

Complaint

IN THE MATTER OF
WESTERN BOTTLE MANUFACTURING COMPANYCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2009. Complaint, Feb. 8, 1932—Decision, Dec. 12, 1932*

Where a corporation engaged in the sale and distribution of a tooth paste; in advertising the same in periodicals and papers of a wide circulation and in window display cards,

- (a) Represented that tests of its own paste and of competitive products, and photographs of three human mouths displaying the upper teeth, with different degrees of discoloration and cleanliness, assertedly demonstrating the relative cleansing efficiency and safety of its own product as contrasted with certain competitive products, were, respectively, tests and photographs made in the laboratory of a great American University; facts being tests in question were carried on by a university faculty member, assigned to duty with an affiliated research institute, and compensated by said corporation for the researches, tests, and photographs involved, none of which were authorized, made, checked, adopted, or approved by a university; and
- (b) Represented that the tests referred to showed that its paste was the only one of the ten that safely cleaned teeth without injury, and that its said preparation was not abrasive due to the presence therein of two polishing agents, instead of one; facts being that nature of tests in question did not warrant aforesaid claims of relative safety, and presence in its own, in fact slightly abrasive, paste, of a very harsh, abrasive, and of a much milder one, did not add any peculiar safety, virtue, or merit thereto;

With effect of deceiving retailers and ultimate purchasers throughout the various States into believing (1) that tests and photographs, authorized, made, checked, or adopted by a university, had demonstrated that its said paste was the only one of a number of competitive products that could be safely used without injury to the teeth, and (2) that it was safer to use the paste involved than the others due to presence therein of two polishing agents, and with capacity and tendency so to deceive and to divert trade to it from competitors:

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

Mr. PGad B. Morehouse for the Commission.
Ashcraft & Ashcraft, of Chicago, Ill., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Illinois corporation engaged in the sale of a tooth paste, and with principal place of business in Chicago, with adver-

tising falsely or misleadingly as to disinterested and expert institutional tests of its said product and its competitors', and results thereof, and qualities or properties of said product, and with using misleading trade name, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as aforesaid, makes such statements and representations in advertisements published, circulated, and displayed, as that its so-called "Dr. West's Tooth Paste" (abbreviation from the trade name "Western Company" under which it conducts its business), in contrast with unidentified competitive products, some of which "may clean" and some of which "do not", "does clean and doubly polish teeth—quickly, safely", and refers to and features through depictions and descriptive matter in its said advertising results of tests assertedly made in the laboratory of a great American university as demonstrating the truth of its aforesaid assertions;¹ facts being tests and pictures were not authorized, checked, or adopted by a great university, but were the work (mostly carried on elsewhere than in said university's laboratory) of a chemist associated with such university, and the conditions of the tests were such that truth of statements made to effect that respondent's tooth paste was the only one of numerous competitive products that cleans, without scratching or injuring enamel on teeth, or can be safely used, was not established when the statements were made.

Respondent, further, as charged, accompanied a picture of two teeth with the statement, "Safely? Magnified photo of enamel after ten years' brushing with Doctor West's. No scratching or injury to the enamel", facts being "ten year brushing" referred to consisted of exposing an extracted tooth to brushing by a machine for about eight hours.

Respondent further, as charged, attributed the asserted safe effectiveness of its "Dr. West's tooth paste", to presence therein of "Two gentle polishers—the finest known", etc.—"can't scratch enamel, but working together * * * can and do polish—as no one polisher alone can without risk of harshness"; fact being that claim of any peculiar merit due to "double polishing" or two polishers "working together" is without substantial basis.

The use by respondent, as alleged, of the trade name "Dr. West's", and the statement and representations of the respondent in its advertisements, "* * *" have the capacity and tendency to deceive and

¹ Statements alleged in the complaint to have been made by respondent, in the foregoing connection, are set forth *infra* in the findings.

mislead, and do deceive and mislead, the public into the belief that respondent's tooth paste originated as and is the product of scientific and professional knowledge and skill of an individual, Dr. West, and that tests of a great university show it to be uniquely superior in effectiveness in cleaning the teeth and in safety to the teeth combined compared with many other unidentified tooth pastes on the market, thereby making said claims of superiority applicable by the public to any other tooth paste, and the use of said trade name, statements, and representations by respondent thereby have unfairly competed with and injured respondent's competitors in the sale of their products of tooth paste in interstate commerce"; all to the prejudice of the public and 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 (38 Stat.L. 717), the Federal Trade Commission issued and served a complaint upon the respondent Western Bottle Manufacturing Co., charging it with the use of unfair methods of competition in interstate commerce, in violation of the provisions of said act.

Respondent having entered its appearance and filed its answer to the complaint herein, hearings were had and evidence was introduced upon behalf of the Commission and respondent before a trial examiner of the Commission duly appointed thereto. Whereupon this proceeding came on for final hearing before the Federal Trade Commission upon the record and briefs, oral argument being waived. The Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Western Bottle Manufacturing Co., is a corporation organized and existing under the laws of the State of Illinois, with its principal place of business located in the city of Chicago. It is, and has been engaged for several years last past, under the trade name of "Western Company", in the sale and distribution of a tooth paste under the trade designation "Dr. West's Tooth Paste", manufactured for it by the Comfort Manufacturing Co. of Chicago. In the conduct of its business as aforesaid, respondent causes its said product, Dr. West's Tooth Paste, to be shipped and transported from the State of Illinois into various other States

throughout the country. There are many manufacturers of tooth pastes whose products are in direct and substantial competition with respondent's product in the trade above described among the States.

PAR. 2. In the course and conduct of its business as aforesaid, with the purpose and effect of creating a large number of sales to the ultimate purchasers, respondent caused its tooth paste to be advertised widely in the Saturday Evening Post, Ladies Home Journal, Chicago Tribune, and other magazines and newspapers and window display placards. By means of such advertisements, respondent caused to be published photographic reproductions of the results of certain tests purporting to show the comparative cleaning, scratching, and erosive properties of its own and nine unnamed tooth pastes, to the disparagement of the latter, representing that the results were measured and photographed by a great university laboratory; that these results showed that Dr. West's was the only one of the ten that safely cleaned teeth without injury; that Dr. West's tooth paste was not abrasive by reason of some peculiar merit due to the presence among its ingredients of two polishing agents instead of one. In such advertisements respondent made the following statements and representations among others:

Some may clean; Some do not! Doctor West's Tooth Paste does clean and doubly polish teeth—quickly, safely.

(Followed by three pictures of human mouths displaying the upper teeth and showing different degrees of discoloration and cleanliness.)

Results measured and photographed by a great university laboratory. This is the most sensational demonstration of a tooth paste ever made; showing you exactly what it will do for your teeth in advance. These are accurate photographs of results of a great American university. This is what the laboratory found: (1) Some dentifrices do not clean. (2) Some dentifrices clean but injure enamel. (3) Some dentifrices do neither. (4) Doctor West's Tooth Paste cleans teeth—quickly, safely. It does not in any way scratch or injure tooth enamel.

In other forms of respondent's advertising, in connection with a picture of a tube of paste bearing the words "Doctor West's Tooth Paste", appeared:

Only tooth paste that cleans teeth safely; in university laboratory tests of ten dentifrices.

Just how sure are you about the tooth paste you used this morning? Here are some startling facts from a great university laboratory where ten dentifrices have just been tested. Seven do not clean, and of these seven, two injure enamel. Two dentifrices clean, but both injure enamel. Only one dentifrice—Doctor West's cleans teeth without injury to enamel.

What it really means is that you need guess no longer, in choosing a dentifrice to keep your teeth safely white and clean.

Here is what you learn from scientific tests, initiated and carried out in the laboratory of a great university. Ten typical tooth pastes were tested.

Some of them did not clean but scratched enamel. Some did not scratch and did not clean. Sharply singled out against this background of neutral or negative performance, Doctor West's Tooth Paste proved itself to be unquestionably outstanding—for (a) Really cleaning the teeth; (b) Without scratching the enamel!

Remarkable double polishing (no scouring) added to cleansing, provides the safe effectiveness Doctor West's Tooth Paste now demonstrates. Two gentle polishers—the finest known; especially perfected. They can't scratch enamel, but working together they can and do polish—as no one polisher alone can without risk of harshness.

PAR. 3. The facts and circumstances surrounding the tests and photographs with which this advertising is concerned are as follows:

For more than fifteen years last past an associate professor of biochemistry in the Pathological Department of University of Chicago has been employed by the Otho S. A. Sprague Memorial Institute to conduct research work. This institute has a fund of money which was set aside by Otho S. A. Sprague at the time of his death for the alleviation of the ills of mankind. It was stipulated by him that the men who were in charge of the work were to be connected with some large university, and the trustees of the institute made such a connection with the University of Chicago. All of the tests and most of the photographs referred to in paragraph 2, supra, were made by this associate professor who received his entire salary directly from the board of trustees from the Sprague Memorial Institute. His duties were confined exclusively to the above research work, and he did not instruct students at the university. In the spring or summer of 1929 he began some research work into diet and its effect upon the mouth and gums, at the instance of the Chicago Dental Research Club which was a club of some twelve practicing dentists who for eighteen years had been investigating various dental subjects. This work began in 1929 in an orphan asylum at Mooseheart, Ill., and the club paid the biochemist a salary. The chemist's testimony, however, was that the first work was done at his laboratory in Billings Hospital at the University of Chicago, where he had obtained a number of the patients of the Dental Club who gave him their history as to food, blood, dentifrices, etc.; he there tested the cleansing and scratching efficacy of different dentifrices used by these patients. From July, 1929, to December, 1930, this scientist received compensation and supplies from a competitor of respondent. Tests of scratching and abrasions were made on extracted teeth. Numerous photographs were taken showing the results with a camera having a lens producing 60 diameters magnification. Experiments were continued and

numerous photographs taken at the orphans home in Mooseheart, Ill., in October, 1929, using some 200 children for these experiments.

On January 27, 1930, the professor opened negotiations with respondent by writing for its tooth paste formula. By that time he had conducted scratching experiments on over twenty brands of tooth paste and cleansing experiments on seven brands. Such experiments included Dr. West's tooth paste and that of six leading competitive brands and the teeth of at least twenty patients had been photographed. At that time it appeared that Dr. West's tooth paste scratched the enamel. Respondent explained this to the professor by telling him that it was an old preparation of paste that had been tested, whereupon respondent's new formula was tested and found not to scratch. Respondent wished to have some of the photographs of experimental work showing the comparative cleansing action and scratching experiments with tooth pastes already tested, and also wanted further experiments and photographs made. Thereupon respondent placed this biochemist upon its pay roll and supplied needed equipment, including a machine for abrasion tests. Comparative erosive and scratching qualities of different brands of tooth paste on extracted teeth were tested by a certain tabulated number of brushing strokes delivered under a specific pressure. Under this arrangement \$2,000 was paid this employee of the Sprague Institute from May, 1930, to January, 1931, out of which he bought certain lenses and supplies amounting in all to about \$623. Some time in the fall of 1930 he was officially informed as a member of the Otho S. A. Sprague Memorial Institute that he had no right to make financial connections with outside interests and on January, 1931, he discontinued such connections.

On November 6, 1930, on the letterhead of the Otho S. A. Sprague Memorial Institute, criticising respondent for the use to which it had put his tests, the professor wrote to it, in part:

The statement that this work was carried out in the laboratories of a great university is only partially correct. Most of it was done elsewhere. The university is certainly not responsible for any of this work because as I have explained to you before a university endorses a piece of research by allowing this work to be published in a scientific journal. All reference to the university should, therefore, be eliminated from your advertising copy until the results have been published.

In his testimony he explained this written statement as being untrue and "very poor psychology" on his part, exercised in the hope of deterring respondent from using that form of advertising, and he took the position that his work upon which respondent's advertising was based was university work. During the 15 years of his

connection with the Sprague Institute, such of his other research investigations as had been formally approved by the university as an institution were published. At the time of the taking of the testimony in this case the research investigations upon which this respondent's advertising was based had not been published nor formally approved by the university as an institution.

Some of the photographs used in connection with the aforesaid advertising had no connection with the tests but were photographs taken in a commercial studio and substituted in the advertising for the photographs which had been taken by the professor for the reason that in the opinion of respondent's advertising counsel, the test photographs in some instances were too repulsive in appearance to give the proper advertising appeal.

After considering all the evidence, the Commission finds that the tests referred to in the aforesaid advertisements were not tests authorized, made, checked, and adopted by a university; and that the pictures of teeth published in connection with said advertising claims were not the result of the work of a university nor did any university as an institution authorize, approve, or adopt such comparative photographic results.

PAR. 4. The Commission finds to be false and misleading respondent's representations made expressly and by implication in its advertising that its tooth paste is the only one of ten competitive tooth pastes that can be used safely or without injury to the teeth.

The cleaning tests made under the circumstances above set forth were made briefly as follows: Sixty persons whose teeth had been stained with a solution to disclose plaques or dirty places on them brushed them under the direction of the professor for a period of three minutes with a wet soft tooth brush saturated with respondent's tooth paste and other groups of twenty or more persons made similar use of nine other typical tooth pastes. Respondent's tooth paste and two of the other brands almost invariably removed the plaques completely from the front teeth except in places where the brush bristles could not reach and thus produced the same effect as that given by a hard tooth brush without the use of any paste. The other seven brands did not usually remove all of the plaques and in some cases appeared not to remove any of them.

To ascertain the comparative scratching qualities of the different tooth pastes tested, a portion of the enamel of an extracted tooth free from scratches was brushed a thousand strokes or 100,000 strokes under a pressure of 50 grams or about one-ninth of a pound with a tooth brush kept saturated with respondent's paste. If the tooth

developed scratches it was polished before each brushing. The test was repeated five times with each paste. After each brushing the enamel was magnified sixty diameters and examined for scratches. The results as reported for respondent showed that some of the pastes scratched the enamel each time tested, some never scratched and some gave variable results, the material from one tube scratching and that from another not scratching and that samples of respondent's paste purchased at drug stores scratched enamel and other samples so purchased as well as samples furnished by respondent did not scratch. It was later reported to respondent by this professor that four of the competitive brands scratched, two of which cleaned and two of which failed to clean. Respondent changed its formula for its paste to include English instead of domestic chalk and put the new product on the market in 1929. Apparently the samples of its paste that scratched enamel were made under the old formula and those that did not scratch were made under the new formula. The tests on one of the other nine brands described by respondent as cleaning but scratching were made prior to May, 1930. In August, 1930, the makers of this brand changed their formula so that after October, 1930, the paste described in respondent's advertisements had either been removed from the market or was being gradually replaced by a new product not covered by the tests referred to by respondent. The testimony of a professor of pharmaceutical chemistry in the University of Iowa, for twenty-one years, and who also was consulting chemist for one of respondent's competitors showed that his tests for abrasiveness and scratching qualities in nine of the competitive tooth pastes referred to in respondent's advertising disclosed through a lens magnification of ten diameters no apparent abrasiveness or scratching.

For the abrasion test the professor employed by respondent ground flat the surface of the crown of an extracted tooth and brushed under pressure of 400 grams or about nine-tenths of a pound with between 50,000 and 150,000 strokes. Using the ten typical tooth pastes he found that all of the ten pastes were somewhat abrasive but showed a marked difference in degree. It was estimated without contradiction that such a brushing was the approximate equivalent, in pressure and number of strokes, of ten years' twice-a-day brushing by the ordinary user.

From a consideration of the entire evidence upon this point it must be concluded that it is largely a matter of interpretation as to whether the scratches disclosed by a magnifying glass in the tests are harmful to the enamel. Dentists who had carefully examined

the photographs of the result of the tests upon which respondent's claims were based and who were unquestionably disinterested did not consider that the other efficiently cleaning tooth pastes sold by competitors showed injury to enamel but one of these conceded on cross examination that every scratch is an injury to enamel. These and most other dentists appearing as witnesses had used one or another of the competitive brands on his own teeth. The scientist employed to make these tests reported to respondent in November, 1930, that he himself did not consider a dentifrice harmful just because it scratched the teeth, but he did believe that scratches and other evidences of abrasion constituted an injury and cautioned respondent not to represent this injury as of serious consequence as it could not be concluded even from the strenuous abrasion test that even the more abrasive dentifrices are definitely harmful, the actual amount of enamel removed being small in every case.

PAR. 5. The Commission finds that there was no basis whatever in these tests for respondent's claim relative to remarkable double polishing with two dental polishers and that as a matter of fact such claim gave the misleading impression that it was safer to use Dr. West's tooth paste than competitive tooth pastes merely because the former contained two polishing agents. The paste contained a very harsh abrasive, celemite or silicon dioxide, toned down or diluted to the degree of abrasiveness respondent desired by the admixture of high-grade chalk which is a much milder abrasive. The tooth paste is slightly abrasive.

PAR. 6. Respondent was charged in the complaint with falsely representing a certain photograph of tooth enamel to have been taken after ten years' brushing with Dr. West's whereas the ten years' brushing consisted of exposing an extracted tooth to brushing by a machine for about eight hours. The Commission finds the fact to be that, in all except one of its advertisements produced in evidence, the representations made by respondent upon this point were that the photographs showed the enamel after the equivalent of ten years' brushing. The Commission finds that this was a true representation.

PAR. 7. It was further charged in paragraph 3 of the complaint that in using the trade name, Dr. West's, respondent was deceiving the public into believing that the tooth paste originated and was the product of the scientific initiative and skill of an individual physician. The answer shows that Dr. George N. West, a practicing dentist, who, in 1920, endorsed and gave his name to respondent's tooth brush products, has ever since been associated with respondent

in a consulting capacity as to composition of the tooth paste. The facts adduced by the evidence fully support respondent's answer in that respect.

PAR. 8. Complaint issued herein on February 8, 1932. On June 30, 1931, respondent had formal notice that the Commission was investigating its aforesaid methods of competition. The evidence shows that the last reference to university by respondent on the face of its magazine advertisements was the November 21, 1931, issue of the Saturday Evening Post. However, up until the end of January, 1932, in response to coupons printed in such magazine advertisements, respondent did send out advertising matter containing reference to the great university laboratory tests and photographs as heretofore set out. February 28, 1931, was the last date upon which the actual number of competitive tooth pastes were referred to with the exception of the reference to them in the advertising matter sent out in response to coupons. The window display cards containing the false and misleading representations were abandoned by November 15, 1931. Respondent's whole advertising policy from time to time has been amended and corrected. While it was stated in both the answer and the evidence that respondent had no intention of resuming any reference to the so-called university tests or photographs or to the comparative results of such tests to the disparagement of its competitors, its advertising managers could not state what its future advertising policy would be. The change in its advertising policies insofar as it affected competitors was due, in part at least, to the action of this Commission which, therefore, is not assured that in the absence of some restraint the practices complained of would not be resumed.

PAR. 9. Respondent's use of the foregoing false and misleading advertising has a capacity and tendency to deceive and does deceive retailers and ultimate purchasers throughout the various States of the United States into the belief that tests and photographs authorized, made, checked, or adopted by a university have demonstrated that Dr. West's tooth paste is the only one of a number of competitive tooth pastes that can be safely used without injury to the teeth and that it is safer to use Dr. West's tooth paste than competitive tooth pastes merely by reason of the fact that Dr. West's contains two polishing agents, when such are not the facts. The Commission finds that such methods of advertising on the part of respondent have had, and if resumed, again would have a distinct tendency to divert trade from competitors to the respondent.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having come on for final hearing by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, the testimony taken, and briefs of counsel for both the Commission and the respondent; both sides having waived oral argument, and the Commission having made its findings as to the facts and conclusion that respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondent, Western Bottle Manufacturing Co., a corporation, its agents, representatives, servants, and employees, in connection with the sale and distribution in interstate commerce of a tooth paste under the trade name of Dr. West's Tooth Paste cease and desist from representing to customers or prospective customers, either directly or by implication:

1. That certain tests purporting to show the comparative cleansing, scratching and erosive properties of its own and nine unnamed tooth pastes, to the disparagement of the latter, are tests which have been authorized, made, checked or adopted by a university unless and until such time as some university, as an institution, shall have so authorized, made, checked, or adopted such tests;

2. That certain pictures of teeth purporting to show the comparative results of such tests are the work of a university unless and until such time as some university, as an institution, shall have authorized, approved, or adopted such comparative photographic results;

3. That Dr. West's tooth paste is the only one of any number of competitive tooth pastes that can be used safely or without injury to the teeth;

4. That it is safer to use Dr. West's tooth paste than competitive tooth pastes merely by reason of the fact that Dr. West's contains two polishing agents.

Order

17 F.T.C.

It is further ordered, That the complaint be, and it hereby is dismissed as to so much of paragraphs 2 and 3 thereof as charge respondent with an unfair method of competition in representing that a certain magnified photo of tooth enamel, after ten year's brushing with Dr. West's, showed no scratching or injury to the enamel, and in the use by respondent of the trade name, Dr. West's.

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

Complaint

IN THE MATTER OF

H. & S. PUBLISHING 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 2070. Complaint, Oct. 21, 1932—Decision, Dec. 12, 1932

Where a corporation engaged in publication and sale of a monthly magazine, made such representations in connection with sale of a certain variety of soybeans sold in conjunction with subscriptions to its said publication, as "*Coffee 1 cent per pound—Grow your own coffee and cut down the high cost of living. The domestic coffee berry makes a delicious, nourishing drink, * * * send 25 cents and 10 cents extra * * * and we will send you our publication for one year and one packet of seed * * ** You can raise all the coffee you want and sell the balance to your neighbors * * *", facts being seed in question was not that of a coffee berry; with tendency to mislead and deceive prospects into believing that through subscribing they could buy, grow, and produce coffee at a cost of 1 cent per pound, and with result of bringing about their subscriptions, and purchases of said seed in reliance upon truth of such misleading and false representations, and a tendency to divert trade from and otherwise injure its competitors:

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

Mr. PGad B. Morehouse for the Commission.

Mr. Stephen A. Day, of Chicago, Ill., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Illinois corporation engaged in publishing, soliciting, and obtaining annual subscriptions for, and circulating a monthly periodical, and also in the sale, in conjunction with subscriptions, of packets of seed advertised and sold by it as the seed of "coffee" or "domestic coffee berry", and with principal place of business in Chicago, with advertising falsely or misleadingly as to nature of product, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as aforesaid, in its advertisements of said seed, represents the same as "Coffee 1 cent per pound" and invites the prospect to "Grow your own coffee and cut down the high cost of living",¹ etc., thereby representing to prospective sub-

¹ The advertisement alleged in the complaint is set forth in the findings *infra* at page 167.