

IN THE MATTER OF

BENJAMIN D. RITHOLZ, ET AL., AS INDIVIDUALS AND AS COPARTNERS, TRADING AS INTERNATIONAL OPTICAL CO., ETC.; DR. RITHOLZ AND SONS, INC., ALSO TRADING AS INTERNATIONAL OPTICAL CO., ETC.; AND MORRIS I. RITHOLZ, ET AL., AS INDIVIDUALS AND AS STOCKHOLDERS OF DR. RITHOLZ & SONS, INC., AND ALSO TRADING AS INTERNATIONAL OPTICAL CO., ETC.

COMPLAINT (SYNOPSIS), FINDINGS AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 3 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 2069. Complaint, July 13, 1933¹—Decision, Apr. 6, 1934

Where a firm engaged under various trade names in the manufacture and sale of spectacles, spectacle frames and lenses for spectacles; the corporate successor of said firm (four of the five stockholders of which corporation were composed of former partners thereof), engaged both in its own corporate name and under various trade names in carrying on the business theretofore conducted by said firm; and the aforesaid stockholders, engaged in their individual capacity in carrying on under the trade names employed by said corporation, and under other trade names, the business of manufacturing and selling spectacles, spectacle frames and lenses for spectacles in commerce among the various States;

- (a) Variously represented through circulars and advertisements that they furnished their said spectacles free or without cost to purchasers and prospective purchasers, or free without a cent of cost, through statements advising prospective customers to write them for their "free offer", and setting forth that the company was "offering five thousand more sample pairs free" of their new kind of guaranteed spectacles and inviting the prospect to write in for their "free offer", the facts being they did not furnish their spectacles free to customers, as represented, but either required the purchaser wishing to take advantage of the supposed free offer, to make an initial payment, following which they sent the spectacles C. O. D., or required him to sell a certain number, with a pair for himself as compensation, and did not refund the purchase price to those dissatisfied, notwithstanding their guarantee so to do;
- (b) Variously represented through circulars and/or advertisements that their so-called "Marvel Eye Tester" for the use of customers and prospective customers for self-testing, had been "endorsed by the world's most famous eye specialists and eye hospitals", afforded tests, according to a "Washington scientist", "better than optometrists'", had been found "scientific and practical for testing eyes" by "one of the most leading professors of ophthalmology in the world", and had been endorsed by "the world's largest eye hospital", and that through use thereof "you will be able to furnish better glasses by mail than the average optometrist can in his own

¹ Supplemental and amended.

office," and made numerous other representations and statements of similar tenor, the facts being that said various statements and representations were false and without any basis or foundation in fact, the lenses in the device in question, and a substantial number of those in the spectacles made and sold by them, were ground from window glass instead of crown glass, from which alone satisfactory lenses for spectacles and optical instruments can be ground, and use of spectacles obtained through the use of said device is injurious to the wearer thereof, and gravely endangers his sight; and

- (c) Various published and used in their circulars and advertising matter copies of purported letters from specialists, together with pretended photographs thereof, upon purported reproductions of letterheads displaying names of well known institutions, and places, endorsing the scientific merit and value of said tester, facts being said pretended reproductions and photographs were not authentic, and said pretended communications were false and unjustified and the supposed specialist signers thereof had given neither such, nor any other, endorsements of the aforesaid device, but had only, at the most, in one or two cases, written one of the individuals herein concerned respecting an entirely different instrument;

With capacity and tendency, (a) to mislead and deceive dealers and the purchasing public into believing that, (1) they would be furnished free of cost, spectacles, lenses and spectacle frames, as aforesaid, and, (2) that through use of said device, self-examination of eyes could be successfully accomplished, and proper lenses prescribed, and, (3) that the statements in said fictitious testimonials were true and actually made by the persons purporting to have made them, and, (b) to induce purchase from said firm, corporation or individuals, of the products in question in reliance upon the aforesaid erroneous beliefs, and divert trade to them from competitors, including those who do not make such representations in connection with the sale or offer of their own products, and with result that substantial competition in said products throughout the various States was by them substantially injured:

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

Mr. Edward L. Smith for the Commission.

Mr. John A. Nash and *Mr. Aaron Soble*, of Chicago, Ill., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondents Benjamin D. Ritholz et al., individually and as co-partners, trading as International Optical Co., and under other trade names, and engaged for more than three years immediately prior to April 1, 1931, in the manufacture of spectacles, spectacle frames and lenses for spectacles, and in the sale and distribution thereof in commerce among the States, and with principal office and branches, in

Chicago; respondent, Dr. Ritholz & Sons, Inc., an Illinois corporation, organized on or about April 1, 1931, and, since said date, successor to and conductor of, the business immediately before referred to, and also trading as International Optical Co. and under various other trade names; and Maurice I., F. J., Ante, Samuel J., and F. Ritholz, as individuals and as stockholders of the aforesaid corporation (also trading, individually, as International Optical Co., etc.)² with filling orders with other than product advertised, and with advertising falsely or misleadingly as to free product and endorsements and testimonials, in violation of the provisions of Section 5 of such Act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent partners, respondent corporation, and respondent stockholders thereof, as charged, engaged as aforesaid, in competition with others similarly engaged, advertised in circulars sent through the mails, and in newspapers, magazines and periodicals of general circulation throughout the United States, to sell to the purchasing public a certain well known kind and make of spectacles, frame and lenses made by competitors, notwithstanding which they delivered to purchasers ordering such product, in response to said advertisements, spectacles, frames and lenses of different kinds and makes, and of inferior quality.

Said respondents further, as charged, falsely represented in their said advertising that they would furnish their said spectacles, free, without cost to purchasers and prospective purchasers thereof, or free without a cent of cost, and likewise falsely represented that their said "system" had been endorsed by the world's most famous specialists and eye hospitals, and that their device or tester for self-examination of the eyes had likewise been endorsed as scientific and practicable by leading specialists and institutions having to do with the field concerned,³ the facts being that no one could furnish, as claimed, through said device better glasses by mail than the average optometrist could prescribe in his own office, and no such endorsements had been given.

Said various respondents, further, as charged, published purported letters from optometrists and physicians, endorsing the use of the aforesaid device, notwithstanding fact that said testimonials were fictitious and were never furnished by the persons named.

² The various respondents and the trade names used by them are set forth more fully in the findings, *infra*, at page 351.

³ The statements made, as alleged in the complaint, may be found set forth in the findings, *infra*, at pp. 358, 360, 361.

Said representations, advertisements and statements, and their use, as charged, had and (in the case of respondent corporation and stockholders) have the capacity and tendency to mislead and deceive the purchasing public into the belief that, (1) in purchasing aforesaid products from respondents, they are purchasing the products of the manufacturers, as represented, (2) customers will be furnished said products free of cost, (3) through use of said tester, eyes can be successfully self-examined by customers, and proper lenses prescribed, and that, (4) statements in the testimonials in question were true and actually made by the persons purporting to have made them, and to induce said public and dealers to purchase said products in such erroneous beliefs, and divert trade from competitors, who, as manufacturers and dealers, do not make such misrepresentations; to the substantial injury of a substantial competition throughout the States, and 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, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, on July 13, 1933, issued and served its supplemental and amended complaint in this proceeding against respondents, Benjamin D. Ritholz, Morris I. Ritholz, Samuel J. Ritholz, F. Ritholz, and Ante Ritholz, as individuals and as co-partners trading as International Optical Co., Tru Sight Optical Co., Capitol Spectacle Co., Nu Way Optical Co., U. S. Spectacle Co., and under various other trade names; Dr. Ritholz & Sons, Inc., a corporation also trading as International Optical Co., Tru Sight Optical Co., Capitol Spectacle Co., Nu Way Optical Co., U. S. Spectacle Co., and under various other trade names, and the said Morris I. Ritholz, F. J. Ritholz, Ante Ritholz, Samuel J. Ritholz, and F. Ritholz, as individuals and as stockholders of said Dr. Ritholz & Sons, Inc., and also trading as International Optical Co., Tru Sight Optical Co., Capitol Spectacle Co., Nu Way Optical Co., U. S. Spectacle Co., and under various other trade names.

After the issuance of the said supplemental and amended complaint, and the filing of respondent's answer thereto, testimony and evidence were received, duly recorded and filed in the office of the Commission; thereafter the proceeding regularly came on for

final hearing before the Commission on the supplemental and amended complaint, the answer thereto filed by the respondents, testimony and evidence, and a stipulation entered into on May 27, 1933, between the attorney for the aforesaid respondents and the chief counsel of the Federal Trade Commission, by which it was agreed that in the trial of the proceeding the Commission was able to produce as witnesses in numerous other cities of the United States, numerous other optometrists, ophthalmologists and other scientists who would, if called as witnesses, testify in the same substance as to scientific matters as Dr. Pine, Dr. Sheppard and Dr. Huizinga had already testified in the proceeding, and briefs of counsel for the Commission and counsel for the respondents (but without oral argument, counsel for the respondents having waived oral argument), and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Benjamin D. Ritholz, Morris I. Ritholz, Samuel J. Ritholz, F. Ritholz, and Ante Ritholz were for more than three years until April 1, 1931, or thereabouts, copartners, doing business under the trade names, International Optical Co., Tru Sight Optical Co., Capitol Spectacle Co., Nu Way Optical Co., U. S. Spectacle Co., and under various other trade names, with their principal office and place of business and branches thereof located in the city of Chicago, State of Illinois. Until approximately April 1, 1931, they had been for more than three years immediately prior thereto engaged, under the trade names hereinbefore mentioned and under various other trade names, in the manufacture of spectacles, spectacle frames and lenses for spectacles, and in the sale and distribution thereof in commerce between and among the various States of the United States. While doing business under said trade names and under various other trade names, they caused their products, when sold by them, to be shipped from their principal place of business and branches thereof in the city of Chicago, aforesaid, into and through other States of the United States to the purchasers thereof located in such States, other than the State of Illinois. In the course and conduct of said business they were in substantial competition with other partnerships and with individuals and corporations engaged in the sale and distribution of spectacles, spec-

tacle frames and lenses for spectacles, in commerce in various States of the United States and between and among the various States of the United States.

PAR. 2. Respondent, Dr. Ritholz & Sons, Inc., is a corporation organized on or about April 1, 1931, under and by virtue of the laws of the State of Illinois, with its principal office and place of business and branches thereof located in the city of Chicago, State of Illinois. The said respondent, Dr. Ritholz & Sons, Inc., upon its organization acquired and has since continued the business which prior thereto had been conducted by the respondents, Benjamin D. Ritholz, Morris I. Ritholz, Samuel J. Ritholz, F. Ritholz, and Ante Ritholz, as described in paragraph 1 hereof. The said Dr. Ritholz & Sons., Inc., since April 1, 1931, or thereabouts, has been engaged in the manufacture of spectacles, spectacle frames and lenses for spectacles, and in the sale and distribution thereof in commerce between and among the various States of the United States. It causes and has caused said product, when sold by it, to be shipped from its principal place of business and branches thereof in the city of Chicago, aforesaid, into and through States of the United States other than the State of Illinois, to the purchasers thereof located in such States. In the course and conduct of its said business it is now, and has been at all times since its incorporation, in substantial competition with other corporations and with individuals and partnerships engaged in the sale and distribution of spectacles, spectacle frames and lenses for spectacles, in commerce in various States of the United States and between and among various States of the United States. Its stockholders since its organization have been and still are the Respondents Morris I. Ritholz, F. J. Ritholz, Ante Ritholz, Samuel J. Ritholz and F. Ritholz.

In addition to conducting its business described herein under its corporate name, said Dr. Ritholz & Sons, Inc., now trades, and ever since its incorporation has traded, also under the names, International Optical Co., Tru Sight Optical Co., Capitol Spectacle Co. Nu Way Optical Co., U. S. Spectacle Co., and under various other trade names, which other trade names have been used and still are being used also by the aforesaid respondent stockholders of said Dr. Ritholz & Sons, Inc., in the operation between and among the several States of the United States of a business and/or businesses consisting of the manufacture of spectacles, spectacle frames and lenses for spectacles, and in the sale and distribution thereof in commerce between and among the various States of the United States. The said respondent corporation trading under the aforesaid trade names and

the said stockholders of the said corporation also trading under said various trade names cause and have caused said products, when sold by them, to be shipped from their principal place of business and branches thereof in said city of Chicago, into and through other States of the United States, to the purchasers thereof located in such States other than the State of Illinois. In the course and conduct of their said business they are and have been since April 1, 1931, or thereabouts, in substantial competition with partnerships, individuals and corporations engaged in the sale and distribution of spectacles, spectacle frames and lenses for spectacles, in commerce in various States of the United States and between and among the various States of the United States.

PAR. 3. In the course and conduct of their business as described in paragraph 1 hereof, the respondents mentioned in said paragraph 1, for more than three years immediately prior to April 1, 1931, sold and distributed their products to dealers therein and directly to the purchasing public, generally through the use of and by means of the United States mails. And in the course and conduct of their business as described in paragraph 2 hereof, respondents mentioned in said paragraph 2 sell and distribute, and since April 1, 1931, have sold and distributed their products to dealers therein and directly to the purchasing public, generally through the use of and by means of the United States mails. In promoting the sale of their products the respondents named in paragraph 1 hereof advertised until April 1, 1931, or thereabouts, through and by means of circulars transmitted by them through the mails and in newspapers, magazines and periodicals of general circulation throughout the United States. The respondents named in paragraph 2 hereof, in promoting the sale of their products advertise, and have advertised through and by means of circulars transmitted by them through the mails and in newspapers, magazines, and periodicals of general circulation throughout the United States.

PAR. 4. There is in the record no proof that the respondents herein sold their products as the products of any other company except the Shuron Optical Co., Inc.

On May 10, 1932, in the United States District Court, Northern District of Illinois, Eastern Division, in a suit in equity brought by said Shuron Optical Co., Inc., plaintiff, against respondents herein, Dr. Ritholz & Sons, Inc., a corporation; Morris I. Ritholz, Samuel J. Ritholz; Mrs. Ante Ritholz, and Benjamin D. Ritholz, as individuals; and said corporation and said individuals trading as Capitol

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Spectacle Co., defendants, the following decree and injunction was entered:

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SHURON OPTICAL COMPANY, INC., PLAINTIFF

v.

DR. RITHOLZ & SONS, INC., A CORPORATION; MORRIS I. RITHOLZ, SAMUEL J. RITHOLZ; MRS. ANTE RITHOLZ, AND BENJAMIN D. RITHOLZ, AS INDIVIDUALS; SAID CORPORATION AND SAID INDIVIDUALS TRADING AS CAPITOL SPECTACLE COMPANY, DEFENDANTS

In Equity No. 11,426

FINAL DECREE AND INJUNCTION

This cause came on to be heard this day, and thereupon, on motion of Wilkinson, Huxley, Byron & Knight, solicitors and of counsel for the above-named plaintiff and consent thereto by the solicitor and counsel for the above-named defendants, it is—

Ordered, adjudged and decreed as follows:

1. Plaintiff and its predecessors in business have for many years past, and plaintiff now is, engaged in the manufacture and sale, in Interstate Commerce, of eyeglass frames and spectacles, lenses for the same, and various optical instruments and appliances, using for the identification of such manufactures the arbitrary name "Shur-On", and have extensively advertised at large expense and thereby built up a large and lucrative interstate trade in manufactures so identified.

2. Defendant corporation, Dr. Ritholz & Sons, Inc., and the defendants, Morris I. Ritholz, Samuel J. Ritholz, Mrs. Ante Ritholz, and Benjamin D. Ritholz, as individuals, copartners or in other business relationships, and under various trade names, have, prior to the commencement of this suit, in the city of Chicago and elsewhere, and in Interstate Commerce, without the license or allowance of the plaintiff and in violation of the good will of the plaintiff, used plaintiff's trade-mark and trade-name "Shur-On" in association with eyeglasses, eyeglass frames, lenses or other optical goods not made by the plaintiff, both in advertising such goods and offering such goods for sale, and such use of plaintiff's trade-mark and trade-name is calculated to cause confusion in the mind of the purchasing public and lead to the purchase of defendant's said manufactures in lieu of plaintiff's manufactures.

3. That an injunction issue out of and under the seal of this Court, directed to the said defendants, Dr. Ritholz & Sons, Inc., a corporation, Morris I. Ritholz, Samuel J. Ritholz, Mrs. Ante Ritholz, and Benjamin D. Ritholz as individuals, also to said corporation and individuals trading as Capitol Spectacle Co., and each of them, their associates, attorneys, solicitors, clerks, servants, agents, and workmen, enjoining and restraining them, and each of them, without the license of plaintiff, from associating the name "Shur-On" with any eyeglasses, eyeglass frames, lenses or other optical goods not made by plaintiff, either in the advertisement of such goods, the offering of the same for sale, or in any manner using said trade-mark or trade-name to advertise the goods of defendants.

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4. The parties hereto having settled all matters of controversy between them as to damages and profits, no damages or profits shall be recovered by plaintiff from defendants or any of them; and each party shall pay its own costs.

JAMES H. WILKERSON,

U. S. District Judge.

The above-named defendants hereby consent to the entry of the foregoing decree.

JOHN A. NASH,

Solicitor for Defendants.

CHICAGO, ILLINOIS, May 10, 1932.

In the bill of complaint in the said proceeding in which the foregoing decree was entered the plaintiff, the said Shuron Optical Co., Inc., complained against the defendants therein that said defendants well knowing the rights of the plaintiff in the trade-mark "Shur-On", in connection with the manufacture and sale of eyeglasses, spectacle frames, and mountings, and contriving to injure it and to injure and impose on the public did, against the will of the plaintiff, unlawfully and wrongfully advertise in newspapers and other publications of general circulation and in circulars sent through the mails, "Shur-On" glasses, which were not the products of the plaintiff and did unlawfully and wrongfully supply in interstate commerce persons offering to buy from the defendants eyeglasses or spectacle frames or mountings not manufactured or sold by the plaintiff under such circumstances that the origin or source of the said articles so sold was not apparent to the purchasers and without disclosing to the purchasers that said articles sold by defendants were not genuine "Shur-On" articles but on the contrary were eyeglasses or spectacle frames or mountings of other manufacture.

PAR. 5. In the course and conduct of their business hereinbefore described, the Respondents mentioned in paragraph 1 hereof, for more than three years immediately prior to April 1, 1931, or thereabouts, represented, and the respondents named in paragraph 2 hereof, since April 1, 1931, have represented, in their circulars and advertisements to furnish to prospective users of spectacles, such spectacles free without cost to such purchasers and prospective purchasers or free without a cent of cost, when in truth and in fact such spectacles were not furnished by said respondents free, or free without cost, or free without a cent of cost. Among such advertisements is the following published in the November 20, 1930, issue of the Camden (Ark.) News:

NEW KIND OF SPECTACLES

5,000 SAMPLE PAIRS OFFERED FREE

Chicago, Ill.—A new spectacle has been produced which is guaranteed against breaking or tarnishing and is a great improvement over other makes. They

will enable almost anyone to read the very smallest print, thread the finest needle and see far or near. Hundreds of thousands have been ordered in the last few months. Orders are pouring in from all over the world. Shur-Fit Optical Co., Suite R-51, 1014 W. Congress Street, Chicago, Ill., are offering 5,000 more sample pairs free. Just write for their free offer giving your name, age and address. They will also tell you how you can get their agency and without experience or money make from \$250 to \$500 a month.

Another of such advertisements is the following published in the December 30, 1930, issue of the Bloomington (Ind.), World:

NEW KIND OF SPECTACLES FREE

The Shur-Fit Optical Co., Suite P-134, 1014 W. Congress Street, Chicago, Ill., have produced a new kind of spectacle guaranteed against breaking and tarnishing, that enables anyone to read the smallest print and to see far or near. People everywhere are enthusiastically praising them. This company is offering 5,000 more sample pairs free. Just write them for their free offer giving your name, age and address. They will also tell you how you can get their agency and without experience or money make \$250 to \$500 a month.

Others were in the form of letters used by the respondents named in paragraph 1 and in paragraph 2 hereof. Neither the respondents named in paragraph 1 hereof nor the respondents named in paragraph 2 hereof furnished spectacles free to its customers as represented by them. Respondents named in paragraph 1 hereof and respondents named in paragraph 2 hereof, required prospective purchasers when they wished to take advantage of the offer of free spectacles, to make an initial payment before the spectacles would be sent, whereupon the spectacles would be sent to the purchaser C. O. D., or to sell a certain number of spectacles for which they would receive as compensation a pair of spectacles for themselves.

And in selling spectacles respondents named in paragraph 1 hereof and respondents named in paragraph 2 hereof sold them under the guarantee that if they were not satisfactory to the customer, upon return of the spectacles the purchase price would be refunded. The said respondents made it a practice not to abide by such guarantees and in a proceeding begun by the United States Post Office Department it was claimed that there were 7,000 cases in which, while the respondents guaranteed to refund the purchase price of spectacles purchased from them, they did not do so.

PAR. 6. In connection with, and as a part of their business between the various States of the United States, as hereinbefore described, respondents named in paragraph 1 hereof for more than three years until April 1, 1931, or thereabouts, sent to their customers and their prospective customers, a device called and designated by said respondents "Marvel Eye Tester". Of this device

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the said respondents mentioned in paragraph 1 hereof in their advertisements and circulars stated, among other things:

My system has been endorsed by the world's most famous eye specialists and eye hospital;

Washington scientist claims test with my instrument better than by optometrist;

One of the most leading professors of ophthalmology in the world finds my testing device scientific and practical for testing eyes;

World's largest eye hospital endorses my testing instrument;

By its use you will be able to furnish better glasses by mail than the average optometrist can in his own office.

When in truth and in fact the aforesaid eye-testing device has not been endorsed by any eye specialist or by any eye hospital and when in truth and in fact no Washington scientist has claimed that tests with the so-called device of the respondents are better than tests of eyesight by optometrists; and when in truth and in fact no professor of ophthalmology has found the said device scientific and practical for testing eyes; and when in truth and in fact neither the world's largest eye hospital nor any hospital has endorsed the said testing device; and when in truth and in fact no one can by the use of the said testing device will be able to furnish better glasses by mail than the average optometrist can prescribe in his own office. The said testing devices were designed by an employee of the respondents who had only a limited education and who had no scientific training.

The specialists represented by the said respondents as having endorsed the said respondent's system are Dr. Huizinga of Grand Rapids, Mich., and Dr. H. G. Walters, of Washington, D. C. None of these has endorsed the said system.

The Washington scientist represented in said advertisements to claim that tests with the said Marvel Eye Tester are better than by optometrists, is the said Dr. H. G. Walters, who does not make such claim and who never has made such claim.

The professor of ophthalmology represented in said advertisements to have stated that he finds the said testing device scientific and practical for testing eyes, is the said Dr. Huizinga, who never so found.

The eye hospital represented in said advertisements as endorsing the said testing instruments, is the Chicago Eye, Ear, Nose & Throat Hospital. Said hospital never has endorsed the said testing instrument.

The specialist who is represented in the said advertisements as claiming that by the use of the said Marvel Eye Tester the respond-

ents would be able to furnish better glasses by mail than the average optometrist can in his own office, is the said Dr. H. G. Walters. He has never made such a statement.

By the use of said Marvel Eye Tester satisfactory glasses cannot be furnished to purchasers. On the other hand the use of spectacles obtained through the use of said Marvel Eye Tester is injurious to the wearer of such spectacles and he is in grave danger, by using such spectacles, of losing his eyesight entirely. Satisfactory lenses for spectacles and optical instruments can be ground only from crown glass. Reputable manufacturers of lenses for spectacles and for optical instruments grind such lenses only from crown glass. Satisfactory lenses for spectacles and for optical instruments cannot be ground from window glass. All of the lenses used in said respondents' so-called "Marvel Eye Tester" and a substantial number of the lenses in spectacles manufactured and sold by the said respondents were ground from window glass.

PAR. 7. In connection with and as a part of their business between the various States of the United States as hereinbefore described, respondents named in paragraph 2 hereof since April 1, 1931, until July 1, 1933, or thereabouts, which was after the issuance of the original complaint in this proceeding and about the time of the issuance of the supplemental and amended complaint in this proceeding, sent to their customers and their prospective customers the same device described in paragraph 6 hereof and called "Marvel Eye Tester". Of this device the said respondents mentioned in paragraph 2 hereof in their advertisements and circulars made the same representations as set out in paragraph 6 hereof. Satisfactory lenses for spectacles and optical instruments can be ground only from crown glass. Reputable manufacturers of lenses for spectacles and for optical instruments grind such lenses only from crown glass. Satisfactory lenses for spectacles and for optical instruments cannot be ground from window glass. All of the lenses used in said respondents' so-called "Marvel Eye Tester" and a substantial number of the lenses in spectacles manufactured and sold by the said respondents were ground from window glass.

PAR. 8. In connection with the sale by the respondents mentioned in paragraph 1 hereof, and with their offering for sale their said spectacles, lenses and spectacle frames, said respondents for approximately three years, until April 1, 1931, or thereabouts, published purported testimonial letters from optometrists and physicians endorsing the use of the device mentioned in paragraph 6 hereof, which said purported testimonials are fictitious and were never furnished by the persons represented by said respondents as having written

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such testimonials. One of such letters is the following upon the purported letterhead of the Chicago Eye, Ear, Nose & Throat College, which is affiliated with the Chicago Eye, Ear, Nose & Throat Hospital, which said fictitious letter reads as follows:

I find that your instrument is based upon established optical laws governing the construction of all optical instruments.

Your instrument is very interesting and very ingenious and should fulfill the purpose for which it was designed and built.

Dr. NUGENT.

The reproduction of the letterhead of the Chicago Eye, Ear, Nose & Throat College in the aforesaid fictitious letter, is not a reproduction of the genuine letterhead of that institution. The substance of the said fictitious letter is a reproduction made by the respondents of a part of a letter dated August 11, 1928, by Dr. O. B. Nugent on the letterhead of the Chicago Eye, Ear, Nose & Throat College addressed to Mr. B. D. Ritholz, % the National Watch & Jewelry Co., 1445 Jackson Boulevard, Chicago. The remainder of the letter written by the said Dr. Nugent on August 11, 1928, reads as follows:

The instrument you handed to me, which you designate as the "Ritholz Refractometer" invented and designed by Prof. H. G. Huizinga, of Grand Rapids, Mich., has been carefully examined by me.

The Ritholz Refractometer mentioned in the said letter of Dr. Nugent dated August 11, 1928, is an altogether different instrument from the said "Marvel Eye Tester" and is an instrument designed for use by an optometrist, oculist, or ophthalmologist for examining the eyes of a patient and is not an instrument to be used by a person for testing his own eyes. This instrument, the Ritholz Refractometer, is one of numerous instruments used by optometrists, oculists, and ophthalmologists in connection with the examination of a patient's eyes for the purpose of fitting him with spectacles. The facsimile of Dr. Nugent's signature on the said purported letter is not a true facsimile. The facsimile of the letterhead is not true. The facsimile of the picture of the building on the purported letter is not true. The facsimile of the arrangement of the letterhead on the said purported letter is not true. The telephone number given in the said facsimile is not true. The names of members of the faculty of the Chicago Eye, Ear, Nose & Throat College used on its genuine letterhead are not shown on the purported letterhead of the said purported letter.

Another of such purported testimonial letters is the following upon the purported letterhead of Dr. Huizinga, which said fictitious letter is as follows:

Dr. HUIZINGA
Practice Limited
Eye, Ear, Nose and Throat
1407 Grand Rapids National Bank Bldg.,
GRAND RAPIDS, MICHIGAN

I consider this instrument entirely of practical value in testing the eyes, and based upon well known and long established scientific principles. The Calibrations on this machine have been very carefully checked and verified. This device has been found to be in every way practical for use in testing eyes.

Dr. J. S. HUIZINGA.

The reproduction of the letterhead of Dr. Huizinga in the aforesaid fictitious letter is not a reproduction of Dr. Huizinga's genuine letterhead. The purported signature to the said fictitious letter is not a facsimile or reproduction of the genuine signature of Dr. Huizinga. The substance of the said fictitious letter is a paragraph excerpted from a three-page letter written by the said Dr. Huizinga on August 2, 1928 to Mr. B. Ritholz, c/o National Watch & Jewelry Co., 1445 West Jackson Blvd., Chicago, Ill. The instrument described throughout the aforesaid letter was an instrument known as the Ritholz Refractometer, which is an instrument designed for use by an optometrist, oculist, or ophthalmologist for examining eyes of a patient and is not an instrument to be used by a person for testing his own eyes. The said instrument, the Ritholz Refractometer is one of numerous instruments used by optometrists, oculists, and ophthalmologists in connection with the examination of a patient's eyes for the purpose of fitting him with spectacles. The said Ritholz Refractometer mentioned in the said letter of August 2, 1928, is an altogether different instrument from the said Marvel Eye Tester.

Another of such fictitious letters is the following upon the purported letterhead of Dr. H. G. Walters, which said fictitious letter reads as follows:

Dr. H. G. WALTERS
Senate Office Building
Washington, D. C.

Your tester is based upon unquestionable scientific principles. By its use you will be able to furnish better glasses by mail than the average optometrist can in his own office.

No such letter was written by the said Dr. H. G. Walters. Although he practiced the profession of optometry in Washington,

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D. C., he never had a letterhead such as that shown in the said fictitious letter.

Various circulars issued by the respondents containing reproductions of the said fictitious letters also contain reproductions of photographs purporting to be reproductions of photographs of the said Dr. O. B. Nugent, the said Dr. J. G. Huizinga and of the said Dr. H. G. Walters, respectively. None of the said alleged reproductions is that of a photograph of the said Dr. O. B. Nugent, Dr. J. G. Huizinga or of the said Dr. H. G. Walters.

PAR. 9. In connection with the sale by the respondents mentioned in paragraph 2 hereof and with their offering for sale their said spectacles, lenses and spectacle frames, said respondents from April 1, 1931, or thereabouts, until July 1, 1933, or thereabouts, published the same fictitious letters and circulars described in paragraph 8 hereof.

PAR. 10. There were and are among the competitors of respondents, manufacturers and dealers in spectacles, spectacle frames and lenses who do not make, and who have not made in connection with the sale or offering for sale of their products, representations such as those described in paragraphs 5, 6, 7, 8, and 9 hereof.

PAR. 11. The aforesaid representations, advertisements, and statements of the respondents, and the use by such respondents of the aforesaid representations, advertisements, and statements described in paragraphs 5, 6, 7, 8, and 9 hereof, have had the capacity and tendency to mislead and deceive dealers and the purchasing public into the beliefs—

(a) That the respondents would furnish free of cost, spectacles, lenses and spectacle frames;

(b) That by the use of respondents' purported eye-tester, eyes could be successfully examined, and that by the use of such eye-tester the proper kinds of lenses could be prescribed;

(c) That the statements in the fictitious testimonials described in paragraph 8 were true and were actually made by the persons purporting to have made them;

And to induce the purchasing public and dealers to purchase from said respondents, spectacles, lenses and spectacle frames under the beliefs mentioned in (a), (b), and (c) of this paragraph.

PAR. 12. The aforesaid advertisements, representations, and statements as set forth in paragraphs 5, 6, 7, 8, and 9 hereof made by the respondents, have had the capacity and tendency to divert trade to said respondents from competitors and by such representations and

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statements substantial competition throughout the various States of the United States has been injured by said respondents to a substantial extent.

CONCLUSION

The acts and practices of the respondents under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and of respondents' competitors; they are (with the exception of those acts and practices described in paragraph 4 of the said findings as to which said acts and practices the Commission makes no conclusion of law), unfair methods of competition in commerce and constitute violations of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the supplemental and amended complaint of the Commission, the answer of the respondents, the testimony and briefs of counsel for the Commission and counsel for the respondents, respectively (but without oral argument, counsel for the respondents having waived oral argument), and the Commission having made a report in writing in which it stated its findings as to the facts, with its conclusion that the respondents had violated the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", and the Commission being fully advised in the premises,

It is hereby ordered, That the respondents, Benjamin D. Ritholz, Morris I. Ritholz, Samuel J. Ritholz, F. Ritholz, and Ante Ritholz, as individuals and as copartners trading as International Optical Co., Tru Sight Optical Co., Capitol Spectacle Co., Nu Way Optical Co., U. S. Spectacle Co., and under various other trade names; Dr. Ritholz & Sons, Inc., a corporation, also trading as International Optical Co., Tru Sight Optical Co., Capitol Spectacle Co., Nu Way Optical Co., U. S. Spectacle Co., and under various other trade names; and the said Morris I. Ritholz, F. J. Ritholz, Ante Ritholz, Samuel J. Ritholz, and F. Ritholz, as individuals and as stockholders of said Dr. Ritholz & Sons, Inc., and also trading as International Optical Co., Tru Sight Optical Co., Capitol Spectacle Co., Nu Way Optical Co., U. S. Spectacle Co., and under various other trade names, their agents and employees, in connection with the advertising, offer-

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ing for sale, and selling in interstate commerce of spectacles, spectacle frames and lenses for spectacles, forthwith cease and desist from—

(1) Representing in circulars and advertisements, or in any other way; that the respondents or either of them furnish to prospective users of their spectacles, such spectacles free, without cost to such purchasers and prospective purchasers, or free without a cent of cost, until and unless the said respondents, their agents and employees actually furnish spectacles, free without cost, or free without a cent of cost, or free without requiring services to be performed in order to secure them.

(2) Stating in circulars or in advertisements of their device called by them "Marvel Eye Tester" or of any other device intended to be used by their customers and prospective customers for testing their own eyes and from stating in any other way the following, or any of the following:

My system has been endorsed by the world's most famous specialist and eye hospitals.

Washington scientist claims tests with my instrument better than by optometrists.

One of the most leading professors of ophthalmology in the world finds my testing device scientific and practical for testing eyes.

The world's largest eye hospital endorses my testing instrument.

By its use you will be able to furnish better glasses by mail than the average optometrist in his own office.

(3) Making any other representation or statement in any of their circulars and/or advertisements regarding their said device called by them "Marvel Eye Tester" of tenor or import similar to or of the nature of any of the aforesaid statements mentioned and described in (2) hereof.

(4) Publishing and using in its circular and advertising matter any of the following purported letters—

CHICAGO EYE, EAR, NOSE & THROAT COLLEGE. Founded 1897. 231 West Washington Street, Southeast Corner Franklin Street, Long Distance Telephone Franklin 0962 P. O. Canal Street Station, CHICAGO.

I find that your instrument is based upon established optical laws governing the construction of all optical instruments.

Your instrument is very interesting and very ingenious and should fulfill the purpose for which it was designed and built.

Dr. NUGENT.

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DR. HUIZINGA
Practice Limited
EYE, EAR, NOSE, AND THROAT
1407 Grand Rapids National Bank Building
GRAND RAPIDS, MICHIGAN

I consider this instrument entirely of practical value in testing the eyes, and based upon well known and long established scientific principles. The Calibrations on this machine have been very carefully checked and verified. This device has been found to be in every way practical for use in testing eyes.

Dr. J. S. HUIZINGA.

DR. H. C. WALTERS
SENATE OFFICE BUILDING
WASHINGTON, D. C.

Your tester is based upon unquestionable scientific principles. By its use you will be able to furnish better glasses by mail than the average optometrist can in his own office.

Dr. H. C. WALTERS.

or any other letters unless such letters be genuine and be actually written by the persons purporting to have written them, in which event all of such genuine letters, if any, including dates, names and addresses or addressees thereof, and the names of the writers thereof, shall be published.

It is hereby further ordered, That the charge in the complaint to the effect that the respondents sold their products as the products of other companies is dismissed without prejudice because there is no proof that said respondents sold their products as the products of any other company except the Shuron Optical Co., Inc., and because, as shown by the findings herein, said last named company in May, 1932, obtained a decree from a United States District Court enjoining the principal respondents herein from continuing said misrepresentation.

And it is hereby further ordered, That the said respondents shall, within 60 days from and after the day of the date of the service upon them of this order file with this Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
FRANK H. FLEER CORPORATION

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

Docket 1832. Complaint, May 12, 1930—Order, Apr. 11, 1934

Consent order requiring respondent, its officers, etc., in connection with the manufacture and sale of chewing gum in interstate commerce, to cease and desist from the sale thereof through lottery schemes, under which (1) the chance purchaser of a piece of gum having a certain color will receive one or two additional pieces, or a small package, free, and (2) chance purchasers of pieces of gum within the individual wrappers of which there are concealed depictions of parts of certain articles of merchandise, receive said different articles upon securing wrappers bearing depictions of all the component parts making up such article; and from supplying to wholesalers, jobbers and retailers explanatory display cards for retailers' use in selling gum under aforesaid plans.

Mr. Henry C. Lank and Mr. G. Ed. Rowland for the Commission.
Mr. Horace M. Barba, of Philadelphia, Pa., for respondent.

COMPLAINT

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission charges that Frank H. Fleer Corporation, a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of the said Act, and states its charges in that respect as follows:

PARAGRAPH 1. The respondent is a corporation, organized under the laws of the State of Delaware, with its principal office and place of business located in the city of Philadelphia, State of Pennsylvania. It is now and for more than five years last past has been engaged in the manufacture of chewing gum, and in the sale and distribution thereof to wholesale dealers and jobbers, located at points in the various States of the United States, and causes said products when so sold to be transported from its said principal place of business in the city of Philadelphia, State of Pennsylvania, into and through other States of the Union to said purchasers at their respective points of location. In the course and conduct of said business respondent is in competition with other individuals, partnerships and