

Syllabus

IN THE MATTER OF
THE MADISON 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 1573. Complaint, Feb. 25, 1929—Decision, June 28, 1932

Where a corporation engaged in sale and distribution of paints and paint materials to purchasing and consuming public through large numbers of solicitors in their respective home or local communities, and through catalogues, circulars, newspaper and periodical advertisements and other trade literature,

- (a) Described said paints in its trade promotional literature as composed wholly or principally of the best grades of white lead, zinc oxide, and linseed oil, and its outside house paint as a white lead and linseed oil paint of the highest grade containing only the best and most costly ingredients, through such statements as "Only the finest raw materials that money can buy", "Only first quality white lead, zinc, and linseed oil and other materials", "The finest exterior house paint that money can buy. Made of the purest ingredients, the result of years of research and experience. Covers easiest, lasts longest", etc., "You can buy elsewhere roofing and paints as good * * * but you would have to pay about twice the * * * low direct factory price", and that "unscrupulous manufacturers often take advantage" of common erroneous belief that weight in paint means quality "by loading their paint with barytes or marble dust, which are both very heavy fillers but which do not wear or cover well", and that its house paint was "exactly the right weight because it contains the finest, purest, and the most durable of ingredients";

Facts being its own paint contained (1) such inert pigments as barium sulphate (barytes) and asbestine in proportions regarded by experts as excessive, and, by some, as amounting to adulterants in proportions used, and (2) white lead and zinc oxide only in minor proportions, and formula and composition required and disclosed approximate pigment and vehicle content of 58 per cent and 42 per cent, respectively, and (a) pigment or solid content of 36 per cent titanox, 4 per cent lead sulphate, 20 per cent zinc oxide, 16 per cent barium sulphate and 24 per cent asbestine (with subsequent substitution of 12 per cent white lead for 4 per cent lead sulphate, and 8 per cent barium sulphate, 20 per cent zinc oxide, 16 per cent barium sulphate, and 24 per cent asbestine (with subsequent substitution of 12 per cent white lead for 4 per cent lead sulphate, and 8 per cent barium sulphate for 16 per cent), and (b) vehicle or liquid content of 87 per cent linseed oil, in fact diluted by addition of substantial quantities of soya bean oil, and weight was less than that claimed;

With capacity and tendency to mislead, deceive, and induce purchasing public to buy said paint as and for the preferred and demanded high quality product composed of the generally esteemed white lead, zinc oxide, and pure linseed oil, with necessary color pigment and dryer, and of the best and finest raw paint materials obtainable, and with no such cheap, inert pigments as barium sulphate and asbestine, or any other inert pigment other than necessary coloring pigment, or oil other than pure linseed oil;

- (b) Represented itself as a manufacturer, owning, operating and controlling a large modern paint factory, purchasing and storing raw materials in large quantities, and as an old, million dollar company with hundreds of employees, paint experts, chemists, laboratory, vats, etc., through depictions of "our giant paint factory", "laboratory for research", "aging and storage tanks", "immense grinders", "shipping platform", etc., and through such statements in catalogues and other trade literature addressed to prospective customers or agents as "World's largest paint factory selling direct", etc., "When you have a concern of this size to do business with—backed by prestige and reputation covering nearly a quarter of a century you can trade with confidence", "You are benefitted * * * by dealing direct with the factory, * * * the greatest stock of paint * * * in the country to select from and you get your paint fresh from the mixing vats * * *", "One of the finest equipped paint factories * * * covers two city blocks", "The mixing * * * is done by the most modern and up to date machinery in our own new plant", "We do a tremendous volume of business, enabling us to attract the highest skilled paint-making experts and employ the most modern equipment", "Our large storage tanks permit us to buy raw materials when prices are lowest and store them until ready for use, saving vast sums of money for our customers", "Our wonderful factory * * * does away with expensive labor and makes production cheaper", and referred to its huge laboratory with a staff of chemists, constantly working out new problems and checking raw materials and to its financial strength of over one million dollars and its Bradstreet rating of G-AA; and
- (c) Represented itself as selling and distributing its product directly from factory to purchaser without intervention of any jobber, wholesaler, retailer, or middleman and that purchasers in dealing with it dealt directly with the factory and saved themselves the costs, profits, and other charges of aforesaid intermediaries and secured their paints at savings of from 25 per cent to 40 per cent or from \$1 to \$2 a gallon less than products of comparable quality could be bought from competitors or retailers, through such statements as "The world's biggest paint factory—selling direct to the user", "You save \$1 to \$2 per gallon when you buy", "Selling direct from the factory is the modern way * * * the middleman who is chiefly responsible for the high cost of living is completely cut out. Factory to user is the economical road because it brings about a real saving without sacrifice of quality", "Before the store-bought paint reaches you, there is included in the price you pay the profits of many middlemen—the wholesaler, the jobber, the retailer. At each step in the journey of the paint to you, these middlemen add their profit", "Every can sold direct to users at the low factory price. You pay for paint only. None of your money goes for middlemen's profits or expensive advertising", "So many thousands of * * * customers the country over have welcomed this money saving paint plan that it takes an immense factory working to capacity to keep up with the demand. Thousands of dollars * * * saved and banked by paint users as a result", "We save you from 25 per cent to 40 per cent on every gallon purchased as we sell direct from the factory to the user eliminating jobber and middleman entirely", "Besides their [middlemen's] profits, you have to pay for their costs of doing business—rent", etc., "* * * over half of what you pay for store bought

paint goods is for cost of distributing", "Up to date people never think of going to a store for roofing or paint products any more. Store paints of comparable quality cost more because of the many middlemen's profits you have to pay", "these are factory prices without one cent added for dealers or jobbers * * * you get lowest factory prices on the finest paint that can be made", and ascribed its pretended ability to sell such alleged high grade products at such a low price to its being "a million dollar concern", purchasing raw materials in such quantities that it got "rock bottom prices", and manufacturing in tremendous quantities, with consequen' very low overhead, etc.;

Facts being it did no manufacturing and neither owned nor operated any factories, laboratories, etc., but, along with seven other similarly operated corporate selling organizations, shipped all its paint from a separate corporate manufacturer (with a reputable appraisal value substantially less than one million dollars), to which its interests were tied by the fact of common stock owners and general officers, upon a small part of the premises of which corporate manufacturer's own place of business was located, and which manufacturer was the real owner of buildings, etc., depicted as its own as above set forth, and connection with which manufacturer it carefully concealed and withheld, it had no paint manufacturing experts, chemists, etc., in its employ but only 22 persons, besides salesmen, engaged under a sales manager in carrying on sale and distribution of its merchandise, rating referred to was a collective figure applying to entire group under directors' resolution to that end, aforesaid corporate manufacturer charged it for paint in question a sum substantially in excess of said manufacturer's cost, its prices were not factory, or factory wholesale prices, but middlemen's prices, and figures at which it resold its said paint represented an increase of approximately 100 per cent over price to it and exceeded those charged purchasing public by retail stores for paint of comparable quality, and did not represent claimed savings to purchasing public of 25 per cent to 40 per cent or \$1 to \$2 a gallon;

With capacity and tendency to mislead and deceive the purchasing and consuming public and induce purchase of its said paint and paint materials by such public in the erroneous belief that said false, misleading, and deceptive representations were true in fact, and with effect of injuring the public and unfairly diverting trade from and otherwise injuring and prejudicing competitors in their business, and of operating as an unfair competitive advantage to it and a detriment to and burden upon the legitimate paint manufacturing and marketing industry of the country, and with capacity and tendency so to do:

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. Henry Miller for the Commission.

Squire, Sanders & Dempsey and *Mr. Samuel Doerfler*, of Cleveland, Ohio, for respondent, and *Mr. Thomas J. McFadden*, of Washington, D. C., for Unfair Competition Bureau of the Paint & Varnish Industry (*Amicus Curiae*).

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 Ohio corporation engaged in the sale and distribution of paints to the trade and consuming public throughout the United States through advertisements in newspapers, magazines, and similar publications, catalogues, circulars, letters, pamphlets, and similar sales literature, and through salesmen and agents, and with principal office and place of business in Cleveland, with misrepresenting the composition and quality of its product, its 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.

Respondents, as charged, engaged as aforesaid, represented its outside house paint as composed wholly or principally of white lead, zinc oxide, and linseed oil, as being a white lead and linseed oil product of the highest grade, and as containing no barium sulphate, siliceous matter, calcium carbonate, or other inert material; the fact being that the product in question was not such a paint as claimed, but was inferior thereto, contained white lead and linseed oil in minor proportions only, had a pigment portion containing approximately 23 per cent, 17 per cent, and 9 per cent, of barium sulphate, siliceous matter, and calcium carbonate, respectively, and that 19 per cent of the liquid content was other than linseed oil.

Respondent further, as charged, represented itself as a manufacturer of paints and paint materials, owning and operating a large factory and other manufacturing equipment, and selling directly to the purchaser or consumer without the intervention of middlemen, at manufacturers' prices, and as thereby saving purchasers the costs and profits of jobbers, wholesalers, retailers, and middlemen, and selling its products at prices lower than those at which similar products could be purchased from competitors; the facts being that respondent did not manufacture, directly or indirectly, products in question, or sell same directly, as above claimed, but sold same at dealers' prices, including middlemen's costs and profits, and at prices which were not lower than those of its competitors for similar products.

The use of such representations, statements, and assertions, as alleged, "has been and is calculated to mislead and deceive, and said representations, statements, and assertions had and have the capacity and tendency to, and did, mislead and deceive large or substantial numbers of the purchasing and consuming public into, and thereby

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caused them to purchase said products in and because of, the erroneous beliefs that said false, misleading, and deceptive representations, statements and assertions" were true in fact, and the aforesaid false, misleading, and deceptive acts and practices of respondent "had and have the capacity and tendency to and do unfairly divert trade from said competitors," who sell and distribute their paints, without misrepresenting their business methods, or facilities, or their products or the terms under which marketed; 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", the Federal Trade Commission on February 25, 1929, issued and thereupon served its complaint in this proceeding upon The Madison Paint Co., a corporation, respondent above named, charging it with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

Respondent entered its appearance by counsel and on March 25, 1929, and February 12, 1931, respectively, filed answer, and amended and supplemental answer, to said complaint. By such answers respondent admitted certain allegations in said complaint, including all of paragraph 1 thereof, and denies others therein. Thereafter, the matter being ready for the taking of testimony and other evidence with respect to the charges in the complaint, hearings therefor were held before an examiner of the Commission thereunto duly appointed, at which hearings oral testimony, documentary evidence, and other exhibits were introduced in evidence by counsel for the Commission in support of said complaint and by counsel for the respondent in opposition thereto. By agreement the hearings were held and the evidence taken in a consolidated proceeding covering not only this case but also the proceedings before the Commission upon complaints issued against The Franklin Paint Co., Docket No. 1567, and The Progress Paint Co., Docket No. 1575. Said evidence was duly recorded and filed of record in the office of the Commission, and thereafter a stipulation by respondent, dated November 6, 1931, and relating to certain matters of fact in issue, was submitted and filed by its counsel.

Thereupon, by agreement of and with the opportunity for the filing of briefs by counsel, the proceeding was brought on for final hearing before the Federal Trade Commission, and was heard upon

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oral argument of counsel for the respondent and counsel for the Commission, the latter having filed brief while counsel for the respondent elected to submit the case upon oral argument without brief. And the Commission having now 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 The Madison Paint Co. is a corporation organized under the laws of the State of Ohio in March, 1921, and, at all times since, doing business as such Ohio corporation with its office and place of business in the city of Cleveland in said State. The said business of respondent is the sale and distribution of paints and paint materials to the purchasing and consuming public throughout the several States of the United States. The said paints are designated and sold by respondent as the Madison line of paints and they consist largely of outside house paint for use upon dwellings and other buildings and property. Respondent advertises, offers for sale, and sells its paints and paint materials (a) through and by means of salesmen and agents who, on behalf of respondent, solicit purchase orders for said products from the purchasing and consuming public throughout the several States of the United States; (b) also through and by means of catalogues, circulars, letters, color cards, pamphlets, and similar sales or trade promotional literature in which it describes, represents, and offers for sale its paints and paint products, and which it causes to be sent and delivered from time to time by mail and by said salesmen and agents, and otherwise, from its place of business in Cleveland, Ohio, through and into many other States of the United States to numerous customers and prospective customers in such other States; (c) and through and by means of advertisements published by it from time to time in newspapers, magazines, and similar publications of general circulation among the purchasing public throughout the United States and in various sections thereof.

Respondents said salesmen and agents who are active, number between 1,500 and 2,000. They are employed by respondent on a commission basis and solicit orders for and sell said products in their respective home or local communities throughout the United States. Respondent's means of contact with many of such salesmen is limited entirely to correspondence and to said sales or trade promotional literature which is supplied to such salesmen and used by them in soliciting trade for respondent. As a result and because of said advertising, soliciting, and offering for sale, many members of the purchasing public throughout the United States are thereby

induced from time to time to purchase said paints and paint materials from respondent. The customers' purchase orders, and their remittances of the purchase price, for the products so purchased, are transmitted from various States to respondent at its place of business in Cleveland, Ohio. To complete the sale and in making distribution and delivery of its products pursuant to said purchase orders, respondent causes its paints and paint materials so ordered and sold to be transported and delivered from Cleveland, Ohio, through and into other States of the United States to the respective purchasers thereof in such other States.

In so conducting its business respondent has, in the course thereof, continuously maintained a current of commerce between the State of Ohio and other States of the United States, and is and has been engaged in interstate commerce in such sale and distribution of its paints and paint materials. Annual gross sales of its products aggregated \$125,502.27 for 1928, \$350,583.09 for 1929, and \$332,854.30 for 1930. Said products are distributed by respondent in the usual commercial containers such as 1-gallon cans, 5 and 10 gallon cans, kegs, half barrels, and barrels. Shipments are made in small quantities of a few gallons up to comparatively large quantities depending upon the amount ordered by the respective customer; and such shipments are forwarded by parcel post, express or freight as desired. Throughout the territory covered by respondent in its sales there are many competing brands and makes of house paint and similar paint materials offered for sale and sold to the purchasing and consuming public through the retail stores and by dealers, distributors, and manufacturers. At all times in the course and conduct of its business respondent has marketed its paints and paint materials and conducted its said business, in direct, active competition with such competing products and with many individuals, partnerships and other corporations engaged in the sale and distribution of paints and paint materials in commerce in, between, and among the several States of the United States.

PAR. 2. In and through the methods and means used by respondent in advertising, offering for sale and selling its paints and paint materials, as hereinabove set forth, and for the purpose and with the effect of thereby inducing the purchasing public to purchase said paints, respondent has made, and has caused its paint to be offered for sale, sold, and distributed to the purchasing and consuming public upon various representations, statements, and assertions to the following effect:

That respondent's outside house paint is composed wholly and principally of the best grades of white lead, zinc oxide, and linseed oil; that its outside house paint is a white lead and linseed oil paint

of the highest grade; that it contains nothing but the highest and best class, grade, or quality of paint ingredients, the highest and costliest ingredients; that said paint is not adulterated with cheap imitations or low-grade substitutes; that in its manufacture respondent's policy is to make paint of the very best grade instead of loading it up with cheap fillers which lessen the durability of the paint; that some people think that weight in paint means quality, but that this is not the case, that unscrupulous manufacturers often take advantage of this belief by loading their paint with barytes (i. e., barium sulphate) or marble dust, which are both very heavy fillers but which do not wear or cover well, that said paint of respondent is exactly the right weight because it contains the finest, purest, and the most durable ingredients.

PAR. 3. The following are among the specific representations of the above-named type as they have been printed by respondent in its said sales or trade promotional literature:

EIGHT POWERFUL REASONS FOR BUYING MADISON NATIONALLY FAMOUS PAINTS

1. Quality Madison Paint is 100 per cent quality. Only the finest raw materials that money can buy enter into its manufacture. (P. 1, Catalogue, Com. Ex. 24; p. 10, Com. Ex. 35.)¹

What goes into Madison Paint—A-1 Ingredients.—The first secret of Madison quality is the use of the highest grade ingredients. Only first quality white lead, zinc, and linseed oil and other materials are used. (P. 5, Catalogue, Com. Ex. 24.)

100 per cent quality paint in every can.—Every can or barrel of Madison Paint comes to you with quality in every can. The Madison label is your assurance that the contents are absolutely 100 per cent quality paint as good as money can buy anywhere. (P. 5, Catalogue, Com. Ex. 24.)

It is an economic fact that the amount of good you can get out of any product—be it paint, foods, or clothes, is governed entirely by the amount of good you put into it. Only the very best grade of zinc oxide, white lead, linseed oil, and color pigments are used in making Madison paint. Its quality can not be surpassed and is only equalled by the best. (Com. Ex. 24, Catalogue, p. 13.)

As further assurance The Madison Paint Co. guarantees that Madison paints are made from the finest, A-1 grade, raw materials obtainable. (Com. Ex. 27, Printed Circular; See also Com. Ex. 35, Catalogue; Resp. Ex. 24, current circular, and current catalogue, Resp. Ex. 23, p. 4.)

Madison house paint made from highest grade materials. (Com. Ex. 29, Color Card.)

Madison house paint.—The finest exterior house paint that money can buy. Made of the purest ingredients, the result of years of research and experience. Covers easiest, lasts longest. The beauty and luster of this paint makes customers proud of their homes. Increases value of property. Beautiful, protective, durable. (Com. Ex. 32, price list.)

Madison best grade paints contain only the purest and finest of ingredients and are made fresh to your order. Cover an average of 300 square feet to

¹ Exhibits not published.

the gallon, two coats, and give you a firm, hard, glossy, surface that will last for years. Try them at our risk. (Com. Ex. 34-C, customer's copy of order blank.)

Madison uses the finest paint materials, mixes them scientifically and employs the best paint-making talent to produce a product it can proudly offer as the best. (Com. Ex. 35, Small Catalogue, p. 3.)

This paint is of the finest quality and will stand up under ordinary conditions for at least five years of excellent service. It has fine covering quality, spreading easily and going a great distance and a very beautiful appearance.

It is our policy to make paint of the very best grade instead of loading paint up with cheap fillers which lessen the durability of the paint.

Madison exterior house paint is constructed of pure linseed oil, white lead and zinc oxide. (Com. Ex. 37, letter to customer.)

Does the weight of paint prove its quality?—Weight has nothing whatever to do with quality in paint. Some people think that weight means quality, but this is not the case. Unscrupulous manufacturers often take advantage of this belief by loading their paint with barytes or marble dust, which are both very heavy fillers but which do not wear or cover well.

Madison house paint is exactly the right weight because it contains the finest, purest, and the most durable of ingredients. Of course, the weight varies slightly, depending on the color purchased, but averages from fifteen to sixteen pounds to the gallon. (Com. Ex. 139, Current Salesmen's Instruction Booklet, p. 25.) (Com. Ex. 140, 1930 Salesmen's Instruction Booklet, p. 15.)

Does anybody sell better paint or roofing than The Madison Paint Company? No. We sell the finest paint and roofing that can be made—regardless of price. That's why our products last for years, keeping their life, luster, and beauty. (Com. Ex. 140, Salesmen's Instruction Booklet, p. 9.)

The quality of all Madison paint products is the very best that is possible to put into paints. A higher price would not and could not buy any higher quality. Madison Paints are not "cheap" paints, which are the most costly in the long run. They are the best paints you can buy, sold at the lowest prices consistent with quality.

Madison uses only the finest quality A-1 grade ingredients. These are scientifically ground and mixed in the most modern machines by highest skilled paint makers. This means that you get 100 per cent quality paint products, as fine as you can buy anywhere no matter what price you would be willing to pay. We use only the best quality materials. Madison products are not adulterated with cheap imitations or low grade substitutes. The mixing is done scientifically in the most up-to-date machinery so there is perfect mixing and most important—perfect blending. Our men have the knowledge, the knack, and the experience and know how to produce in every Madison product a quality that is famed as 100 per cent excellent, every ounce uniform, full body, and smoothly ground. True, you can buy elsewhere roofing and paint as good as Madison sells you—but you would have to pay about twice the Madison low direct factory price.

* * * We pride ourselves on the superfine quality of this superior house paint. We go the limit to make it the best house paint you can buy no matter what price you pay. Of course, we use only the highest grade and costliest ingredients, but the real secret of unsurpassed quality in Madison house paint is the skill with which we proportion, mix, grind and blend these

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ingredients. In our enormous factory at Cleveland where we prepare thousands of gallons daily, we employ the greatest paint-making experts who use the latest and most modern equipment. (Resp. Ex. 23-A, Current Catalogue, pp. 3, 6, 10.)

PAR. 4. The representations with respect to the composition of said outside house paint as set forth in paragraph 2 hereof were used throughout a period of more than two years prior to the issuance of the complaint and for a period of approximately ten months thereafter, without any substantial change. Evidence was introduced by respondent that thereupon and in certain parts of its sales or trade promotional literature used, beginning with the season of 1930, there was incorporated a change in the text of such representations to the extent of eliminating the specific mention of the terms "white lead", "zinc oxide", and "linseed oil" as constituting the ingredient of the paint, and substituting therefor such other expressions to the effect that in the manufacture of the paint respondent uses "only the highest grade and costliest ingredients"; that "Madison uses only the finest quality A-1 grade ingredients", (Resp. Ex. 23-A); "the finest A-1 grade raw materials obtainable" (Resp. Ex. 24); that the paint contains "only the purest and finest of ingredients" (Com. Ex. 34-C). The above described changes did not eliminate the other representations with respect to the composition of its paint as described in paragraph 2 hereof, and respondent continues to use in its sales promotional literature said representations to the effect that the paint contains nothing but the costliest and the highest and best class, grade, or quality of paint ingredients; that said paint is of the very best quality regardless of price, and is not adulterated with cheap imitations or low-grade substitutes; that some people think that weight in paint means quality, but that this is not the case, that unscrupulous manufacturers often take advantage of this belief by loading their paint with barytes (i. e., barium sulphate) or marble dust which are both very heavy fillers but which do not wear or cover well, that said paint of respondent is exactly the right weight because it contains the finest, purest, and most durable ingredients.

PAR. 5. In truth and in fact said house paint as marketed by respondent throughout said period of years under the representations described in paragraphs 2, 3, and 4 hereof, is not and has not been a white lead and linseed oil paint, nor has it been composed wholly or principally of white lead, zinc oxide, and linseed oil, with or without the necessary color pigments, but in fact contained and still contains white lead and zinc oxide only in small or minor proportions with a barium sulphate or barytes content both as a separate ingredient and as a large proportion of a combination ingredient,

titanox; and, during a period, was made with the oil ingredients containing soya bean oil which was substituted in part for linseed oil as hereinafter described.

(a) It is established by the evidence and by stipulation of respondent that the composition of said paint and the basic master formula under which the same has been manufactured, since about January 1, 1931, are as follows:

MASTER FORMULA COVERING PERIOD SINCE JANUARY 1, 1931

Pigment (i. e., the solids, comprising 57.77 per cent of the paint):

	Per cent
Titanox.....	36
White lead.....	12
Zinc.....	20
Asbestine.....	24
Barium sulphate (also known as barytes).....	8
Total.....	100

Vehicle (i. e., the liquid portion comprising 42.23 per cent of the paint):

	Per cent
Linseed oil.....	87
Mineral spirits and dryers (i. e., volatile liquid).....	13
Total.....	100

(b) It is also established, by evidence adduced by respondent, that prior to the change of the above formula and during the period from October 26, 1925, to December 31, 1930, more than three years immediately prior to the issuance of the complaint and for a considerable period of time thereafter, respondent's said paint was manufactured under the following master formula, subject, however, to the exception stated below with respect to the item of linseed oil:

MASTER FORMULA COVERING PERIOD OCTOBER 26, 1925, TO DECEMBER 31, 1930

Pigment (i. e., the solids in the paint consisting of 57.77 per cent of the paint):

	Per cent
Titanox.....	36
Lead sulphate.....	4
Zinc oxide.....	20
Barium sulphate.....	16
Asbestine.....	24
Total.....	100

Vehicle (i. e., the liquid portion, consisting of 42.23 per cent of the paint):

	Per cent
Refined linseed oil.....	87
Oil dryer and thinner.....	13
Total.....	100

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(c) In manufacture the paint was processed through the grinders, mixers, and other manufacturing machinery in batches of 83 gallons each. It was the duty of the factory workmen engaged in producing the paints to introduce the ingredients in certain designated quantities which would be sufficient to produce 83-gallon batches and would correspond to the relative proportions named in the above formulæ. In the manufacture of the paint under said master formula covering the period October 26, 1925, to December 31, 1930, it was not purely linseed oil which was in fact used for the ingredient listed as "refined linseed oil, 87 per cent," but besides linseed oil there was actually used soyabean oil in the proportion of 7 gallons to each batch of 83 gallons of paint. Such 7-gallon substitution of soyabean oil was made during the incumbency of a former factory superintendent of the Acorn Refining Co., Mr. Rumberg, who served as such for several years and until July, 1929. Testimony of the succeeding factory superintendent of the Acorn Refining Co., H. L. Williams, was introduced by respondent to the effect that beginning October, 1929, the amount of soyabean oil substituted for linseed oil was 6 gallons in every 83 gallons of the paint; that such substitution of soyabean oil for linseed oil was made because "in our estimation" such soyabean oil "is as good an oil in that quantity as linseed, and as we had an oversupply of soyabean oil at that time, we used it to cut down our inventory, and that only was done until the first of the year 1930"; also that the cost of soyabean oil was higher than the cost of linseed oil (Tr. p. 1171).

(d) In proof of the composition of said paint there is also evidence, introduced by counsel for the Commission, as to the ingredients in seven different samples of the paint as determined by chemical analyses made by paint chemists of the United States Bureau of Standards. Five of such samples were 1-gallon cans of the paint procured prior to the issuance of the complaint from shipments to purchasers. The other two were 1-quart cans obtained directly from a distributor of paints in Cleveland, Ohio, after the date of the complaint. All samples were procured prior to said use of the changed formula adopted January 1, 1931, and during the period of the use of said master formula of the period of October 26, 1925, to December 31, 1930. In comparison with such last-named formula the results of said analyses as given in evidence showed some variation or differences in the relative proportions or percentages of the various ingredients in these particular samples or specimens, but were in substantial accord with the specifications in the master formula in the following important respects: Kind or name of ingredients used; the total amount of inert pigments in the paint; total

amount of active pigments in the paint and the relative proportions of the pigment and the vehicle or liquid.

(e) Titanox is a paint pigment consisting of 75 per cent barium sulphate, also called barytes, and 25 per cent titanium dioxide. Thus, when expressed by its component parts, the item of 36 per cent titanox in the above-stated master formulæ may be rendered 9 per cent titanium dioxide and 27 per cent barium sulphate. The respective items of 8 per cent and 16 per cent barium sulphate in the above-mentioned master formulæ used prior and subsequent to January 1, 1931, are barium sulphate ingredients which are in addition to the barium sulphate present in said titanox and is free from barium sulphate. The said 8 per cent barium sulphate and 24 per cent asbestine in the currently used master formula above stated, and the 16 per cent barium sulphate and 24 per cent asbestine in said former master formula, are inert paint pigments, while the remaining pigments listed in said formulæ are known as active paint pigments.

(f) Barium sulphate is an inert pigment having little or no opacity, i. e., hiding power, and is a very cheap ingredient in comparison with lead, zinc, or titanox. From figures supplied by respondent covering the years 1927 and since, the cost of the barium sulphate in the paint was less than 1 cent per pound as compared to the average of $6\frac{1}{2}$ cents per pound for zinc oxide and from $6\frac{3}{4}$ cents to 9 cents per pound for lead. Through the same period the cost of titanox ranged from $6\frac{1}{2}$ cents per pound to $11\frac{1}{2}$ cents with an average for the period of a little less than 9 cents per pound. Barium sulphate is a relatively heavy material of approximately the same bulk as titanox, but of about 35 per cent to 60 per cent greater bulk than zinc and lead, respectively. Asbestine is a siliceous material which is likewise inert and has little or no opacity in comparison with lead, zinc, or titanox. It is also a comparatively cheap pigment with an average cost of less than 1 cent per pound for the above-mentioned period. Such asbestine is of much greater bulk than lead or zinc or the other pigments in the paint. The comparative bulk of these materials may be expressed by the facts that it requires only 23.74 pounds of asbestine to make 1 gallon in volume, whereas it requires, respectively 56.74 pounds of lead, 47.15 pounds of zinc, 35.82 pounds of titanox, and 35 pounds of barium sulphate to make 1 gallon in volume in each instance. Said inert pigments such as barium sulphate and asbestine are paint ingredients of low class or merit, and they do not rank among the finest or best paint pigments which are on the market and in general use. Titanox is a comparatively newly discovered paint ingredient which is classed as an active pig-

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ment. Respondent introduced testimony, however, to the effect that it is chemically inert. It has high hiding power, and as shown by the figures above-stated, it has about 60 per cent greater bulk than lead and 35 per cent greater than zinc. The pigment is used by some manufacturers as one of the pigments for first quality paint, but its properties or qualities as a paint pigment are not so generally or widely known among the purchasing public as are those of white lead and zinc oxide.

(g) White lead and zinc oxide are paint pigments of high quality and have long been known and recognized as such in the paint industry and trade, and by painters and the consuming public generally. They rank high and are extensively used by paint manufacturers as the principal pigments for paint of highest or best quality. Linseed oil is likewise recognized and considered as a product of highly desirable qualities and merit for use as the oil ingredient of paint. Outside house paint consisting wholly or principally of white lead, zinc oxide, and linseed oil with necessary color pigments and dryer, and white lead and linseed oil paint, are paints which are among those of the highest grade or best quality and have been considered and generally recognized as such among paint manufacturers, dealers, users, and consumers. And paints composed wholly or principally of such ingredients, and white lead and linseed oil paint, are in demand by the purchasing and consuming public, and the composition of such paints is a sales advantage and an important factor which is conducive to the sale of such paints. White lead and linseed oil paint has white lead as its pigment, exclusive of coloring pigment, and linseed oil as the oil ingredient. Such paint has long been used by master painters for outside house paint, and is the type of paint which is frequently mixed by hand as used or needed for any particular painting job. The reputation and recognition of such lead and oil product as paint of first or best quality has existed among painters and the public generally for many years.

(h) Much evidence was introduced with respect to the quality of respondent's paint and the effect of the ingredients therein as compared to high quality paints, white lead and linseed oil paints, and paints manufactured of white lead, zinc oxide, and linseed oil or paints containing only the best or highest class paint ingredients. The witnesses called by counsel for the Commission on these points included paint chemists of the United States Bureau of Standards and a number of paint chemists and others having long experience in the manufacture, formulation, testing, and sale of paints. The evidence adduced embraces testimony of such witnesses to the effect that respondent's said paint is inferior in quality to paint composed

wholly or principally of white lead, zinc oxide, and linseed oil, white lead and linseed oil paints, or paints composed of the highest class or best paint ingredients; that the said inert pigments in respondent's product, barium sulphate and asbestine, are in excessive proportion to the active pigments; that of the pigment of first or best quality paints a maximum of, or not more than, 15 per cent of inert materials can be used without reducing the quality of the paint below first class or best paints, and that in many of the best quality paints on the market a much smaller proportion than 15 per cent of inerts is used, that the large proportions of inert materials in respondent's said paint are excessive and that by reason of the use thereof respondent's paint is not only cheapened as to cost of materials, but is also of an inferior or reduced quality; that such inert pigments are fillers and extenders and considered by some in the excessive proportion used in respondent's paint as adulterants.

Respondent's witnesses in this regard—comprising principally the superintendents of the factory where the paint was made, which superintendents formulated the product, and another paint expert of long and varied experience—testified to the effect, among others, that respondent's paint is first quality and that said inert pigments therein have various necessary or desirable effect particularly because of the use in the paint of said titanox ingredient; and that said inert pigments notwithstanding their cheapness in price and lack of opacity are not excessive. The term "reenforcing pigments" is used in respondent's testimony to designate said inert ingredients. In its sales promotional literature described in paragraph 3 hereof, respondent represented in effect that barytes, which is barium sulphate, is a product which is often used to load cheap paint and is a very heavy filler but does not wear or cover well (Com. Ex. 139, p. 25; Com. Ex. 140, p. 15).

(i) Respondent's said house paint as made under said master formulæ used prior to and since January 1, 1931, weighs 14 pounds to the gallon and not 15 to 16 pounds, as represented by respondent on page 25 of Commission's Exhibit 139 and Commission's Exhibit 140, page 15, quoted in paragraph 3 above. (All percentages or relative proportions of paint ingredients in these findings are given on the basis of weight of the product, unless otherwise stated.)

PAR. 6. Upon consideration of the record the Commission finds that some of the purchasing public do not believe paints composed as respondent's in fact is and has been are of as high quality as paints composed wholly or principally of white lead, zinc oxide, and linseed oil, with or without color pigment, or white lead and linseed oil paint, or paints of equally high quality. And the Commission fur-

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ther finds that respondent's said representations with respect to the composition of its paint, and to the effect that its paint is composed wholly or principally of white lead, zinc oxide, and linseed oil, is a white lead and linseed oil paint, and that all the ingredients thereof are of the highest class of raw paint materials obtainable, all as more fully set forth in paragraphs 2, 3, and 4 hereof, are and have been false, misleading, and deceptive, and had the capacity and tendency to mislead, deceive, and induce the purchasing public to purchase said paint in the erroneous beliefs that said representations are and were true in fact and that the paint was in fact so composed; that said paint does not and has not contained other ingredients, nor said barium sulphate and asbestine, as above described, nor any inert paint pigment other than necessary coloring pigment; that the oil in the paint was in fact purely linseed oil at all times throughout the use of such representations as to linseed oil, and that it did not contain any such soya bean oil as was in fact substituted for linseed oil to the extent above stated in the manufacture of the paint under said master formula used prior to January 1, 1931.

PAR. 7. The said false, misleading, and deceptive representations above set forth have been made by respondent with knowledge that the said paint was not in fact composed wholly or principally of lead, zinc, and linseed oil and was not a white lead and linseed oil paint as represented, but was in truth manufactured with the ingredients as described in paragraph 5 hereof, contained said barytes or barium sulphate besides asbestine, titanox, and soya bean oil. Throughout the period in which said false, misleading, and deceptive representations were used, prior or subsequent to the issuance of the complaint, respondent's customers were not advised or informed by respondent through its trade promotional literature that in fact said paint is not in truth composed as stated in its representations above described or that it contained barytes or barium sulphate, or asbestine or any inert materials, or titanox or soya bean oil, or that the white lead and zinc oxide therein constituted only a small or minor part of the pigment. Respondent has not followed the practice used by some paint manufacturers of printing the formula upon the label on the commercial containers of the paint or otherwise disclosing the actual ingredients in the paint.

PAR. 8. Further, in the course and conduct of the business of promoting and effecting the sale and distribution of its paints and paint materials as hereinabove described, respondent has caused, throughout the period of more than two years prior to the issuance of the complaint and thereafter, and still causes its said paints and paint materials to be offered for sale and sold to its customers, the pur-

chasing and consuming public of the several States, upon various representations, statements, and assertions to the following effect:

(1) That respondent is a manufacturer of paints and paint materials, and manufactures said products which it markets; that for such purpose it owns, operates, and controls a large modern paint factory and other paint manufacturing equipment; that respondent's factory is the "million dollar Madison paint factory", and that respondent is "a million-dollar company"; that its factory keeps over 400 people busy producing and preparing the thousands of gallons of paint which are shipped every day to Madison customers everywhere in the United States; that it employs the highest skilled paint-making experts and most modern equipment; that its factory, paint vats, grinding mills, and other manufacturing machinery or facilities are as pictorially represented in its said trade or sales promotional literature; that it has been engaged in said business for a quarter of a century, or for 23 years or more; that it purchases and stores raw materials in large quantities, has a huge laboratory with a staff of chemists, and carefully mixes, grinds, and selects the paint ingredients.

(2) That in the sale and distribution of its paint and paint materials respondent acts as a manufacturer and not as a middleman or dealer; that it sells and distributes its paints and paint materials directly from the factory to the purchaser or consumer without the intervention of any jobber, wholesaler, retailer, or middleman; that the prices at which respondent sells and distributes said products are manufacturer's prices or factory prices and do not include any of the costs, profits, or other charges of any jobber, wholesaler, retailer, or middleman; that in purchasing from respondent, purchasers thereby deal directly with the manufacturer and save to themselves the costs, profits, and other charges of jobbers, wholesalers, retailers, and middlemen; that because respondent is the manufacturer of said products they are of better quality than similar products sold by competing dealers, and that respondent's prices for its products are cheaper and lower than the prices at which similar products of like quality can be purchased from respondent's competitors or from retail stores; that in purchasing said products from respondent the purchasers thereby save to themselves the costs, profits, and other charges of any and all middlemen or dealers; that, by reason of its advantages in being a large manufacturer and selling at factory prices direct to consumer, its prices on paint are from \$1 to \$2, or from 25 per cent to 40 per cent, less than competitors' prices for similar quality paints or the prices at which such similar

quality paints are sold by, or may be purchased by the public from, retail stores, or from competitors.

PAR. 9. The following are specific instances of the foregoing representations, statements, and assertions which are among those respondent has caused to be set forth in its sales or trade promotional literature:

(a) On the outside cover of respondent's catalogue (Com. Ex. 24) large factory buildings are depicted in silhouette with the statement in large red letters—

**WORLD'S LARGEST PAINT FACTORY SELLING DIRECT
THE MADISON PAINT COMPANY
CLEVELAND, OHIO**

On the inside of the catalogue, which is arranged so as to appeal to the purchasing public and is displayed to purchasers and prospective purchasers by respondent's salesmen, appear such representations as follows:

The Madison Paint Co., with its quarter of a century record for square dealing, its immense factory and its enormous financial resources, stands back of this guarantee and stands ready to make good on the provisions without argument. [Inside cover page.]

EIGHT POWERFUL REASONS FOR BUYING MADISON NATIONAL FAMOUS PAINTS

2. Saving—You save \$1 to \$2 per gallon when you buy Madison Paint.

6. Fresh Paint—Madison Paint comes to you fresh from our giant paint vats. It never deteriorates on dealers' shelves (p. 1). (Com. Ex. 35, p. 10.)

You deal with confidence when you buy from the world's biggest paint factory! Selling direct to the user!

The chief purpose of this book, of course, is to tell you how to get the best quality of paint and to save money.

After you have read our direct-from-factory-to-you story, we feel sure that you will be 100 per cent sold on our direct plan.

Before we go into the details and give you the sound reasons why and how you can save money buying paint direct—it is natural that you should want to know who the Madison Paint Co. is.

Below we show a picturization of our giant paint factory—the biggest paint factory in the world selling direct to the user over the heads of the middlemen. This gives you a good idea of the size and magnitude of this great factory. At the sides of this page we show you pictures of scenes from inside the factory. Here you see the immense grinders that grind the ingredients into the most minute fineness. Also are shown the large mixers where the mixing is done by powerful machinery that insures perfect mixing—a quality so necessary in good paint to insure utmost coverage and long life.

When you have a concern of this size to do business with—backed by prestige and reputation covering nearly a quarter of a century, you can trade with confidence and know in advance you will receive a square deal on all your transactions.

You take no risks whatever when you buy Madison Paints. You are absolutely protected by our reputation and 23 years of fair dealing (p. 2).

On the same page and in conjunction with the foregoing statements are set forth the following:

(1) Depiction of a large factory and factory warehouse with the following legend:

THE GREAT MADISON PAINT FACTORY

One of the finest equipped paint factories for the production of high grade paints. Covers two city blocks and keeps over 400 people busy producing and preparing the thousands of gallons of paint which are shipped each day to Madison customers everywhere in the U. S. (p. 2).

(2) Six depictions of factory scenes as being actual pictures of factory equipment and facilities operated by the respondent, the Madison Paint Co., as part of the Madison paint factory, respectively, and described as "Laboratory for research"; "Ageing and storage tanks"; "Battery of grinding mills"; "Filling into containers"; "Labeling and packing"; "Shipping platform."

Further representations in the catalogue appear as follows:

Our factory-to-user plan brings a million dollar paint plant right to your door! Thousands of satisfied customers. Even though we may be miles away from you—all the convenience of trade in your home town is yours.

The Madison local service man is at your beck and call to help and advise you on your painting needs and problems; use him. Let him assist you and show you how the gigantic Madison paint factory, with its great resources, is brought to your very door.

Selling direct from the factory is the modern way of doing business. The middleman, who is chiefly responsible for the high cost of living is completely cut out. Factory-to-user is the economical road because it brings about a real savings without sacrifice of quality.

You are benefited in many ways by dealing direct with the factory. You have the greatest stock of paint, roofing, varnish, enamel in the country to select from and you get your paint fresh from the mixing vats.

The Madison Paint Co. has been in business nearly a quarter of a century—is rated at "one million dollars" by the Bradstreet mercantile agency. If you want to know more about us, we are pleased to refer you to the Cleveland Trust Co. or any other financial institution in Cleveland.

Cleveland, Ohio, is known as the heart of America's paint business. More paint products are made in Cleveland than anywhere else in the world. And Madison—the largest direct selling paint factory in Cleveland—in 23 years has done more than its share to build this wonderful reputation for its city (p. 3).

Save money on paint! Buy from Madison factory—Save \$1 to \$2 per gallon!

BANK THE SAVINGS

Before the store-bought paint reaches you, there is included in the price you pay the profits of many middlemen—the wholesaler, the jobber, the retailer.

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At each step in the journey of the paint to you, these middlemen add their profit. Over half of what you pay for store-bought paint goes for distributing.

WITH MADISON YOU PAY FOR PAINT ONLY

Contrast this expensive round-about way with the Madison direct-from-the-factory way. Every can of Madison paint or varnish is manufactured in our own mammoth factory and sold direct to users at the low factory price. You pay for paint only. None of your money goes for middleman's profits or expensive advertising.

WHOLESALE FACTORY PRICES

When you buy Madison paint in this economical, direct way, you keep the middlemen's profits. Besides you get the finest quality paint made from honest materials by highly skilled workmen in a most modernly equipped paint factory. The low wholesale factory price saves you \$1 to \$2 on every gallon—a worth-while saving.

Madison paint has been sold by this direct-from-factory method for a great number of years. So many thousands of Madison paint customers the country over have welcomed this money-saving paint plan that it takes an immense factory working to capacity constantly to keep up with the demand. Thousands of dollars have been saved and banked by paint users as a result (p. 4).

HIGHER PRICE CAN NOT BUY BETTER PAINT

Just because Madison paint sells for \$1 to \$2 per gallon less than other paint, do not think it is cheap paint. The saving on Madison paint hasn't a thing to do with quality. The saving is made possible by eliminating expensive distribution methods. The quality of Madison paint is such that if you paid the regular high paint store price for our paint, you could not buy better quality than Madison. And the chances are you couldn't buy as good.

MILLIONS OF DOLLARS—THOUSANDS OF BUILDINGS SAVED BY PAINT

Paint for protection is the cry that has made itself heard and felt through the length and breadth of the land. The saving to America's property owners through the use of good paint is beyond compute. There are two major savings possible with paint—saving the surface from deterioration and saving the building from depreciation. And now Madison comes with a third major saving—that is saving on the paint itself because you buy at wholesale factory prices. Use Madison paint and save three ways.

SCIENTIFICALLY MIXED

The mixing of Madison paint is done by the most modern and up-to-date machinery in our own new plant. The blending of the ingredients is always absolutely perfect (p. 5).

We give you the low factory cash price and give you credit (p. 7).

Here is another saving step in buying Madison paint. Not only do you get fresh paint direct from the factory at the wholesale factory price and on 60 days' credit—but we pay the freight besides.

If you order amounts to \$10 or more, this free freight privilege is yours. This removes all uncertainty of what the Madison paint will cost you delivered to your town.

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Madison low factory prices mean no extras! No additional costs!

Buy all your paint needs from this million dollar factory (p. 8).

(In conjunction with the foregoing statement on page 8 of the catalogue appears the depiction of large factory buildings similar to the depiction appearing on page 2 of the catalogue.)

Direct from Madison vats to you.

MADISON PAINT IS ALWAYS FRESH

It comes fresh from our mixing vats to you. Every year we make and sell millions of gallons of paint and roofing and ship it right out to our thousands of customers as fast as we make it. Stale shelf-worn paint can not begin to give you the covering and long life that you can get from Madison fresh paint. You not only save money but you get better paint. Thus the Madison direct-to-you plan is double-barreled economy. Madison paint comes to you fresh—and full strength and whole body which means Madison paint goes farther in covering capacity and stays on better, giving longer wearing quality.

WHY MADISON FACTORY MIXED PAINT IS SUPERIOR

Did you ever try to mix your own paint? If you have, you probably know the big job it is. The lead, zinc oxide, and oil must be constantly paddled by hand—but no matter how long or how hard you stir it, you can not begin to get the perfect blend that we do at the factory with our powerful grinders and giant mixers. It takes hours of grinding and agitating by machinery to secure a thorough mixture so the combined materials are blended into an even, smooth paint. Ready-mixed paint—fresh from the factory—is the only paint you should ever consider using. That's Madison paint (p. 12).

(In conjunction with the above statement on page 12 appears the depiction of a factory scene with battery of paint-mixing machinery.)

EXPERT SKILL IN THE MAKING

But the use of the best ingredients is only half of the battle. Unless these materials are scientifically proportioned, skillfully blended and perfectly mixed, the value in using them is virtually lost. There is a certain art in paint making that required expert skill and modern machinery to the highest degree. In our enormous factory at Cleveland, we do a tremendous volume of business. This enables us to attract the highest skilled paint-making experts and employ the most modern equipment.

WHOLESALE FACTORY PRICES

Madison paints cost you \$1 to \$2 less per gallon, not because of cheapened quality, but because we sell you direct from our factory at wholesale and save you many middlemen's profits by giving you the wholesale factory price. Besides we give a genuine free trial—60 days to pay, and pay the freight (p. 13).

MADISON FACTORY OUTDOOR SERVICE TEST

Up on the roof of the giant Madison paint factory at Cleveland there is probably the most unique test for paint ever used in the entire history of the paint industry.

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We have constructed on our roof penthouses, resembling skylights, which are used for testing not only Madison—but most all well-known paint brands. It is Madison's outdoor laboratory. * * * The Madison Paint Co., Cleveland, Ohio. (Inside back cover.)

(In conjunction with the above statement is shown a sketch or depiction of roof penthouses with paint-testing panels.) (Com. Ex. 24, 1929 Catalogue—Cover pages and pp. 1, 2, 3, 4, 5, 7, 8, 12 and 13.)

(b) In the magazine advertisements, Commission's Exhibits 25 and 26, respondent sets forth a large depiction of factory buildings and manufacturing plants with such statements as follows:

* * * The Madison Paint Co., the largest paint concern in the world selling direct from the factory, invites you to be the local agent and take orders from property owners, farmers, managers of industrial plants and factories. One of the few propositions in direct selling actually good for \$5,000 to \$10,000 a year.

Save users \$1 to \$2 a gallon—60 days credit—Freight allowed. Besides selling 100 per cent quality paint you have the greatest sales argument in the world. Direct from factory saves users \$1 to \$2 per gallon—you give 60 days' credit—and freight is allowed. You can not beat it. The painting business is a sound one—a steady year 'round business. Property owners must use paint for protection as well as decoration. Every year millions are invested in it. With this new direct selling plan and powerful arguments you can get practically all the painting business in your locality. (Com. Ex. 26, also Ex. 25, magazine advertisements.)

(c) On the first page of respondent's printed circular, Commission's Exhibit 27, is shown a depiction of what purports to be factory buildings and in connection with which also appears the following statement:

Average \$18 a day as the local agent for this million dollar paint factory—earn easily \$4,000 to \$10,000 a year.

No investment necessary—No experience required. A gold mine opportunity awaits you in this offer. The Madison Paint Co., steadily increasing its business for nearly a quarter of a century, invites you to join their successful men and be a local agent where a lifetime job and a brilliant future is yours.

You can be your own boss, come and go as you please and become an established success in your community with an income of at least \$100 per week and you don't have to have any experience—we show you how.

On the inside of such circular are depictions of factory scenes such as chemical laboratory, shipping room and batteries of tanks and grinding mills with factory workmen. Among the printed statements accompanying such depictions appear the following:

Showing one of the research rooms of our up-to-date laboratory located on the roof of the Madison factory.

A corner of the labeling and packing department in the Madison shipping room.

Partial view of a battery of grinders in the house and barn paint department of the Madison paint factory.

Be the Madison paint agent in your locality. Easy for you to make over \$100 a week steadily. 12 reasons why you will make good. 1, you represent a million dollar company. * * * 8, you sell direct from the factory. * * *

As soon as you show your customers a saving of \$1 per gallon and when you explain that this million dollar factory ships them fresh paint, absolutely guaranteed, you will be flooded with orders.

On the last page of such circular appears among others the following statement:

You don't have to use high pressure selling methods. Madison selling outfit actually takes the orders for you.

The literature is so plain and the pictures and illustrations are so clear that orders come to you with hardly any work on your part. There is nothing like it in the paint business. In fact there is nothing like it in the entire selling field. (Com. Ex. 27.)

(d) On the color card, Commission's Exhibit 29, respondent sets forth among other things the following:

MADISON HOUSE AND BARN PAINTS PROTECT AND BEAUTIFY

YOUR PROPERTY

The Madison Paint Company

Manufacturers

Cleveland—Ohio. (Com. Ex. 29, Color Card.)

(e) In form letter, Commission's Exhibit 31, the following representation appears among others:

Our local representative, Mr. John Johnson, thought you might enjoy a visit to the Madison Paint Co. factory. At his request I am happy to extend to you a cordial invitation to visit us whenever you are in Cleveland. The writer will consider it a pleasure to show you personally thru our modern million dollar factory and to explain to you how paints and roofings are made.

Meanwhile your name has been placed on the record of our company as one privileged to receive our wholesale prices on all of our products including our exterior house and barn paints, our Masticote asbestos liquid roofing and any interior paint or varnish that you may require.

We save you from 25 per cent to 40 per cent on every gallon purchased as we sell direct from the factory to the user, eliminating the jobber and middleman entirely.

If you can not visit our factory personally, our district service man will gladly bring our factory to you by showing you our catalogue, painted samples and color cards and by offering helpful suggestions for color combinations. (Com. Ex. 31, Sales Promotional Letter.)

(f) Respondent's small catalogue (Com. Ex. 35) contains the depiction of large factory buildings or manufacturing plant with the following statement made in connection therewith:

Here's why you save money buying paint and roofing from the factory. Selling direct from factory is the modern way of doing business. Before the store-bought paint reaches you, there is included in the price the profits of many middlemen—the wholesaler, the jobber, the retailer. Besides their

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profits, you have to pay for their costs of doing business—rent, clerk hire, deliveries. Over half of what you pay for store-bought paint goes for cost of distributing.

Get wholesale factory prices. But why should you, the consumer, pay for these high costs of doing business? Contrast this expensive round-about way with the Madison direct-from-the-factory way. Every gallon of Madison paint and roofing is made in our own mammoth factory and sold for middlemen's profits or high costs of selling. All of your money is spent to secure the utmost paint value for your money.

Eliminating the middleman saves you \$1 to \$2 per gallon: When you buy Madison paint in this economical direct way you keep the middleman's profits. The wholesale factory price saves you \$1 to \$2 on every gallon—a worth-while saving. So many thousands of satisfied Madison paint customers have welcomed this money-saving paint plan that it takes an immense factory working to capacity to keep up with the demand (pp. 2, 3).

(g) In respondent's current catalogue, respondent's Exhibit 23A, there is displayed on pages 2 and 3 a depiction of large factory buildings or manufacturing plant and six pictures of factory scenes showing manufacturing machinery and equipment. Accompanying said depictions are such statements as follows:

A MILLION-DOLLAR ROOFING & PAINT FACTORY

Roofing and paint of superb Madison quality could only be produced in a plant like this—an up-to-date building covering two whole city blocks and keeping more than four hundred people employed, using the most up-to-date processes and the finest machinery money can buy. Only the very best methods of doing business could keep this gigantic plant running twenty-four hours a day.

Now you can buy all your roofing and paints direct from this great million-dollar factory and save one half.

We have been selling roofing and paint through direct factory representatives like the salesman who is showing this catalog to you, for a quarter of a century. The gigantic business we have built—its nation-wide reputation—prove that this is the practical and economical way for you to buy your supplies. Up-to-date people never think of going to a store for roofing or paint products any more. Store paints of comparable quality cost more because of the many middlemen's profits you have to pay, and because of the way paint settles and goes bad when it stands for weeks and months on manufacturers', jobbers', and dealers' shelves.

Buy direct from the million-dollar Madison paint factory—assure yourself the finest quality at the lowest prices.

Go through this book carefully. Read all about this great million dollar paint company. Note the factory pictures showing how carefully, scientifically, and thoroughly we mix, grind and select the paint ingredients and how carefully we guard every step in making Madison Roofing and Paints to be certain that you get the very finest quality products which human skill can produce.

Pictured opposite is our immense million-dollar paint factory in Cleveland, Ohio, where Madison Roofing and Paints are manufactured.

On page 6 of said current catalogue is likewise set forth the depiction of large factory buildings or manufacturing plant with such statements as follows:

YOU BUY DIRECT FROM FACTORY—YOU SAVE 25 PER CENT TO 40 PER CENT

We can make this tremendous saving to you on your roofing and paints because of our saving in selling cost. One of the biggest items that adds to the cost of ordinary paint is the high cost of distribution when sold through jobbers and dealers. The manufacturer must make a profit and then the jobber and the wholesaler and the retailer must make a profit. And all these profits are added to the price you pay. But when you buy your roofing and paints from Madison you buy quality products direct from the factory, so there are no dealers or jobbers' profits to add to the price. You get the low direct factory price. That's why you can save 25 percent to 40 percent.

Selling direct to you from the factory brings you another advantage in addition to saving money. Because you eliminate the jobber and dealer, Madison paint comes to you fresh from our mixing vats (p. 6).

Among the further representations in such current catalogue are the following:

You can pay much more for your house paint than we ask, but you can not buy better paint. Remember these are factory prices without one cent added for dealers or jobbers. When you buy Madison paint you buy direct from the factory and you get lowest factory prices on the finest paint that can be made. You can pay less than these Madison low direct factory prices, but to buy cheaper does not protect your buildings (p. 10).

Buy all your paint needs direct from the Madison factory and save money (pp. 20-21).

I have given you every good reason for using Madison paint products.

I have explained fully how all Madison paint products are made right here in our million-dollar paint factory, and how they are sold direct to you from this factory at the lowest wholesale factory prices, saving you big money (p. 22, Resp. Ex. 23-A, Current Catalogue).

(h) Respondent's current printed circular (Resp. Ex. 24) contains the following on the front page over the name Jerry Lowell, general manager, the manager of the Madison Paint Co.:

I am at the head of a great roofing and paint business at Cleveland Ohio, which is the center for all paint making in this country, and I am looking for a man like you to represent this great company in your locality.

My company has been in business for 25 years, selling roofing and paints direct to users at wholesale prices, and as a result has grown into a million-dollar concern. Our sensational plan of selling direct from the factory has enabled us to build up a tremendously successful business, and to employ a wide-awake man in every community to share in the generous profits.

On the inside of such circular is perpetuated said depiction of large factory buildings or manufacturing plant in conjunction with which appear, among others, such statements as follows:

This million-dollar factory backs you. For 25 years supplying roofing and paints direct to users.

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When you represent this company, you will be the factory representative for one of the greatest and most complete lines of fine quality roofing and paints made.

The Madison Paint Co., Cleveland, Ohio. (Resp. Ex. 24.)

(i) On respondent's letterhead (Resp. Ex. 25), which was adopted since the issuance of the complaint and is currently used in letters to customers and to salesmen, is set forth a depiction of large factory buildings or manufacturing plant, similar to the depictions in its catalogues and circulars above described, and upon such depiction of factory is superimposed in large print the name—

THE MADISON PAINT COMPANY (Resp. Ex. 25)

(k) In respondent's current book of instructions, Commission's Exhibit 140, for use of its salesmen in their sales promotional work, appear the following:

1. Who is the Madison Paint Co.? You represent one of the largest, oldest, and most reliable paint companies in the country. In business for twenty-four years, we have built up a reputation for making the finest paints, varnishes, liquid roofing, and stains that can be manufactured. We are not jobbers. Every gallon of paint is made up fresh in wonderful modern machinery in our enormous factory. We sell direct to the customer, which means "The best paint at the lowest price." The customer saves money and gets better, fresher material than if he paid retail prices for stale paint or roofing bought from paint or hardware stores (p. 4).

31. If "cheap" paint is so unsatisfactory, why do people sell it? Local stores can not sell first class paint as cheaply as you can. They have too many expenses to meet, such as rent, light, heat, factory, profit, and selling. They also have to make a profit. If they sold paint as good as ours they would have to charge \$1 more per gallon and nobody would buy from them. So they frequently handle inferior paint selling at a few cents per gallon less than ours, thinking that people won't know the difference. Some mail order concerns also sell "cheaper" paints but they are not high grade paints like ours and do not cover as well nor last as long. They also sell cheap tar or low grade asphalt roofings, not high grade asphalt roofing like Mastlicote. Mail-order houses do not have neighborhood service men like we do. They have to spend thousands of dollars just on postage, catalogues, and radio. They send out hundreds of these catalogues just to get a single order. Their expenses are therefore so great that they can only afford to give the customer a "cheap" grade of paint or roofing (p. 9).

32. Why can the Madison Paint Co. sell such high grade paint and roofing at such a low price?

Because: 1. We are a million dollar concern and buy raw material in such large quantities that we get rock bottom prices.

2. We discount all our bills which is a still further saving.

3. Our large storage tanks permit us to buy raw materials when prices are lowest and store them until ready for use, saving vast sums of money for our customers.

4. Our wonderful factory with floor to floor method of making paint in modern machinery does away with expensive labor and makes production cheaper.

5. We manufacture such tremendous quantities that our overhead and cost of production is very low (pp. 9-10).

* * * We have a huge laboratory with a staff of chemists constantly working out new problems and making sure that raw materials are up to standard. They have done this for years and will continue to do so (p. 10).

What is the financial strength of the Madison Paint Co.? Over \$1,000,000. See Bradstreet for our rating of G-Aa. Established in 1906, and growing bigger every year. We are not jobbers but manufacture every gallon of paint we sell (p. 20). (Com. Ex. 140; See similar representations in Com. Ex. 139.)

PAR. 10. The true facts in regard to said representations are and have been as follows:

(a) Respondent corporation, the Madison Paint Co., is not a manufacturer and does not manufacture any of the paint, or other products, which it markets, but procures such products from the Acorn Refining Co. at certain prices charged therefor by such Acorn company. The Madison Paint Co., respondent corporation, does not own, control, or operate any such paint factory, factory warehouse, paint vats, grinding, mixing, or other paint manufacturing equipment or facilities as represented and depicted in its sales or trade promotional literature, or any other paint manufacturing equipment or facilities. The authorized capital stock of such Madison company is \$25,000, par value, and all its physical property, listed on its books at \$1,107.94, consists of furniture and fixtures such as office desks, chairs, adding machines, typewriters, files, and other office equipment, which are used in the promotion, sale, and distribution of its products. Its other assets consist of cash, accounts receivable, deferred assets in the form of prepaid salesmen's expense, with all assets totaling between \$15,000 and \$20,000. Said Madison corporation does not employ any paint manufacturing experts, chemists, or any other employees engaged in manufacturing. Besides said salesmen respondent corporation's regular employees number 22, and all are engaged under the supervision of a sales manager in the work of promoting and effecting the sale and distribution of its merchandise. It is not a million dollar company or manufacturer. Respondent corporation does not purchase, store, test, or otherwise handle or use any raw materials for the manufacture of paint or paint materials; nor does respondent have any paint laboratory with a staff of chemists.

(b) The said Acorn Refining Co. is an Ohio corporation engaged since about the year 1914 in the manufacture of a complete line of paints or paint products and roof coating, which, in the course of its business it sells to the purchasing and consuming public, including industrial plants and other users and consumers, throughout the United States, as well as supplying said products, at prices herein-

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after stated, to the respondent and to seven other similarly situated corporations including the Progress Paint Co. and the Franklin Paint Co., respondents in Dockets 1575 and 1567, respectively. Said Acorn Refining Co. has, and operates in its business, a paint factory or paint manufacturing plant at Cleveland, Ohio, which paint factory or paint manufacturing plant is of reputable appraisal value of substantially less than \$1,000,000. The average daily production of the plant is 4,000 to 5,000 gallons of paint and 5,000 to 6,000 gallons of roof coating. Such Acorn company has facilities for the purchase and storage of raw materials in carload quantities. It also has a paint laboratory with a staff of four men. The respondent corporation, the Madison Paint Co., occupies as its place of business rented office space on the premises of the Acorn Refining Co. for which space it pays rent to such Acorn company. And it is from the Acorn Refining Co.'s factory premises that respondent corporation ships its product to its customers. Besides paint and paint materials, respondent also purchases various other supplies and services used in its business from said Acorn company.

(c) Said depiction in silhouette of factory buildings on outside of catalogue, Commission's Exhibit 24, is wholly fanciful or fictitious. Evidence was introduced by respondent that the various other depictions of factory and factory scenes and equipment elsewhere in its trade promotional literature are in fact depictions of the factory and manufacturing facilities of the Acorn Refining Co. The factory of the Acorn Refining Co. has prominently displayed thereon the large sign "Acorn" and is an integral part of the building of such Acorn Refining Co. The depictions of such factory in respondent's literature have been altered or set forth in such a way as not to show said sign "Acorn." Also, such depictions are represented in respondent's trade promotional literature as being depictions of the Madison factory and of factory equipment and facilities owned or operated by respondent corporation, the Madison Paint Co. Such depictions are fictitious in that respondent has no such factory or any factory, and in that they do not reveal said sign Acorn, which is in reality on the front of said Acorn factory and an integral part of the building.

(d) Prior to the issuance of the complaint and until about January, 1930, substantially all of the capital stock of the respondent corporation, the Madison Paint Co., was owned in equal proportion by S. S. Sanders and E. M. Katz, president and secretary-treasurer, respectively, of the respondent, who also own in equal proportion all of the capital stock of the Acorn Refining Co. and are officers of that company. After the issuance of the complaint the capital stock of

respondent corporation, owned by said individuals Sanders and Katz, was acquired and is now owned by the Acorn Refining Co.

(e) The Madison Paint Co., respondent, is one of eight corporations whose stock, ranging from \$10,000 to \$100,000, authorized par value, is similarly owned by the Acorn Refining Co. They are similarly engaged in procuring paint manufactured by the Acorn Refining Co. and selling the same to the public throughout the United States. It is marketed by said companies as paint of their own respective line and manufacture. For example, it is sold by the Progress Paint Co. as the Progress line of paints; by the Franklin Paint Co. as the Franklin line of paints; by the Madison Paint Co. as the Madison line of paints. To other purchasers it is sold by the Acorn Refining Co. as the Acorn line of paints. The products sold by the respondent corporation comprise from about 3 per cent to 9 per cent of the output of the Acorn Refining Co.

(f) Evidence was introduced on behalf of respondent to the effect that the prices charged by the Acorn Refining Co. to the respondent, the Madison Paint Co., for said paint and paint materials are the Acorn Refining Co.'s so-called blue book prices less 15 per cent, and that such net prices represented only the Acorn Refining Co.'s cost; that all the profits in the distribution of the products sold by respondent to the public are allowed to accumulate in the name of the Madison Paint Co. and are taken out mainly, if not entirely, in the form of salaries to said Katz and Sanders rather than through the declaration of dividends.

(g) Evidence was also introduced through respondent's witnesses tending to show that the business of the Acorn Refining Co. and said other eight corporations, including respondent, which are engaged in selling and distributing paint manufactured by the Acorn company, is considered by the officers of the Acorn company and of respondent as one business. That any such relationship exists between said companies is not disclosed to the purchasing public. Testimony was also given, largely by said S. S. Sanders, president of respondent, substantially to the effect that care is also taken to avoid disclosing any such relationship to the salesmen who sell the paint to the public for various companies referred to, and that such nondisclosure enables these companies to sell more paint, and makes possible the solicitation and sale of the paint by several of the respective companies in any given locality or community by reason of the nondisclosure in such communities of the existence of such relationship or that in reality it is all the same paint which is being sold under different company names and labels. As part of such nondisclosure each of said respective companies, although located on the

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same premises, represents itself as being located at a differently named street address. Testimony was also adduced by respondent to the effect that instead of conducting respondent's business under its name as an unincorporated trade name, it was incorporated so that, among other things, respondent could receive a listing and rating in the commercial rating publications of R. G. Dun & Co. and of Bradstreets in such a way as not to disclose or reveal any relationship or connection with the Acorn Refining Co. or other company. Until March, 1928, respondent was listed by Bradstreets as follows:

Madison Paint Co. W+HAa

Since then such rating was given as "W÷GAa", excepting during the latter half of 1930, when through an error, it was listed without the division sign, "÷". Such symbol "W" designates the business of the company as wholesale. "HAa" stands for a capital rating of \$750,000 to \$1,000,000 and "GAa" for \$1,000,000 and up in capital rating. Said division sign means that such rating covers two or more corporations and in this particular case it covers jointly the respondent, the Acorn Refining Co. and seven other corporations, and is not a separate rating upon respondent corporation only. In meeting the requirements of Bradstreets for such rating, arrangements were made whereby the Acorn Refining Co. by its board of directors passed a resolution to the effect that it would guarantee payment of the debts or obligations of said other corporations including the respondent. In Dun's commercial rating publication respondent is classified as a dealer, wholesaler, with a rating of "−2" which means good credit with a financial rating from \$35,000 to \$125,000.

(h) In the sale and distribution of its paint and other products, and the conduct of its business, respondent corporation is a middleman instead of a manufacturer. The prices at which it sells its said paint to the public are middleman's prices and not factory prices or factory wholesale prices as represented. The profits which respondent makes in the sale of said paint and its costs therein, which profits and costs are included in its paint price and ultimately borne by the consumer, are in fact middleman's costs and profits. The relative costs and prices of its paint covering the various colors, years and types of containers involved are illustrated by the following (using the color white, 1-gallon cans and the year 1930 as representative): The cost to Acorn Refining Co. of the paint material in 1 gallon of the paint was \$1.16. The price which the Acorn Refining Co., the manufacturer, charged respondent for such gallon of paint was \$1.624 for the first four months of 1930 and \$1.573 for the remainder of the year. The Madison Paint Co.'s price at which it sold such paint to the public was \$3.85 less 5 per cent discount for cash with

order, or net within 60 days, and with freight paid on all orders amounting to more than \$10. During the latter part of 1930 respondent reduced its price 20 cents to 25 cents per gallon. The price per 1-gallon can of the same paint as sold throughout the same States and on similar terms by the Franklin Paint Co. was \$3.32, and the Progress Paint Co., \$3.75.

(i) In the evidence adduced is testimony tending to show that outside house paint of quality comparable with that of respondent's paint is marketed and available to the purchasing public through retail stores at \$2.75 per 1-gallon can, as testified to by a paint manufacturer of Cincinnati marketing paints through various States which are also covered by respondent; that substantially comparable quality paint of the largest paint manufacturer in the industry is marketed through retail stores to users and consumers throughout the United States at retail prices from \$2.50 to \$2.75 per 1-gallon can, as testified to by an official of such manufacturer. Some of the other testimony on this point included that by a retail dealer who stated he sells house paints of the best or highest quality at a price of \$2.65 per gallon in 100-gallon lots; also testimony by a paint manufacturer, selling largely to industrial plants for maintenance purposes, that in his opinion paints of certain costs, delivered to the carrier, ranging from \$1.17 to \$2.09 per gallon would be sold through dealer channels in 1-gallon cans at certain retail prices to the consumer which ranged from \$2.80 to \$4.70 per gallon. Upon the whole record the Commission finds that the prices at which respondent sells its said paint to the public are not less to the extent of \$1 to \$2 per gallon, or from 25 per cent to 40 per cent, than prices at which paints of similar or comparable quality are available to the purchasing public or at which the purchasing public can buy the same from competitors or retail stores.

PAR. 11. The representations, statements, and assertions of the Madison Paint Co., respondent corporation, referred to and described in paragraph 8 hereof and used by respondent as hereinabove set forth, are and have been false, misleading, and deceptive, and have had the capacity and tendency to mislead, deceive, and induce the purchasing and consuming public into purchasing respondent's paint and paint materials in the beliefs, which are erroneous, that said representations, statements, and assertions are and were true in fact.

PAR. 12. In the evidence, respecting the effect upon competitors of the use by a paint distributor or by a paint seller of misrepresentations as to the ingredients and quality of its paint and as to being a manufacturer selling direct to purchasers without the intervention of middlemen, is testimony of four witnesses experienced as direc-

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tors or managers of sales or otherwise in the promotion of the sale of house paint and paint products of manufacturers or distributors selling in competition throughout the several States in which respondent also sells its paint. The testimony of these witnesses was given mainly as their views or respective opinions based upon or as a result of their experience in the business, and included testimony to the effect that the use on the part of any paint distributor of representations which are untrue is a detriment to competing concerns or others engaged in the same business; that it destroys confidence on the part of the consumer, the buyer, in his ability to know whether he is getting what he is paying for; that the misrepresentations by a distributor of paint of the quality or ingredients thereof is "extremely harmful to the business of competitors"; that the use of false or misleading representations has a tendency to divert trade from other competitors selling similar paints; that the misrepresentation as to the composition or quality of paint is "a general detriment to the whole trade"; that misleading representations by a paint distributor increases the burden upon competitors to meet such competition; that representations of being a manufacturer selling direct to consumers to the exclusion of middlemen, whether true or false, would have an effect or tendency to substantially divert trade from competitors; that business has definitely been lost by one witness's company because of such representations by competing concerns not including the respondent; that a seller's misrepresentations of an inferior paint as first quality paint would divert business from competitors if the prices were less than the competitors' price for first quality paint, that such diversion would depend upon the price.

It was stipulated by respondent that certain Commission witnesses about to be sworn and consisting of five other members of paint manufacturing or distributing companies selling in general competition in the same territory in which respondents are selling, if called as witnesses, would testify that untruthful advertising is unethical and that it tends, in their opinion to divert business or trade from those engaged legitimately in a similar business; and that such stipulation may be used with the same effect as though such witnesses were actually sworn and so testified. It was also conceded of record by respondent that "deliberately false advertising is unethical", and "contrary to good morals".

PAR. 13. Upon the record the Commission finds that the aforesaid false, misleading, and deceptive representations, statements, and assertions, as set forth in the foregoing findings and used by respondent in the course and conduct of its said business, are methods of

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competition in interstate commerce which (a) are unfair and are characterized by deception; (b) have been pursued by respondent against the interest of the public; (c) have the capacity, tendency, and effect of injuring the public and unfairly diverting trade from respondent's competitors and otherwise injuring and prejudicing said competitors in their business; and (d) operate as an unfair competitive advantage to respondent and a detriment to and burden upon the legitimate paint manufacturing and marketing industry in this country.

CONCLUSION

Respondent's use of its said paint marketing and distributing business of the false, misleading, and deceptive acts and practices under the circumstances and conditions hereinabove set forth are unfair methods of competition contrary to the public interest, and are and have been injurious and prejudicial to the public and to the competitors of respondent and constitute a violation of the provisions 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 record, including the pleadings, the evidence, stipulations, and upon argument of counsel, and the Commission having made its findings as to the facts with its conclusion that respondent has violated the provisions 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".

It is now ordered, That, in the course of the sale or distribution in interstate commerce of paints or paint materials, the respondent corporation, the Madison Paint Co., its officers, directors, agents, representatives, servants, and employees, cease and desist:

(a) From directly or indirectly making or causing to be made any representation, statement, or assertion in advertisement, trade promotional literature, or by any other means, to the effect that any such paint is a white lead and linseed oil paint, or is composed wholly or principally of white lead, zinc oxide, and linseed oil with or without necessary color pigments and dryers; or that any such paint does not contain titanox, barium sulphate, asbestin, silicious material, or any inert material, if and when such representations, statements, or assertions are not true in fact.

(b) From directly or indirectly making or causing to be made any representation, statement, or assertion in advertisements, trade promotional literature, or by any other means, to the effect that respondent corporation is the manufacturer of any of said paints or paint materials; that it owns, operates, or controls a paint factory, or any other paint manufacturing equipment or facilities used in the manufacture of said paints or paint materials; or that customers in purchasing from respondent are thereby dealing directly with the manufacturer of said products; or that in the sale and distribution of said products by respondent corporation to its customers the same are sold and distributed by and from the manufacturer directly to such customers to the exclusion and without the intervention of middlemen, unless and until respondent becomes the manufacturer and actually owns and operates, or directly and absolutely controls such paint factory and paint manufacturing equipment or facilities by which any and all such products so represented are manufactured; or unless and until, so long as said paint or paint products are manufactured by the Acorn Refining Co. and the relationship subsists between that company and the respondent as set forth in the findings as to the facts, a full and true disclosure of the facts of such manufacture by, and relationship of respondent to, said Acorn Refining Co. be prominently made in conjunction with such representations.

(c) From directly or indirectly making or causing to be made any representation, statement, or assertion in advertisements, trade promotional literature, or by any other means, to the effect that the prices at which respondent sells its products are manufacturer's prices; or that by reason of respondent being such manufacturer and selling its products under a plan or method of distribution by which all costs, profits, or other charges of middlemen are eliminated, respondent's said prices are less than the prices at which paint products of equal quality are available, or may be purchased from competitors and from retail stores or through other dealer channels; or that the benefit of such savings by reason of the elimination of such middlemen accrues to purchasers from respondent, or that such saving is a certain definite amount, such as \$1 to \$2 per gallon, or 25 per cent to 40 per cent, unless and until respondent owns and operates, or directly and absolutely controls a factory or manufacturing facilities in or by which said products are manufactured, and such representations are otherwise true in fact.

It is further ordered, That respondent corporation, the Madison Paint 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 hereinabove set forth.

Commissioner Ferguson dissenting to issuance of order as to use of the word "manufacturer"; Commissioner Humphrey dissenting in memorandum attached.

Dissenting opinion by Chairman Humphrey

One who is not a manufacturer is guilty of an unfair practice in advertising that he is such, because the public believes that by buying from a manufacturer they save the middleman's profit.

There is no such element in this case. The respondent is in every particular regarding additional profits a manufacturer. He is in fact, while not a sole manufacturer, a part manufacturer. There may be a deception in the technical sense to the public, but there is no injury to the public.

This case involves a method of business conduct that it is admitted increases the sales of the products of the respondent. It therefore increases competition, and is to that extent in the interest of the public.

To cause the respondent to cease calling itself a manufacturer, would do him substantial injury in many ways. It would benefit no one. I believe that the Commission should issue no order that is not clearly in the interest of the public. This proposition is so plain that it calls for neither argument nor citation of authorities.

IN THE MATTER OF
THE PROGRESS 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 1575. Complaint, Feb. 26, 1929—Decision, June 28, 1932

Where a corporation engaged in sale and distribution of outside house paint and roof coating to purchasing and consuming public, through large numbers of solicitors in their respective home or local communities, and through catalogues, circulars, newspaper and periodical advertisements, and other trade literature.

- (a) Described said outside house paint as a lead and oil paint of highest grade, with pigment content composed wholly of white lead and zinc oxide and vehicle composed wholly of linseed oil and represented said paint as made of the finest raw materials obtainable and its roof coating as containing gilsonite in substantial proportions, through such statements in its trade promotional literature as "the acme of perfection in high grade lead and oil house paint", "Cheap paint is easily loaded with powdered rock or barytes (barium sulphate)", "the only genuine protection * * * Progress House Paint—good old lead, zinc, and oil", "the best paint money can buy * * * You can't afford to use cheap paint. Remember there is a 'joker' in the cheap paint can—it doesn't wear", "Why fool ourselves? We've found nothing yet that can replace the ingredients our forefathers used in making paint and that is lead, zinc, and linseed oil! You can't improve on these products * * *", "When you buy cheap paint something has been put into it that costs less than lead or zinc—some substitute has been added to the linseed oil to cheapen that. Consequently when you buy cheap paint you are getting just what you pay for. You suffer in the cost of application which is the big item and the lack of protection which good paint would give for just a few cents more per gallon. * * *", "We do not sell linseed oil or white lead separately, as we know that a customer cannot make as good a paint by hand as we can through our modern machinery nor as economical", and so worded its instructions to salesmen and trade literature as to directly feature and discuss the asserted and assumed gilsonite composition of its roofing;

Facts being said roof coating did not contain gilsonite in substantial proportions and aforesaid house paint contained (1) such inert pigments as barium sulphate (barytes) and asbestine in proportions regarded by experts as excessive, and, by some, as amounting to adulterants in proportions used, and (2) white lead and zinc oxide only in minor proportions, and formula and composition required and disclosed approximate pigment and vehicle content of 58 percent and 42 percent, respectively, and (1) pigment or solid content of 36 percent titanox, 4 percent lead sulphate, 20 percent zinc oxide, 16 percent barium sulphate, and 24 percent asbestine (with subsequent substitution of 12 percent white lead for 4 percent lead sulphate, and 8 percent barium sulphate for 16 percent), and vehicle or liquid content of 87 percent linseed oil, in fact diluted by addition of substantial quantities of soya bean oil;