

FEDERAL TRADE COMMISSION

v.

ROYAL BAKING POWDER COMPANY.

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

Docket 539—July 2, 1921.

SYLLABUS.

Where a concern exclusively engaged in the manufacture and sale of cream of tartar baking powders, under the well-known trade-mark and name (among others) of "Dr. Price's Cream Baking Powder," long and extensively advertised and alleged (1) that it used only cream of tartar in its product, (2) that cream of tartar was the only wholesome acid ingredient available for the manufacture of baking powder, (3) that phosphate and alum for that purpose were unwholesome and injurious to the health, and (4) that no cream of tartar baking powder contained phosphate and no phosphate baking powder contained cream of tartar, whereby it was enabled to sell large quantities of its cream of tartar baking powder in competition with the cheaper phosphate and alum baking powders; and thereafter,

- (a) With the intent and effect of deceiving the public, labeled a phosphate powder, which it commenced to manufacture and which it called "Dr. Price's 'Cream' Baking Powder," with labels substantially similar to those of its "Dr. Price's Cream Baking Powder," and sold the same in containers expressly made to resemble those in which it had theretofore sold its aforesaid cream of tartar brand;
- (b) Extensively and elaborately advertised a reduction in "DR. PRICE'S Baking Powder," using such statements as "Low Cost Shakes Hands with High Quality in DR. PRICE'S Baking Powder. Now reduced to about one-half of the former cost * * * Does not Contain Alum * * * Always Wholesome. A name famous for sixty years is your Guarantee," emphasizing the much lower price of the new powder, but failing in most instances to disclose prominently or at all the change in ingredient from cream of tartar to phosphate; with the tendency thereby to mislead the public into mistaking the new product for the original Dr. Price's Baking Powder, and with the result, at the expense of competitive products, that sales of the new phosphate powder greatly exceeded former sales of the cream of tartar brand;

All with a tendency unfairly to hinder competing manufacturers of cream of tartar, and of phosphate, powders:

Held, That such mislabeling and such false and misleading advertising, 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 the Royal Baking Powder Co.

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der Co., hereinafter referred to as the respondent, has been and 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 the respondent, the Royal Baking Powder Co., is a corporation organized under the laws of New Jersey in 1899, and was a consolidation of four preexisting corporations, one of which was Price Baking Powder Co.; that its constituent companies before its organization and the respondent since its organization were and has been and still is engaged in manufacturing and selling, in interstate commerce, and in competition with many other concerns similarly engaged, baking powders not only under its own name but in the names of its constituent companies and particularly the Price Baking Powder Co. It has for many years asserted, advertised, and emphasized the fact that its baking powders contained for their necessary acid ingredient cream of tartar, or tartaric acid, a fruit product, represented as made of grapes, of high food value, pure, safe, and healthful; that the baking powders of its competitors contained as their necessary acid ingredient alum or phosphate, and that these ingredients rendered such powders unhealthful, impure, deleterious, and dangerous to their users and consumers. It and its predecessor and constituent, the Price Baking Powder Co., have spent large sums in advertising their products along these lines and built up a large trade and valuable good will for their cream of tartar baking powders, and especially for "Dr. Price's Cream Baking Powder," under and by that trade-mark and name, as of particular excellence and high quality. It put up these powders in cans under distinctive designs, brands, and labels, and a registered trade-mark as "Dr. Price's Cream Baking Powder," with printed directions for use and the statement that they do not contain ammonia, lime, or alum, and the formula "pure grape cream of tartar, tartaric acid (from grapes), bi-carbonate soda and corn starch." It had a wide and large sale of these powders at standard retail prices of 40 to 50 cents per can of 12 ounces, and other sizes in like proportions, while its competitors' powders, so much denounced by it as cheaper, inferior, unwholesome, etc., sold at much less prices.

PAR. 2. That the respondent, the Royal Baking Powder Co., in 1919, with the intent and effect of unfairly competing and interfering

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with and restraining its competitors' business and promoting the sales of its own products, compounded and manufactured baking powders in which it substituted for cream of tartar, or tartaric acid, formerly used and so much advertised, phosphate, a much cheaper ingredient, and put the same on the market in lieu of and under the trade name and trade-mark of Dr. Price's Cream Baking Powder at about one-half the price formerly prevailing for said Dr. Price's Cream Baking Powder. It put up and sold said powders in containers similar to those formerly used for Dr. Price's Cream Baking Powder under the same designs, brands, labels, and trade name and mark, with a stamp on the reverse side of the container to this effect: "A pure phosphate powder. This powder is composed of the following ingredients and none other: carbonate of soda, phosphate, corn starch." It continued for some time the sale of these substitute powders under those old designs, labels, brands, and trade name and mark, and then substituted gradually a new label on its containers of similar dress, design, and color, and containing substantially the same devices, directions, and matters of the old labels, using the same trade mark and name, "Dr. Price's Cream Baking Powder," "registered U. S. Patent Office," to which was added at the foot "A pure phosphate powder, new label," and substituting on the reverse of the container as the formula of these powders the substance of the stamp hereinbefore quoted, thus in substance and in fact misbranding and confusing these new or substitute phosphate powders for and with the former well-known and well-established Dr. Price's Cream Baking Powders.

PAR. 3. That respondent, the Royal Baking Powder Co., in connection with the sale of these new or substituted phosphate baking powders, entered upon and conducted and continues a general campaign of false and misleading advertising of the same by means of advertisements inserted in public newspapers and periodicals, by billboards, circulars, posters, handbills, and in various other forms, to promote the sales and distribution of these new or substitute phosphate powders as and for and in the name of said Dr. Price's Cream Baking Powders to this effect: The price of Dr. Price's Baking Powder has been reduced nearly one-half the former price; Dr. Price's Baking Powder, a name famous for 60 years, is a guarantee of quality; millions of women know Dr. Price's Baking Powder, the name has been a household word for 60 years; there is no longer any excuse for using a doubtful baking powder because it is cheap; new prices, 25 cents for 12 ounces, 15 cents for 6 ounces, 10 cents for 4 ounces, full weight cans, the price is right; Dr. Price's Baking Powder is now sold for 25 cents for a full weight 12 ounce can instead of 50 cents as formerly; Dr. Price's Baking Powder contains no alum, leaves no

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bitter taste, always wholesome; and much more to the same and similar effect. These prices so advertised, although about half the former prices of Dr. Price's Cream Baking Powder (genuine), were still much in excess of the current and reasonable prices of phosphate baking powders such as the respondent was in fact under these advertisements selling as a substitute for and in lieu of Dr. Price's Cream Baking Powders. Thus respondent is injuring and restraining the business of its competitors and deceiving and misleading purchasers and consumers.

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, Royal Baking Powder Co., 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 by its attorney, 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, Royal Baking Powder Co., before Mr. Byron L. Shinn and Mr. Baldwin B. Bane, examiners of the Federal Trade Commission, theretofore duly appointed.

And thereupon this proceeding came on for final hearing, and the Commission having heard the argument of counsel and duly 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. The respondent, Royal Baking Powder Co., is a corporation organized under the laws of the State of New Jersey in the year 1899, and has been continuously since its organization and now is engaged in the manufacture of baking powders and in the sale and shipment thereof throughout the various States of the United States and to foreign countries, in competition with many other partnerships and corporations similarly engaged.

PAR. 2. In said year, 1899, the respondent acquired by purchase the entire capital stock of three other corporations then and theretofore engaged in the manufacture of baking powders and in the sale thereof among the various States of the United States, to wit, Price Baking Powder Co., Cleveland Baking Powder Co., and a former corporation also known as Royal Baking Powder Co.

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PAR. 3. The baking powder manufactured by Price Baking Powder Co. was known as "Dr. Price's Cream Baking Powder"; that manufactured by Cleveland Baking Powder Co. was known as "Cleveland's Superior Baking Powder"; and that manufactured by the former Royal Baking Powder Co. was known as "Royal Baking Powder"; and after the acquisition of the stock of said three corporations by respondent as aforesaid, the manufacture and sale of said three brands of baking powder was continued by respondent.

PAR. 4. From 1899 to 1917 the respondent manufactured and sold said "Dr. Price's Cream Baking Powder" under the name of said Price Baking Powder Co., but in 1917 respondent acquired all the property and assets of said Price Baking Powder Co. and thereafter continued, up to September, 1919, the manufacture and sale of said baking powder under its own name.

PAR. 5. Baking powder consists of (1) a carbonate, usually bicarbonate of soda, mixed with (2) an acid ingredient capable of reacting with the alkaline carbonate, when moistened, and setting free carbonic acid gas, which gas raises the dough, and (3) a filler, usually flour or cornstarch, which tends to prevent any premature reaction caused by the moisture in the air.

PAR. 6. Baking powders are known and distinguished by the public, the trade, and the United States Government according to their respective acid ingredients, and those having for such acid ingredient cream of tartar or tartaric acid are known as "Cream of tartar" baking powders; those having phosphate for their acid ingredient are known as "Phosphate" baking powders; and those having any compound of aluminum for their acid ingredient are known as "Alum" baking powders. Baking powders containing both compounds of aluminum and phosphate are sometimes referred to as "Alum-phosphate" baking powders.

PAR. 7. The three brands of baking powder mentioned in paragraph 3, which were acquired by respondent in 1899, as aforesaid, were all cream of tartar baking powders, having for their acid ingredient cream of tartar, or tartaric acid, a condensed form of cream of tartar, and this respondent had never, prior to September, 1919, nor had any of its predecessors, manufactured any baking powder other than "Cream of tartar" powders.

PAR. 8. The baking powder known as "Dr. Price's Cream Baking Powder" was originated in or about the year 1853 by Dr. Vincent J. Price, a physician, and was manufactured by him, and by various firms of which he was a member, up to the year 1884, when the Price Baking Powder Co., an Illinois corporation, acquired the business and continued the manufacture and sale of said baking powder

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until said business was taken over by the respondent herein, as aforesaid, and during all of said time and until September, 1919, said baking powder was a cream of tartar baking powder, and was advertised and sold exclusively as such. Dr. Price ceased to have any interest in or connection with the manufacture of said baking powder in 1891 and has since died. Said Dr. Price never manufactured a phosphate baking powder.

PAR. 9. For a period of over 60 years prior to September, 1919, said "Dr. Price's Cream Baking Powder" had been marketed and advertised exclusively as a cream of tartar baking powder, and for at least 35 years (1884-1919) the respondent and its predecessor, Price Baking Powder Co., had carried on an extensive advertising campaign, throughout 22 States in the middle and western sections of the country, where said baking powder was sold, to establish in the minds of consumers the superiority, especially from the point of view of healthfulness, of its cream of tartar baking powder, and the inferiority of the baking powders manufactured and sold by competitors and containing phosphate or alum, or both, as their acid ingredients, which competing powders were represented by respondent to be unwholesome and deleterious.

PAR. 10. Through circulars, pamphlets, cook books, newspapers, and other forms of advertising, respondent for many years prior to September, 1919, made a practice of warning the purchasing public against the use of phosphate baking powders, and asserted that cream of tartar was the only acid ingredient which should be used in baking powder. It emphasized the wholesomeness and food value of cream of tartar and maintained that phosphate was unwholesome and dangerous as an ingredient, was produced either by dissolving bones in oil of vitriol, or from rocks formed by the action of the excreta of birds and animals on limestone. It referred to phosphate as "bone-acid" or "lime phosphate," and alleged that it was of purely mineral origin, left objectionable mineral residues in the food, and many other statements to the same or similar effect. Respondent further asserted that it had never manufactured any but exclusively cream of tartar powders, that no cream of tartar baking powder ever contained phosphate, and that no phosphate powder ever contained cream of tartar.

PAR. 11. By means of such advertising respondent was able to sell large quantities of its cream of tartar baking powder, under the name "Dr. Price's Cream Baking Powder," in competition with phosphate baking powders and alum baking powders selling for about one-half and one-fourth, respectively, of the selling price of respondent's said cream of tartar baking powder.

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PAR. 12. Prior to the year 1915, following a difference of opinion among physiologists as to the healthfulness of inorganic phosphate in food products, a Dr. Marshall published an article in the Journal of the American Medical Association which convinced the chief chemist of respondent that inorganic phosphate was entirely unobjectionable as a baking powder ingredient. Respondent continued up to May 28, 1919, to publish and circulate disparaging advertisements concerning baking powders containing such phosphate.

PAR. 13. At the same time that it was warning the public against the use of phosphate baking powders and claiming that cream of tartar was the only healthful acid ingredient, respondent was engaged in manufacturing and selling in Canada, through a company controlled by it, a phosphate baking powder known as "Magic Baking Powder"; and contemporaneously with its campaign of disparagement of phosphate baking powders, also owned 49 per cent of the capital stock of the Provident Chemical Works of St. Louis, Mo., a corporation engaged in the manufacture of phosphate for use in baking powders and in selling the same to manufacturers of phosphate baking powders, being sold in competition with respondent.

PAR. 14. In or about the month of July, 1919, because of the scarcity and increased cost of cream of tartar, respondent determined to change Dr. Price's Cream Baking Powder, which had been well-known for 60 years as a cream of tartar baking powder, to a phosphate powder, and to conserve the available supply of cream of tartar for its other brands. Cream of tartar had increased in price until at that time it cost more than five times as much as phosphate.

PAR. 15. Respondent put this new phosphate powder on the market at 25 cents per can of 12 ounces, under the long-established and well-known Dr. Price label, and so announced in a circular letter to the grocery trade, stating that the new goods should have a very large sale. Respondent estimated that it would have to sell three and one-half times as many pounds of the phosphate powder at the above-mentioned price in order to make the same profit which it had previously made on the cream of tartar powder at 60 cents a pound.

PAR. 16. In a "News Item for Trade Papers" respondent asserted that in view of the high cost and scarcity of cream of tartar, the growing demand for a pure baking powder at a lower price, and recent scientific developments in phosphate which permitted the manufacture of a pure high-grade phosphate baking powder containing no deleterious or objectionable substances at a

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very much lower price, it had decided to change its well-known Dr. Price brand from a cream of tartar powder to a straight phosphate baking powder to be sold at approximately one-half its former price after November 1, 1919.

PAR. 17. After some alterations in its Chicago factory, respondent began the manufacture of said phosphate powder, about September 15, 1919, and put the same on the market about the middle of November, 1919, in the States of Illinois, Wisconsin, Missouri, and part of Kansas. The label on the new goods was the same as had been previously used on the cream of tartar powder, except that a small circular "World's Fair Award" sticker was omitted from the front panel and a clause headed "A Pure Phosphate Powder" was printed in red diagonally across the back panel, giving the new ingredients, "Bi-Carbonate of Soda, Phosphate, Cornstarch." There was retained on this label the declaration in heavy black type, more conspicuous than the red overprint, that the powder contained "Pure Grape Cream of Tartar, Tartaric Acid." The first lot of these so-called "overprint" labels (Exhibit 30)¹ was made by printing the "phosphate clause" on the old Dr. Price labels still in stock, but early in August, 1919, respondent placed an order for the printing of 1,600,000 of the old form cream of tartar labels on the back of which it ordered that this "phosphate clause" should be added. Altogether some 6,000,000 of this variety of labels were used in the States named above in which the new product was first offered for sale to the wholesale trade.

PAR. 18. On August 9, 1919, respondent had ordered from its printer 18,000,000 of the labels which it intended to use as the regular or permanent label for this new phosphate baking powder. These labels were to be delivered not later than October 15, 1919. Later the printer informed respondent that it would take 16 weeks, due to conditions in the printing and paper industries, to print these new labels.

PAR. 19. All of the distinctive features of the old cream of tartar labels were retained on these new labels, including the name "Dr. Price's," which had been advertised for many years as denoting exclusively a cream of tartar powder and not a phosphate powder, made from burned bones treated with oil of vitriol, etc., as aforesaid. Quotation marks were placed around the word "Cream," registered as a trade-mark by respondent, and the design of a cornucopia containing clusters of grapes was modified by changing the grapes to flowers, but retaining the general contour. At the bottom of the front panel the legend "Perfectly Pure" was replaced by the words "A Pure, Phosphate Powder" in the same

¹ Not printed.

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size of type, "Standard for 60 Years" became "Makers for 60 Years," and various other minor changes were made.

PAR. 20. These new permanent labels (of which Commission's Exhibit 31¹ is a sample) were so like the labels previously used by respondent on the cream of tartar powder (of which Commission's Exhibit 1¹ is a sample), in arrangement of lettering and design, in coloration and general appearance, as to cause the one to be mistaken for the other and to confuse and mislead purchasers familiar with the former product as to the character of the contents of the new cans. In its efforts to avoid, as far as possible, any striking modification of the general appearance of the containers, respondent caused the bottoms of the new cans to be forced up to make allowance for the smaller bulk of the phosphate goods. Respondent's president regarded any change in the general appearance or coloration of the label as inadvisable.

PAR. 21. On October 4, 1919, and before any goods had been put out under the new label, the Illinois food authorities questioned the use by respondent of the so-called "overprint" label on the phosphate powder, but, after conferences, the use of this label was permitted in that State, with the understanding that it should be discontinued as soon as new labels could be obtained. Respondent sent blue prints of the new labels to the food authorities of Illinois and ordered the printing suspended until their objections could be straightened out. On November 3, 1919, respondent finally directed the printer to proceed with printing the new labels, and deliveries thereof were begun on or about December 12, 1919, at which time the "overprint" label was discontinued, and all shipments of goods were thereafter made under this label throughout the 22 Middle Western States in which "Dr. Price's Baking Powder" had been sold. In January, 1920, the Illinois food officials ruled that the "new" label was illegal, but respondent secured a temporary injunction in the district court at Chicago which prevented further action by the said food authorities.

PAR. 22. Proceedings were instituted or objections raised to the use of the "overprint" label or "new" label, or both, on the new phosphate powder in the following States: Arkansas, Montana, Wyoming, Colorado, Minnesota, South Dakota, Kansas, Idaho, Louisiana, Texas, and Tennessee. In Arkansas, Montana, and South Dakota, where respondent secured injunctions against the local food authorities in the Federal courts, these courts in every case decided that the so-called "new" labels constituted misbranding under the

¹ Not printed.

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various States' statutes, and the ruling of the district judge in the Arkansas case was affirmed by the Circuit Court of Appeals for the Eighth Circuit. In many of the other States mentioned respondent has enjoined the State officials from interfering with its sales under the "new" label, or the officials have voluntarily withheld prosecutions pending decision of the question by the courts. Respondent was also cited by the Federal food authorities for the purpose of inquiring into the legality, first, of the "overprint" label and subsequently of the "new" label. An informal conference or hearing was held in Washington on December 9, 1919, before the Assistant Chief of the Bureau of Chemistry of the United States Department of Agriculture. As a result the order of the assistant chief directing withdrawal of the label was countermanded on respondent's agreeing to discontinue shipment of any further cans bearing the "overprint" label after December 12, 1919. The United States Department of Agriculture never passed upon the legality of the new label; because that question, as well as the question of the propriety of respondent's advertising, was then the subject of an investigation by this Commission.

PAR. 23. The new phosphate powder was introduced first in the States of Illinois, Wisconsin, Missouri, and a portion of Kansas in November, 1919, and at the same time respondent began an advertising campaign in newspapers, trade journals, and on billboards, window posters, card displays, motion-picture films, etc. In all of these advertisements the fact that the new powder was to be offered to the public at about one-half of the former price was given emphasis. In some instances the advertisements failed to make any mention whatever of the change from cream of tartar to phosphate as the acid ingredient. In other instances a reference was made in the body of the advertisement to the use of "new methods of production with pure phosphate." No mention of phosphate appeared in the headings of any of the advertisements prior to the beginning of this proceeding (February 4, 1920), except that three of the advertisements, known as "Series D," bore the caption "The 'Cream' of Phosphate Baking Powders." These were published in the Chicago papers in January, 1920. These advertisements were not published outside of Chicago until March, 1920, and were followed by "Series F and G," in which the mention of phosphate was again relegated to the body of the advertisements. A few advertisements in trade papers and small dailies and weeklies stating that phosphate was used instead of cream of tartar were published in March, 1920.

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PAR. 24. The following are examples of respondent's advertisements of the new powder which contained no mention of phosphate:

"Low cost Shakes Hands with
High Quality in
DR. PRICE'S
Baking Powder

Now reduced to about one-half of
the former cost.

Here are the new Prices:

25¢ for 12 oz.

15¢ for 6 oz.

10¢ for 4 oz.

Full weight Cans.

The price is Right

Does not Contain Alum—Leaves No
Bitter Taste—

Always Wholesome

A name famous for 60 years is your Guarantee."

"What One Neighbor
Told Another

'Have you heard the good news?

The price of Dr. Price's Baking Powder
has been reduced nearly one-half. When
the grocer told me, I just threw away
that alum mixture I have been using, and
ordered a can of

DR. PRICE'S

Baking Powder

A name famous for 60 years is a guarantee of
quality," etc.

"Don't Increase

The High Cost of Living

By spending your shrunken dollar and risking
your health, for doubtful baking powder when
you can now get

DR. PRICE'S

Baking Powder

At about one-half the former cost

A name famous for 60 years assures quality
and dependability."

"Putting More In The
Market Basket

The greatly reduced price of Dr. Price's Baking Powder
enables you to put more good things in your market basket.
The saving will help pay for the flour and other things you
put in your cakes, and besides, you are assured of the whole-
someness of

DR. PRICE'S

Baking Powder

A name famous for quality for 60 years."

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The following are some examples of advertisements which made mention of "new methods of production with pure phosphate," prior to the commencement of this proceeding:

"Save Nearly one-half
Means More Today Than Ever

When the usual rule is higher and higher prices, it means a lot to hear of a price change that helps to reduce the high cost of living.

No more timely or welcome announcement could be made than that new methods of production with pure phosphate make it possible to reduce by nearly one-half the price of

DR. PRICE'S
Baking Powder
NOW—25¢ for 12 oz., etc.

"PRICE

The Price of Dr. Price's Baking Powder has been cut Nearly in Half.

Do you realize what such a message means?

Ask your grocer. He will tell you that it ends the folly of using baking powder cheapened with alum.

Ask the Doctor. He will tell you that it is a good reason for more home baking—the best food for you and yours.

New Methods of production with pure phosphate give you the advantage of the great reduction in the price of

DR. PRICE'S
Baking Powder

A name famous for quality for 60 years."

Several advertisements in trade publications of the retail grocery trade contained no mention of the substitution of phosphate for cream of tartar. Other trade paper advertisements contained a reference to phosphate, usually in the last paragraph. The newspaper and trade journal advertising ultimately covered the entire Price territory—22 States.

PAR. 25. Billboard posters were erected in the 22 States in which "Dr. Price's Cream Baking Powder," a cream of tartar baking powder, had previously been sold. These posters when first put out in Illinois, Wisconsin, and Missouri, read as follows:

Reduced in Price Nearly One-Half (Reproduction
DR. PRICE'S of Can)
Baking Powder
No alum—No Bitter Taste. NOW 25¢

The only mention of the new ingredient, phosphate, was that contained on the label of the reproduction of the can, which contained the words "A Pure Phosphate Powder" in letters much smaller than those in which the reduction in price was announced. At first a

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bunch of grapes showed on this label, and in this form the poster was exhibited in the three States mentioned, but afterwards the poster was corrected by means of a sticker showing flowers, and thereafter the posters were used in the balance of the territory. In all, several thousand of these billboard posters were used. On December 18, 1919, some two weeks after the sending out of the posters, and after action had been taken by the food authorities of Illinois and by the Federal Bureau of Chemistry, instructions were given to the concern having this advertising in charge to have a paper strip bearing the words "A Pure Phosphate Powder" pasted on those posters already erected and on all others subsequently posted.

PAR. 26. A large window poster or streamer was also sent out about the same time to retail grocers throughout the Dr. Price territory to be displayed in their store windows. These streamers were similar to the billboard posters and gave prominence to the fact that Dr. Price's Baking Powder had been reduced in price nearly one-half, but were entirely silent as to the change in ingredient. There was no reproduction of the new label on these streamers. Later, as in the case of the billboard posters, after the Illinois food officials had questioned the propriety of this method of advertising, a new streamer was prepared and sent out bearing the added words "Now Made with Pure Phosphate." A reproduction of the original uncorrected poster was, however, published in a number of trade papers throughout the entire Dr. Price territory during the month of December, 1919. Display cards for use in street railway cars were also prepared and sent out by respondent in Illinois, Wisconsin, and Missouri, and later in some of the other States in the Dr. Price territory. These cards showed a reproduction of a can bearing the new label with grapes in the central vignette, and, as in the case of the billboard posters, a sticker containing flowers was added to such of the cards as had been already sent out. There was no mention in the body of these street railway cards, as originally prepared and sent out to a number of States, of the fact that phosphate had been substituted for cream of tartar as the acid ingredient. The uncorrected and unrevised cards were displayed in the following, among other, large cities: Chicago, St. Louis, Milwaukee, Kansas City, Dallas, and Vancouver. Later these street railway cards were changed by substituting new ones bearing the additional legend printed near the bottom of the cards in letters considerably smaller than those announcing the reduction in price, "Now Made with Phosphate."

PAR. 27. Motion-picture slides similar in wording to the billboard posters, window streamers, and street-car advertisements were fur-

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nished to and exhibited in a total of 433 moving-picture houses or theaters in the States of Illinois, Wisconsin, and Missouri. These bore in large letters the usual announcement "Reduced in Price Nearly One-Half. Now 25¢." They also contained a comparatively small reproduction of the new label, but no other allusion to the fact that the new powder was a phosphate baking powder. After February 15, 1920, and subsequent to the beginning of this proceeding, a new slide was prepared and used in other States to which was added a line reading "Now Made with Phosphate." This revised slide was not substituted for the old in the States in which the latter was exhibited. Another form of advertising used by respondent for this new phosphate powder was what is known as "can inserts" which were inclosed inside of the packages of the new powder and contained no reference to the change of ingredient except the vague statement: "This reduction in price is made possible by changes in method and formula and is in line with the popular effort to reduce the high cost of living, which will be appreciated by all consumers." It was also stated that the new powder "contains no alum or other objectionable ingredients."

PAR. 28. Respondent's methods of advertising, as aforesaid, tended to create the belief on the part of the public that the new product was in fact the Dr. Price's Baking Powder which had been well known for 60 years as a cream of tartar powder, and to conceal or obscure the fact that it was a radically different powder.

PAR. 29. Retailers in the Dr. Price territory advertised and offered for sale this phosphate powder as "Dr. Price's Baking Powder," showing the price reduced about one-half without disclosing the reason for the lower prices, viz, the change in ingredient.

PAR. 30. In spite of the interference of food officials, State and National, and the fact that there were competing brands of phosphate baking powders selling at lower prices, respondent sold more than twice as much of its new phosphate powder in the first nine months after it had been put out as it had ever sold of the cream of tartar baking powder in any corresponding period. This increase of 100 per cent in respondent's sales, there being no claim or showing that the total consumption of baking powders in the Price territory had increased to a corresponding extent, was effected, in part, by the attraction of the users of competing brands by means of said misleading labels and advertising as aforesaid.

PAR. 31. Respondent's said advertising was false and misleading in representing to the public that the price of said new phosphate baking powder had been reduced to about one-half its former cost, when in fact the price of said powder had been at all times the same;

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and respondent's use on a phosphate baking powder of a brand which had by its own efforts become identified exclusively with a cream of tartar powder as opposed to a phosphate power, which latter type of powders respondent had for many years denounced as undesirable and unhealthful, was calculated and designed to deceive and did deceive the public, and especially such part of the public as was accustomed to obtain a pure cream of tartar baking powder under the well-known brand, "Dr. Price's Baking Powder."

PAR. 32. Respondent's said advertising and its said conduct in using said well-recognized brand or name upon a phosphate baking powder tended, under the circumstances hereinbefore set forth, unfairly to hinder and obstruct the business of competitors engaged in manufacturing and selling cream of tartar baking powders, at their normal prices, which were approximately double the prices asked by respondent for said phosphate powder. Said method of advertising and branding also tended unfairly to hinder and obstruct the business of respondent's competitors engaged in the manufacture and sale of phosphate baking powders in competition with said phosphate baking powder of respondent selling at an alleged reduced price under a name used for 60 years on an exclusively cream of tartar powder.

CONCLUSIONS.

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate and foreign 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, and the briefs and arguments 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,"

It is now ordered, That the respondent, Royal Baking Powder Co., its officers, directors, agents, servants, and employees, cease and desist from:

1. Using on the new phosphate baking powder manufactured by it the so-called "overprint label" or the so-called "new label" (Ex-

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hibit 31), heretofore used by it, or any label simulating or resembling in coloration, design, or general appearance the labels formerly used by respondent on its "Dr. Price's" brand of cream of tartar baking powder;

2. Selling, or advertising for sale, said phosphate baking powder under the name "Dr. Price's" or "Price's" unless the word "cream" is omitted, and the word "phosphate" is incorporated, as part of the name of said baking powder, on the labels thereof and in the advertisements relating thereto;

3. Advertising or representing, in connection with the sale of said phosphate baking powder, that respondent's "Dr. Price's" cream of tartar brand of baking powder has been reduced in price;

4. Representing, by advertising or otherwise, that said phosphate baking powder is the baking powder sold by respondent for many years under its "Dr. Price's" brand.

And it is further ordered, That the respondent, Royal Baking Powder Co., file a report in writing with the Commission 90 days from notice hereof, stating in detail the manner in which this order has been complied with and conformed to.

PAUL FORBRIGER & CO. (PAUL FORBRIGER ET AL.).

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Complaint.

FEDERAL TRADE COMMISSION

v.

PAUL FORBRIGER AND AUGUST BENTKAMP, PARTNERS,
STYLING THEMSELVES PAUL FORBRIGER & COM-
PANY.