer and wholesale purchasers to secure business on a false and fictitious basis, and of forcing competitors also to sell "loaded" sponges; to the injury of competitors who did not sell "loaded" sponges and to the injury of the public:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Lasker & Bernstein, hereinafter referred to as respondent, has been and now is 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," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That respondent, Lasker & Bernstein, is a corporation, organized and existing under the laws of the State of New York, having its principal office and place of business in the city of New York, in said State. That for more than a year last past

respondent has been engaged in purchasing sponges in other States of the United States and foreign countries and in the sale and shipment of said sponges to persons, firms, copartnerships, and corporations in other States and Territories of the United States and the District of Columbia in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That in the conduct of its business respondent purchases sponges in the State of Florida and other States of the United States and foreign countries and causes the same to be transported through other States of the United States to its place of business in the city of New York, State of New York, where the same are sold and shipped to purchasers and dealers in different States and Territories of the United States and the District of Columbia, and that there is continuously, and has been at all times hereinafter mentioned, a constant current of trade and commerce in said sponges between and among the various States and Territories of the United States and more particularly from the State of Florida and foreign countries to and through the city of New York, State of New York, and from there to and through other States and Territories of the United States and the District of Columbia.

PAR. 3. That respondent for more than a year last past has knowingly and deceptively engaged in and is now knowingly and deceptively engaged in loading, doping, and saturating sponges with foreign matter, such as glucose, sand, molasses, Epsom salts, and lead, and knowingly and deceptively caused and procured, and is now knowingly and deceptively causing and procuring others to so load, dope, or saturate sponges with the aforesaid foreign matter, with the intent and purpose of selling and disposing of said sponges by weight, per pound basis, in commerce as aforesaid, thereby deceptively increasing and falsifying the weight of said sponges, creating a fictitious price therefor, deceiving, defrauding, and misleading customers and consumers who can not readily differentiate and distinguish between pure, unadulterated sponges and sponges doped, loaded, or saturated with foreign matter, as aforesaid, to purchase and pay for, by weight, per pound basis, such loaded, doped, or saturated sponges as and for pure unadulterated sponges; that the effect and result of the aforesaid loading, doping, or saturating sponges is to create a fictitious price for said sponges in competition with competitors who purchase and sell pure unadulterated sponges, thereby causing prejudice and injury to competitors, or may cause prejudice and injury to competitors; and other effects; that the further effect of loading, doping, or saturating sponges with foreign matter as aforesaid is to impair the durability, quality, and purity of said sponges.

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PAR. 4. That respondent for more than a year last past knowingly and deceptively purchased and sold, by weight, per pound basis, and is still knowingly and deceptively purchasing, selling, and disposing of, by weight, per pound basis, in commerce as aforesaid, large quantities of sponges, loaded, doped, or saturated with foreign matter such as glucose, sand, molasses, Epsom salts, and lead, with the intent and purpose of deceptively increasing and falsifying the weight of said sponges, creating a fictitious price therefor, deceiving, defrauding, and misleading customers and consumers who can not readily differentiate and distinguish between pure unadulterated sponges and sponges loaded, doped, or saturated with foreign matter, as aforesaid, to purchase and pay for, by weight, per pound basis, such loaded, doped, or saturated sponges as, and for, pure unadulterated sponges; that the effect and result of the aforesaid purchase and sale of loaded, doped, or saturated sponges is to create a fictitious price for said sponges in competition with competitors who purchase and sell pure unadulterated sponges, thereby causing prejudice and injury to competitors, or may cause prejudice and injury to competitors; and other effects; that the further effect of purchasing and selling sponges loaded, doped, or saturated with foreign matter, in commerce as aforesaid, is to impair the durability, quality, and purity of said sponges.

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, Lasker & Bernstein, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

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

And thereupon this proceeding came on for final hearing, and the attorneys for the Commission and respondent having submitted briefs, and the Commission having heard oral argument, and the Commission, having fully considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondent, Lasker & Bernstein, is a corporation organized and existing under and by virtue of the laws of the

State of New York, having its principal office and place of business located at the city of New York in said State, and is now and at all times hereinafter mentioned has been engaged in the business of selling and shipping sponges from the city of New York, in the State of New York, to purchasers thereof located throughout the different States of the United States and the District of Columbia in direct competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That in the conduct of its business respondent purchases sponges in the different States of the United States and in foreign countries and causes the same to be transported through other States to its place of business located in the city of New York, in the State of New York, from which place said sponges are sold and shipped to purchasers thereof in the different States of the United States and the District of Columbia, and there is and has been at all times hereinafter mentioned a current of trade and commerce in said sponges among and between the various States of the United States and the District of Columbia.

PAR. 3. That in the conduct of its business respondent for more than two years prior to the filing of the complaint herein had been engaged in artificially increasing the weight of sponges by a process of soaking said sponges in a solution of a substance or substances such as salt, Epsom salts, glucose, glycerine, and sugar; that the substance or substances contained in said solution are incorporated into the texture of said sponges and remain in said sponges after the said sponges are dried; that the said process of artificially increasing the weight of sponges by the addition of a substance or substances as aforesaid is commonly known to and designated by sponge packers as "loading"; that the sponges whose weight has been thus artificially increased are designated and referred to by sponge packers as "loaded" sponges. When hereinafter mentioned, sponges whose weight has been thus artificially increased are referred to as "loaded" sponges, and the process by which the weight is artificially increased is referred to as "loading."

PAR. 4. That the total cost of "loading" 1 pound of sponge, including the cost of ingredients and labor, is approximately 20 cents; that the substance or substances added to the sponges in the process of "loading" do not in any way add to the usefulness or durability of the sponges and do not enable them better to serve any of the purposes for which sponges are employed; that the sole purpose of "loading" is to increase the weight of the sponges while they are in the channels of commerce before they have reached the ultimate user; that when said sponges are put into use the substance or sub-

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stances introduced in the process of "loading" are generally washed out and lost.

PAR. 5. That in the conduct of its business respondent for more than two years prior to the filing of the complaint herein, had been selling and shipping by weight in interstate commerce sponges "loaded" by it as aforesaid to purchasers thereof, including among others, sponge packers and wholesale dealers; that respondent in selling said "loaded" sponges to said sponge packers and said wholesale dealers did not disclose or make known to said sponge packers or said wholesale dealers the amount of matter artificially added to said sponges; that said sponge packers and said wholesale dealers did not know the amount of matter artificially added to said sponges; that the "loading" of said sponges was paid for by said sponge packers and said wholesale dealers.

PAR. 6. That said sponge packers who purchased from respondent "loaded" sponges as aforesaid resold said sponges by weight to purchasers thereof, including among others, wholesale druggists and other wholesale dealers handling sponges; that said sponge packers in reselling said "loaded" sponges to said wholesale dealers did not disclose or make known to said wholesale dealers the amount of matter artificially added to said sponges; that said wholesale dealers did not know the amount of matter artificially added to said sponges; that the "loading" of said sponges was paid for by said wholesale dealers.

PAR. 7. That said wholesale dealers who purchased said "loaded" sponges from respondent and from said other sponge packers in turn resold said "loaded" sponges by weight to purchasers thereof, including, among others, retail dealers, such as dealers in the drug, hardware, and paint and oil lines, and large consumers, such as garages, painters, decorators, office buildings, and manufacturing concerns; that said wholesale dealers did not disclose or make known to said retail dealers or to said consumers that said sponges were "loaded"; that said retail dealers and said consumers did not know that said sponges were "loaded" and did purchase and pay for by weight said "loaded" sponges as and for sponges whose weight had not been artificially increased; that the respondent "loaded" said sponges and sold said "loaded" sponges to said sponge packers and to said wholesale dealers with the knowledge and expectation that said "loaded" sponges would be resold to said retail dealers and said consumers in a manner calculated to deceive and mislead and actually deceiving and misleading said retail dealers and said consumers; that the cost of the substance or substances added to said sponges by the process of "loading," and of the labor by which said

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substance or substances were introduced into said sponges, was ultimately borne, in whole or in part, by said retail dealers and said consumers without their knowledge.

PAR. 8. That the "loading" of sponges and the sale of "loaded" sponges by the respondent, as aforesaid, is a fraudulent and deceptive practice and results in injury to the public; that it enables said wholesale dealers who purchase said "loaded" sponges to resell said sponges as and for sponges whose weight has not been artificially increased and in the natural course of business causes such result; that the practice of "loading" as aforesaid is calculated to and does enable said respondent and said sponge packers and said wholesale dealers who resell said "loaded" sponges to secure business on a false and fictitious basis to the injury of the competitors of respondent and the competitors of said sponge packers and the competitors of said wholesale dealers who do not sell "loaded" sponges, and to the injury of the public.

PAR. 9. That the sale of "loaded" sponges by respondent, as aforesaid, has the tendency and capacity to, and does, force competitors of respondent also to sell "loaded" sponges, to the injury of competitors who do not sell "loaded" sponges and to the injury of the public.

CONCLUSIONS.

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, 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 and answer of the respondent, the testimony and evidence, and the argument of the counsel, and the Commission having made its findings as to the facts with its conclusions that the 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, Lasker & Bernstein, and its agents, servants, and employees, and each and every one of them, do cease and desist from directly or indirectly:

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1. Increasing the weight of sponges intended for sale and subsequent shipment in interstate commerce, by soaking them in a solution of salt, Epsom salts, glycerine, glucose, or sugar, or any other substance producing the like effect.

2. Selling for shipment in interstate commerce, or shipping in interstate commerce, any sponges the weight of which has been increased by soaking them in a solution of salt, Epsom salts, glycerine, glucose, or sugar, or any other substance producing the like effect.

It is further ordered, That the respondent, Lasker & Bernstein, 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 hereinbefore set forth.

Commissioners Murdock and Nugent took no part in the final consideration or decision of this case.

The Commission has also issued similar orders in other cases involving substantially the same facts, as shown by the following:

TABLE.

Date.	Dock No.	Respondent.	Location.	Answer, stipulation or trial.
1921 Feb. 4	377	American Sponge & Chamols Co.	New York City...	Trial.
4	380	Greek American Sponge Co.	Chicago, Ill.	Do.
4	383	National Sponge & Chamols Co.	New York City...	Do.
		Nassau Sponge Co.	Chicago, Ill.	

Complaint.

FEDERAL TRADE COMMISSION

v.

JOSEPH BLOCH, INC.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5
OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 375—February 4, 1921.

SYLLABUS.

Where a corporation engaged in the sale of sponges by weight to retailers and large consumers, "loaded" sponges by the addition of foreign substances which did not increase the usefulness or durability of the sponges, but were added for the sole purpose of increasing their weight, and sold such "loaded" sponges without disclosing the fact that their weight had been artificially increased, thereby defrauding, deceiving, and misleading retailers and consumers, enabling it to secure business on a false and fictitious basis, and forcing competitors also to sell "loaded" sponges; to the injury of competitors who did not sell "loaded" sponges and to the injury of the public:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Joseph Bloch (Inc.), hereinafter referred to as respondent, has been and now is 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," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That respondent, Joseph Bloch (Inc.), is a corporation organized and existing under the laws of the State of New York, having its principal office and place of business in the city of New York, in said State. That for more than one year last past respondent has been engaged in purchasing sponges in other States of the United States and foreign countries and in the sale and shipment of said sponges to persons, firms, copartnerships, and corporations in other States and Territories of the United States and the District of Columbia in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

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PAR. 2. That in the conduct of its business respondent purchases sponges in the State of Florida and other States of the United States and foreign countries and causes the same to be transported through other States of the United States to its place of business in the city of New York, State of New York, where the same are sold and shipped to purchasers and dealers in different States and Territories of the United States and the District of Columbia, and that there is continuously, and has been at all times hereinafter mentioned, a constant current of trade and commerce in said sponges between and among the various States and Territories of the United States, and more particularly from the State of Florida and foreign countries to and through the city of New York, State of New York, and from there to and through other States and Territories of the United States and the District of Columbia.

PAR. 3. That respondent for more than a year last past has knowingly and deceptively engaged in and is now knowingly and deceptively engaged in loading, doping, and saturating sponges with foreign matter, such as glucose, sand, molasses, Epsom salts, and lead, and knowingly and deceptively caused and procured, and is now knowingly and deceptively causing and procuring, others to so load, dope, or saturate sponges with the aforesaid foreign matter, with the intent and purpose of selling and disposing of said sponges by weight, per pound basis, in commerce as aforesaid, thereby deceptively increasing and falsifying the weight of said sponges, creating a fictitious price therefor, deceiving, defrauding, and misleading customers and consumers who can not readily differentiate and distinguish between pure unadulterated sponges and sponges doped, loaded, or saturated with foreign matter, as aforesaid, to purchase and pay for, by weight, per pound basis, such loaded, doped, or saturated sponges, as, and for, pure unadulterated sponges; that the effect and result of the aforesaid loading, doping, or saturating sponges is to create a fictitious price for said sponges in competition with competitors who purchase and sell pure unadulterated sponges, thereby causing prejudice and injury to competitors, or may cause prejudice and injury to competitors; and other effects; that the further effect of loading, doping, or saturating sponges with foreign matter as aforesaid is to impair the durability, quality, and purity of said sponges.

PAR. 4. That respondent for more than a year last past knowingly and deceptively purchased and sold, by weight, per pound basis, and is still knowingly and deceptively purchasing, selling, and disposing

of, by weight, per pound basis, in commerce as aforesaid, large quantities of sponges, loaded, doped, or saturated with foreign matter, such as glucose, sand, molasses, Epsom salts, and lead, with the intent and purpose of deceptively increasing and falsifying the weight of said sponges, creating a fictitious price therefor, deceiving, defrauding, and misleading customers and consumers who can not readily differentiate and distinguish between pure unadulterated sponges and sponges loaded, doped, or saturated with foreign matter, as aforesaid, to purchase and pay for, by weight, per pound basis, such loaded, doped, or saturated sponges, as, and for, pure unadulterated sponges; that the effect and result of the aforesaid purchase and sale of loaded, doped, or saturated sponges is to create a fictitious price for said sponges in competition with competitors who purchase and sell pure unadulterated sponges, thereby causing prejudice and injury to competitors, or may cause prejudice and injury to competitors; and other effects; that the further effect of purchasing and selling sponges loaded, doped, or saturated with foreign matter, in commerce as aforesaid, is to impair the durability, quality, and purity of said sponges.

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, Joseph Bloch (Inc.), charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

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

And thereupon this proceeding came on for final hearing and the attorney for the Commission having submitted briefs, and the Commission having heard oral argument, and the Commission, having fully considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondent, Joseph Bloch (Inc.), is a corporation, organized and existing under and by virtue of the laws of the State of New York, having its principal office and place of business located at the city of New York, in said State, and is now and at all

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times hereinafter mentioned has been engaged in the business of selling and shipping sponges from the city of New York, in the State of New York, to purchasers thereof located throughout the different States of the United States and the District of Columbia in direct competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That in the conduct of its business respondent purchases sponges in different States of the United States and in foreign countries and causes the same to be transported through other States to its place of business located in the city of New York, in the State of New York, from which place said sponges are sold and shipped to purchasers thereof in the different States of the United States and the District of Columbia, and there is and has been at all times hereinafter mentioned a current of trade and commerce in said sponges among and between the various States of the United States and the District of Columbia.

PAR. 3. That in the conduct of its business respondent, for more than two years prior to the filing of the complaint herein, had been engaged in artificially increasing the weight of sponges by a process of soaking said sponges in a solution of a substance or substances such as salt, Epsom salts, glucose, glycerine, and sugar; that the substance or substances contained in said solution are incorporated into the texture of said sponges and remain in said sponges after the said sponges are dried; that the said process of artificially increasing the weight of sponges by the addition of a substance or substances as aforesaid is commonly known to and designated by sponge packers as "loading"; that the sponges whose weight has been thus artificially increased are designated and referred to by sponge packers as "loaded" sponges. When hereinafter mentioned, sponges whose weight has been thus artificially increased are referred to as "loaded" sponges, and the process by which the weight is artificially increased is referred to as "loading."

PAR. 4. That the total cost of "loading" 1 pound of sponge, including the cost of ingredients and labor, is approximately 20 cents; that the substance or substances added to sponges in the process of "loading" do not add in any way to the usefulness or durability of the sponges and do not enable them better to serve any of the purposes for which sponges are employed; that the sole purpose of "loading" is to increase the weight of the sponges while they are in the channels of commerce before they have reached the ultimate user; that when said sponges are put into use the substance or substances introduced in the process of "loading" are generally washed out and lost.

PAR. 5. That in the conduct of its business respondent for more than two years prior to the filing of the complaint herein had been selling and shipping by weight in interstate commerce sponges "loaded" by it as aforesaid to purchasers thereof, including among others retail dealers handling sponges and large consumers, such as garages, painters, decorators, office buildings, and manufacturing concerns; that respondent in selling said "loaded" sponges to said retail dealers and said consumers did not disclose or make known to said retail dealers or to said consumers that said sponges were "loaded"; that said retail dealers and said consumers did purchase and pay for by weight said "loaded" sponges as and for sponges whose weight had not been artificially increased.

PAR. 6. That the "loading" of sponges and the sale of "loaded" sponges by respondent, as aforesaid, is a fraudulent and deceptive practice, and is designed and calculated to and does defraud, deceive, and mislead retail dealers and consumers; that the practice of "loading" as aforesaid is designed and calculated to and does enable respondent to sell said "loaded" sponges on a false and fictitious basis, and to secure business on a false and fictitious basis, to the injury of competitors of said respondent who do not sell "loaded" sponges and to the injury of the public.

PAR. 7. That the sale of "loaded" sponges by respondent, as aforesaid, has the tendency and capacity to and does force competitors of respondent also to sell "loaded" sponges, to the injury of competitors who do not sell "loaded" sponges and to the injury of the public.

CONCLUSIONS.

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, 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 and answer of the respondent, the testimony, and evidence, and the argument of counsel, and the Commission having made its findings as to the facts with its conclusions that the 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,"

Table.

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It is now ordered, That the respondent, Joseph Bloch (Inc.), and its agents, servants, and employees, and each and every one of them, do cease and desist from directly or indirectly:

1. Increasing the weight of sponges intended for sale and subsequent shipment in interstate commerce, by soaking them in a solution of salt, Epsom salts, glycerine, glucose, or sugar, or any other substance producing the like effect.

2. Selling for shipment in interstate commerce, or shipping in interstate commerce, any sponges the weight of which has been increased by soaking them in a solution of salt, Epsom salts, glycerine, glucose, or sugar, or any other substance producing the like effect.

It is further ordered, That the respondent, Joseph Bloch (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, hereinbefore set forth.

Commissioners Murdock and Nugent took no part in the final consideration or decision of this case.

The Commission has also issued similar orders in other cases involving substantially the same facts, as shown by the following:

TABLE.

Date.	Dock No.	Respondent.	Location.	Answer, stipulation or trial.
1921 Feb. 4	386	Albert Bloch, Dave Bloch, and Benjamin G. Bloch, copartners, doing business under the firm name and style of Albert Bloch & Son.	New York City...	Trial.
4	393	Nathan Sinenberg, a sole trader, doing business under the name and style of Florida Sponge & Chamola Co.	do.	Do.
4	394	Harry J. Levy, J. D. Levy, and Nathan Levy, copartners, doing business under the firm name and style of Levy Bros.	Boston, Mass.....	Do.

H. L. ETTMAN SPONGE CO.

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