

IN THE MATTER OF
STERLING COMPANY ET AL.

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

Docket 2629. Complaint, Nov. 15, 1935—Decision, Aug. 12, 1936

Where a corporation engaged in the sale of cosmetics and its "Bonnie Day" toiletries through so-called prize club, and an individual engaged as president thereof, and two others who organized and controlled the same and were responsible for the selling scheme carried out through the medium of said so-called club—

Sold its products through an ostensible plan of introducing the same, under which it falsely advertised in newspapers and periodicals, leaflets, by radio broadcasts, and otherwise, that those sending in solution to some simple problem depicted, such as naming well-known motion picture actresses or stars, faces or likenesses of which were more or less concealed in the general depiction, or whose first or last names began with any letter in sentence, "Win Twenty Five Thousand Dollars" (with two of such names actually supplied), would receive an automobile or large sum in cash, or both, and that others had won substantial prizes and that large number of prizes would be awarded "to advertise and extend our business", through such statements (with heads and faces), as "I won \$485", "I won \$1980", etc., "Would you too like to win a brand-new, latest model Buick sedan * * * and \$1,000 extra for promptness?", "Now comes your chance to go after big prizes", "Can you find five movie stars' faces in picture", "A sensational advertising campaign. Do you want \$2500? We want people acquainted with our company quick. We will award 100 grand prizes to advertise and extend our business", "Don't send a cent, just do this now", etc.;

Facts being replying prospect supplying solution and sending \$2, pursuant to demand made in glowing follow-up, "come-on" trade literature—which re-emphasized prizes to be won for promptness and otherwise, congratulated prospect for his alertness, and informed him that he had been given high credit rating and 4500 "booster points" (of no particular significance under the actual terms of the contest)—finally learned that he did not win a prize through such solution, but merely opportunity to compete for prizes in contests based on sale of said products, purchase of which had been thus induced by him, and that no prize or prizes had ever thus been awarded, or to those whose heads and faces were thus depicted, by said corporation;

With result that it was enabled, through predominance of said prize feature, to establish contact with prospective purchasers and to present an insidious but delusive appearance, and with capacity and tendency to mislead and deceive public into belief that said representations were true, or that one or more of them had been and was true, and into purchase of its said products in reliance on such erroneous beliefs, and to divert trade to it from competitors selling toilet articles and cosmetics, truthfully advertised and described:

Complaint

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. James M. Brinson for the Commission.

Nash & Donnelly, of Washington, D. C., for respondents.

COMPLAINT

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 having reason to believe that the Sterling Corporation, Don Parmelee, Paul H. Williams, and Sibley F. Everett, hereinafter called respondents, have been and are using unfair methods of competition in commerce as commerce is defined in said act and it appearing to said Commission that a proceeding by it in respect thereto would be in the public interest, it hereby issues its complaint, stating its charges as follows in that respect.

PARAGRAPH 1. Respondent, Sterling Company, is now and for more than a year last past has been a corporation organized, existing, and doing business under and by virtue of the laws of the State of Iowa, with its principal office and place of business at Des Moines in said State. It has been for more than a year last past and now is engaged in the sale of cosmetics and toilet articles in commerce among and between the State of Iowa and the various other States of the United States and the District of Columbia. It causes its products, when sold, to be transported from its said place of business into and through the various other States of the United States to purchasers thereof at their various points of location.

Respondents, Don Parmelee, Paul H. Williams, and Sibley F. Everett, caused the respondent corporation to be formed in order to serve them as a corporate agency or instrumentality through which to operate and conduct the class of business hereinafter described. They own or control all of its corporate stock and respondent Don Parmelee is its president.

Respondent Sibley F. Everett is associated with the other individual respondents, Don Parmelee and Paul H. Williams in conducting the business of respondent corporation and in conjunction with each other said respondents have formulated its policies, originated or contrived its methods and plans. They supervise, direct, and control the activities of respondent Sterling Company, and completely dominate its business and all of its affairs.

In the course and conduct of such business respondents have been and now are in competition in interstate commerce with other individuals, partnerships, and corporations offering for sale and selling in interstate commerce toilet articles, cosmetics, and similar articles or commodities.

PAR. 2. It has been and is the practice of respondent Sterling Company, at the instance, and under the supervision and control of the aforesaid individual respondents, to offer for sale and sell its aforesaid products by means of a scheme or contrivance, the predominating features of which are prize puzzles, or prize contests of various kinds. Respondent Sterling Company through said individual respondents has developed the method of conducting its prize puzzle or prize contests through the medium of a so-called Sterling Prize Club, of which respondent Don Parmelee is manager, and said respondent corporation has offered for sale and sells its products through the agency of such prize club. It has presented its scheme and its prize puzzles and its prize contests to the purchasing public through advertisements of various kinds in magazines, newspapers, trade journals, house organs, and, more particularly, in leaflets, prospectuses, sheets of paper appearing in the form of and resembling newspapers, circular and other letters and by radio broadcasting. Such advertisements have contained false, deceptive, and misleading representations and statements to the effect that respondent Sterling Company has been and is engaged in a sensational advertising campaign and has adopted the scheme or plan of conducting the aforesaid contests as more successful or effective than the usual forms of advertisement; that solution of the problems or puzzles in the advertisements of respondent qualifies or entitles those solving the puzzles to receive prizes in the form of a Buick automobile or large or other sums of cash; that respondent does not require the sending of money; that a cash reward is guaranteed to those taking an active part; that it is necessary for a contestant to return the so-called "Promptness Certificate" furnished by respondent quickly in order to qualify for a so-called "Promptness" prize; that hundreds have already won cash prizes; that anybody can win; that contestants are in the running because certain points in connection with determination of prize winners have been given them by respondent; that the regular price of respondent's "Surprise Assortment", which it sends to those who forward the so-called "Promptness Certificate" has been or is \$3.45 and that the \$2.00 which must be forwarded to respondent with the Promptness Certificate is a bargain or special price for such assortment; that the persons pictured in its advertisements

have won contests and received prizes from respondent as a result of their success.

In truth and in fact the campaign which respondent has been and is conducting is a selling and not an advertising campaign, a fact which is withheld altogether by respondent from purchasers and prospective purchasers in its advertisements and such advertisements are either wholly false, grossly exaggerated, or withhold and conceal material facts which should be disclosed, such as the fact above stated, that respondent is engaging in a selling and not an advertising campaign, and the fact that solution of the puzzles or problems presented prospective purchasers in its advertising matter does not qualify or entitle the one who solves the puzzle or problem to any prize. Respondent, in its advertisements, or until it receives the \$2.00, fails to notify the reader thereof that he or she will not receive the Buick machine and \$1000.00 or \$2500.00 in cash for solution of any of the advertised puzzles; or that contestants for such prizes, must sell merchandise in order to win them. None of the pictured persons named as prize winners in the advertisements of respondent has ever won or received a prize from respondent. Two dollars must be sent along with the so-called "Promptness Certificate" and instead of receiving a prize, respondent furnishes an assortment of toilet articles and the purchaser thereupon becomes not a prize winner but a contestant if he so desires for the Buick automobile and \$1000.00, or the \$2500.00 in cash, to be determined by the amount of merchandise he or she sells for respondent. The assortment of merchandise which respondent sends those who transmit to it the so-called "Promptness Certificate", accompanied by \$2.00, never did sell for regular price of \$3.45, and the so-called bargain price of \$2.00 is now and has been the only and regular price for which respondent has sold the toilet articles or cosmetics composing such assortment.

Everyone answering the advertisements of respondent by transmission of the so-called "Promptness Certificate", together with \$2.00 in cash, returns and furnishes a substantial profit to respondent.

PAR. 3. There are and for many years last past have been individuals, partnerships, and corporations offering for sale and selling in interstate commerce cosmetics and toilet articles truthfully described in respect to quality, terms, and conditions of sale.

PAR. 4. The aforesaid false, deceptive and misleading representations of respondent described in paragraph 2 hereof have had and each of them has had and now have and each of them has the capacity and tendency to mislead and deceive the purchasing public into the belief that they are true and into the purchase of respondent's products in reliance on such erroneous belief.

Such practices of respondent have had and now have the capacity and tendency to divert trade to it from competitors who have been and now are selling toilet articles and cosmetics in interstate commerce by fair and truthful representations and methods.

PAR. 5. The above and foregoing practices of respondent have been and are all to the injury and prejudice of the public and of respondent's competitors and have been and are unfair methods of competition in violation 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."

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 the 15th day of November 1935, issued and served its complaint in this proceeding upon respondents Sterling Company, a corporation, and Don Parmelee, individually and as its president, and Paul H. Williams and Sibley F. Everett, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance of said complaint and the filing of respondents' answer thereto, a hearing was held for taking testimony and receiving evidence, before Robert S. Hall, an examiner of the Commission theretofore duly designated by it for such purpose.

The Commission was represented by James M. Brinson as its attorney, and the respondents appeared by John A. Nash, Esq., as their attorney. The aforesaid attorneys stipulated certain facts subject to approval of the Federal Trade Commission which are embraced by paragraphs 1, 2, 3, 4, and 5 of the findings as to the facts hereinafter set forth, and such stipulation is hereby approved. Testimony and evidence also were submitted in support of the complaint by the attorney for the Commission. None was submitted on behalf of respondents. The aforesaid stipulation, testimony and evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding having regularly come on for final hearing before the Commission on the complaint, the answer thereto, the stipulation, testimony and evidence, briefs in support of the complaint and in defense thereto, oral arguments of counsel having been waived and it having been agreed that the proceeding should be submitted to the Commission upon the record, the report of the examiner and the briefs of counsel, 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 report stating its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. There was during one or more of the several years last past a company known as Century Company, with its principal office and place of business at Des Moines, in the State of Iowa. It engaged in the sale in interstate commerce of cosmetics and toilet articles of various kinds, particularly so-called Bonnie Day toiletries, through the medium of a so-called "Century Prize Club" and by means of advertisements the same as, or similar to, those hereinafter described as employed by respondent Sterling Company.

Respondents Sibley F. Everett and Paul H. Williams were connected with and controlled the Century Company. It was subjected to a proceeding before the Special Board of Investigation of the Federal Trade Commission, and the respondent Paul H. Williams appeared before said Board as counsel for it. Shortly thereafter a complaint was issued by the Commission against the Century Company and duly served upon it. It surrendered its corporate charter and discontinued business.

After such dissolution, its property and assets were acquired by respondent Sibley F. Everett, and the same business was carried on as a partnership by him and his wife.

Some time later such respondent Sibley F. Everett and respondent Paul H. Williams decided in conjunction with each other to continue the business through another corporation to be formed under the name of Sterling Company. They caused this corporation to be organized in October 1934, under the laws of the State of Iowa. Under such laws, a corporation may have only one officer and respondent Don Parmelee became such officer, the president. Since its said organization it has been and is a corporation existing and doing business under and by virtue of the laws of said State with its principal office and place of business in Des Moines, in said State. Following the course pursued by its predecessor, the Century Company, it has been for more than a year last past and now is engaged in the sale of cosmetics and toilet articles, particularly so-called Bonnie Day toiletries, in commerce among and between the State of Iowa and the various other States of the United States.

Respondent Sterling Company causes its products when sold to be transported from its said place of business into and through the various other States of the United States to purchasers thereof at their various points of location.

In the course and conduct of such business respondent has been and now is in competition in interstate commerce with other individuals, partnerships, and corporations offering for sale and selling in like commerce toilet articles and cosmetics.

PAR. 2. Having caused respondent corporation to be formed in order to serve them as a corporate agency or instrumentality through which to operate and conduct the class of business hereinafter described, respondents Paul H. Williams and Sibley F. Everett acquired and owned and now own and control all of the corporate stock of the respondent Sterling Company. Said individual respondents, acting in conjunction with each other, have formulated, supervised, directed, and controlled the policies, the methods and practices of respondent Sterling Company, including its advertisements and the activities of the Sterling Prize Club, and have completely dominated its business. They are now supervising, controlling, managing, and dominating all of its affairs.

PAR. 3. It has been, and is, the practice of respondent, the Sterling Company, at the instance and under the supervision, direction and control of the aforesaid individual respondents, Everett and Williams, to offer for sale and sell its aforesaid products by means of a plan or contrivance called the Sterling Prize Club such as was utilized by the aforesaid Century Company under the direction of respondents Paul H. Williams and Sibley F. Everett, which had its Century Prize Club, just as respondent corporation under the direction of the same persons, respondents Paul H. Williams and Sibley F. Everett, now has its Sterling Prize Club, the predominating features of which are alleged prize puzzles or prize contests of various kinds. Respondent Don Parmelee was manager of said Sterling Prize Club until about August 10, 1935. He is no longer connected with respondent Sterling Company, but was, however, connected with it at time of its organization, as president, and immediately thereupon was employed by respondent, Sterling Company, as a manager of the aforesaid Sterling Prize Club.

PAR. 4. Respondent, Sterling Company, actually has sold its products under the guise of an ostensible plan of advertising through its said Sterling Prize Company for the purpose of introducing its products. Its so-called plan of advertising and introducing its products has been, and is in fact, the usual and regular method by which respondent corporation sells its products, and such plan is not a distinctive advertising plan: It is a selling plan. The amount of sales respondent makes has been and is entirely dependent upon the extent to which and the effectiveness with which its sales efforts have been so disguised as advertising and introducing efforts, and the purchasing public attracted by the apparent ease with which large prizes

can be won. This prize feature of its plan so predominates that it enables respondent to establish contact with prospective purchasers and to present an insidious but delusive appearance.

There are in the advertisements of respondent two outstanding features. One of them consists of numerous references to grand prizes and many other prizes to be awarded by respondent. The other consists of a direction to the reader of the advertisements to identify, name and transmit to respondent faces of moving picture actresses appearing dimly or vaguely in or about a pictorial representation of a Buick automobile, which is announced by respondent as one of the prizes to be awarded, or to solve some other simple problem or puzzle.

There is in the advertisements by means of which respondent initiates contact with purchasers or prospective purchasers no statement or explanation of the rules or regulations of the contest in which prizes will be distributed. There is nothing in them to indicate that a prize winner is to do anything except to identify and forward to respondent names of actresses whose faces obscurely appear in the above said pictorial representation of an automobile, or solve as stated some such simple problem or puzzle.

Respondent, Sterling Company, in presenting its said products for sale in the disguise of an advertising plan has employed advertisements of various kinds in magazines, newspapers or journals, house organs, and more particularly in leaflets, prospectuses, sheets of paper sometimes appearing in the form of and resembling newspapers, and by radio broadcasting. The following quotations or extracts from such advertisements of respondent corporations are typical of those representations and means by which it reaches and holds the attention and interest of prospective purchasers.

One leaflet contained the heads and faces of various individuals, near each of which appear such legends as "I won \$485", "I won \$1980", "I won \$1750", "I won \$6530", "I won \$1140", "I won \$405", and "I won \$5400".

These heads and faces appear in and about the pictorial representation of an automobile which is represented as a prize. There follows the statement, to-wit, "Now hundreds more cash prizes to be awarded. Would you, too, like to win \$2,500 or Buick and \$1,000 cash".

Beneath this appears the following: "A sensational advertising campaign. Do you want \$2,500.00? We want people acquainted with our company quick. We will award 100 Grand Prizes to advertise and extend our business. There will be thousands of dollars more in cash profit rewards. Would you, too, like to win a brand-new latest model Buick 8 Sedan delivered by the nearest dealer and \$1,000 extra for promptness?"

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"Maybe this grand opportunity sounds like a dream, Hundreds have already won big cash prizes in similar friendship campaigns conducted by men now in this company. Now comes your chance to go after big prizes."

There then follow in large conspicuous letters, "CAN YOU FIND 5 MOVIE STAR FACES IN PICTURE?"

Below this appears the following: "I will award \$1,000 extra to the first prize winner just for being prompt in following my sensational plan. Therefore first prize winner gets Buick Sedan and \$1,000.00 if prompt, or \$2,500 all cash if preferred. Mail coupon today for details."

One of the advertisements of respondent appearing in the magazine section of a paper known as "The Sunday Mirror" of November 11, 1934, contained in large display letters, "HUNDREDS HAVE WON BIG CASH PRIZES. WOULD YOU, TOO, LIKE TO WIN \$2,500 OR A BUICK AND \$1,000?" Further references in such advertisements are made to these prizes and thereupon appear in large black letters "CAN YOU NAME 5 MOVIE STARS". After this appears the following, "Don't send a cent, just do this now. CAN YOU NAME 5 MOVIE STARS WHOSE FIRST OR LAST NAMES BEGIN WITH ANY LETTER IN THE FOLLOWING SENTENCE: WIN TWENTY-FIVE HUNDRED DOLLARS. Will Rogers is one; Norma Shearer is another. Write names on coupon below or on penny post card and mail quick and learn how you may also share in these thousands of dollars. No prizes less than \$5.00 cash. Someone wins \$2,500. Why not you?"

Again in this advertisement in large red letters appears the words "Not a cent of your own money needed on our movie star plan". Thereupon appear heads and faces of various individuals with their names and with the statement that they have won various sums of money. There is also in such advertisement the representation of an automobile with the heading, "CAN YOU FIND 5 MOVIE STAR FACES IN PICTURE?"

The quotations from the advertisements of respondent Sterling Company to which attention has been given, and the pictorial representations of automobiles mentioned as prizes, have signified and implied or have been obviously susceptible to the construction that the automobile and other substantial prizes would be awarded to the successful contestants in the detection or identification of the movie actresses whose faces were made to appear dimly or obscurely in or about the automobile, or to those who name five movie stars whose first or last names begin with any letter in the sentence "Win Twenty-five Hundred Dollars". No statement or explanation to the contrary, or any word or words tending to negative the necessary

implication from the quotations hereinabove set forth appear in connection with or in the vicinity thereof, nor does any such statement, explanation or language appear anywhere in the advertisements of respondent sufficiently clear to overcome the impression first necessarily produced by the advertisements of respondent as illustrated by such quotations which are first addressed to the attention of the prospective purchasers.

After the prospective purchaser has been attracted by advertisements of respondent corporation and his interest has been enlisted in the contest, principally by respondent's glowing description of the prizes to be awarded, and its repeated reference to the facility and ease with which prizes are to be won, he is supplied by respondent with additional literature if he forwards an inquiry in response to such advertisements. This additional literature also displays in vivid language the opportunities for a fortune respondent offers prospective purchasers.

Along with the literature supplied the prospective purchaser, when his inquiry is received, is a paper entitled "Promptness Certificate". The certificate contains the picture of an automobile at the side of which appear the words "Buick Sedan and \$1,000, or \$2,500 all cash". The purchaser is requested to mark "X" before the prize he wishes to win. He is further requested to address the communication to the manager of the respondent Sterling Company requesting that without the risk of a cent by him respondent should rush quick its generous money-back guarantee offer and the big movie star face assortment listed in the certificate. Although the purchaser is advised that he will not risk one cent there appears in red letters the following language, "\$2.00 bargaining prize", and again there appear the words "Don't forget, send only \$2.00". The latter is placed on the left of a list of toilet articles. The prospective purchaser also receives a letter from the manager of the Sterling Prize Club which reads in part as follows: "The fortune of \$2,500 is waiting right now. Will you grab it? I am giving you this glorious offer to receive \$2,500 cash prize, enough money to end worries, to bring happiness and prosperity. Well, as winner you can have a Buick 8 Sedan delivered by your nearest Buick dealer and \$1,000 cash, too * * * and here is the most remarkable part of it—not one penny of your money is needed now or ever on my plan. Here is all you need to do to receive this opportunity to win your choice of \$2,500, all cash, or a Buick Sedan delivered by your nearest dealer and \$1,000 in cash. LOOK AT THE LOWER PICTURE ON THE CARD. CAN YOU FIND 5 HEADS OR FACES? Faces are around the car and among the clouds. Some are sidewise, some up-side-down. Can

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you find 5 or more? Look sharp, mark faces you find and mail card to me quick. Be early, be prompt." Beneath this appears "The first prize winner will receive \$2,500 all cash or a Buick and \$1,000 cash if preferred. Not only one person but hundreds will win cash prizes. Someone will win, why not you. No prize less than \$5.00. In case of ties, duplicate prizes will be paid."

In the literature sent the prospective purchaser after receipt of inquiry is also a letter which in part reads as follows: "Bully for you. You have received the highest credit given for answering. Now you are all set toward winning a fortune. Thousands in cash may be yours. I am even giving \$1,750 extra for promptness instead of \$1,500 as advertised. Then win first prize and \$1,750 cash is actually yours, or a LaSalle Sedan and \$3,700 cash * * * all congratulate you on your alertness in answering. That's the stuff winners are made out of."

The prospective purchaser also receives from respondent along with the above literature containing the above quotations a paper called "Certificate of award". Upon reading it the prospective purchaser is advised that he has been awarded 45,000 "booster" points toward the first grand prize, and he is advised that all he needs to do is mail back the promptness certificate as requested not later than the date stamped on certificate to qualify for the \$1,000 extra cash to be awarded first prize. Then follows the language, "Be prompt, win \$1,000 in addition to Buick Sedan as per plan." The circular also bears the following: "This certificate will be redeemed for \$2,500 cash or a Buick Sedan and \$1,000 cash if preferred. Hurry back your promptness certificate. Delay might cost you \$1,000." On the back of this certificate of award in small letters appear the price list and the plan under which the Sterling Prize Club conducts the distribution of prizes. When the purchaser reads this plan, if he ever notices it in the midst of the abundance of literature containing references to the prizes and to moving picture faces and other puzzles or problems to be solved, he discovers that the 45,000 booster points amount to nothing unless he receives 350,000 booster points, and these can be obtained only by the purchase or sale of a large amount of the toilet articles offered for sale and sold by respondent by means of its so-called advertising plan.

In truth and in fact, no such or any prize or prizes have been or were at any time awarded by respondents to those transmitting a solution of the puzzles or names of the actresses whose faces were made to appear in such advertisements, in or about the pictorial representation of the automobile, or names of five movie stars whose first or last names begin with any letter in the following sentence,

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"Win Twenty-five hundred dollars". The purpose and intent of such advertisements was to induce the belief among readers thereof that by transmitting to respondent, Sterling Company, a solution of the puzzles or the names of the actresses identified, and so-called promptness certificate furnished by respondent corporation, together with \$2.00 in money, they would not only be given a certain assortment of Bonnie Day toiletries, but would participate in the distribution of the prizes. Instead of being contestants for the prizes when they forwarded promptness certificate and \$2.00 together with their solutions of puzzles and problems described in the advertisements, such readers of respondent Sterling Company's advertisements learned that they were merely purchasers of respondent's products, and thereupon could become, if they chose, salesmen of respondent's products and enter the contest for the prizes—the same prizes which they had been led to believe by the respondent's advertisements they had an opportunity to acquire by means of the solution of problems presented in said advertising matter such as identification of various movie actresses appearing as aforesaid in and about the pictorial representation of the Buick automobile, or naming five movie stars whose first or last names begin with any letter in "Win Twenty-five Hundred Dollars".

In other words, they learned that instead of being contestants, they had simply qualified to become contestants.

The pictorial representations of the heads or faces or heads and faces of various persons in the advertising matter of respondent as those of persons who had been awarded prizes by respondents were false pretences in that no prize or prizes had ever or have ever been awarded to such persons or any of them by respondent Sterling Company.

PAR. 5. There are now and have been for many years last past, individuals, partnerships, and corporations offering for sale and selling in competition with respondent in interstate commerce toilet articles and cosmetics truthfully advertised and described.

PAR. 6. The above and foregoing representations, express and implied, of the respondent's advertisements, have had and each of them has had, the capacity and tendency to mislead and deceive the public into the belief that such representations have been and are true, or that one or more of them has been and is or have been and are true, and into the purchase of respondent's products in reliance on such erroneous beliefs or one or more of them.

The aforesaid practices of respondent have had and have and each of them has had and has the capacity and tendency to divert trade to respondent Sterling Company from competitors described in paragraph 5 hereof.

Order

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CONCLUSION

The aforesaid practices of respondent have been and are all to the prejudice of the public and of respondent's competitors, and have been and are unfair methods of competition in violation of the provisions of Section 5 of the Act entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, stipulation concerning certain facts, testimony and evidence taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, briefs filed herein, oral argument having been waived by James M. Brinson, counsel for the Commission, and John A. Nash, counsel for respondents, and the Commission having made its report stating its findings as to the facts and its 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 ordered, That respondents, Sterling Company, a corporation, and Don Parmelee, Paul H. Williams and Sibley F. Everett, individuals, and each of them, whether acting individually, as corporate officers, or through or by means of any agency, or instrumentality, corporate or otherwise, or in any other manner whatsoever, in connection with the offering for sale or sale in interstate commerce of toiletries or other products, do forthwith cease and desist from:

(1) representing, directly or indirectly, that prizes announced in certain advertisements, will be awarded to those who transmit most promptly accurate solutions or answers to problems, puzzles, or questions stated therein, when such is not the fact.

(2) representing, directly or indirectly, that any person has won a prize in such contest when such is not the fact.

It is further ordered, That respondents, and each of them, within 60 days from and after service of this order, file with the Commission a report in writing setting forth in detail the manner and form of compliance therewith.

Complaint

IN THE MATTER OF

CHICAGO MACARONI COMPANY, TRADING AS A. MORICI
AND G. MATALONE COMPANY

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

Docket 2843. Complaint, June 16, 1936—Decision, Aug. 12, 1936

Where a corporate wholesale grocer engaged, among other things, in preparing, packing, selling, and distributing a table oil composed of fifteen percent olive oil from Spain, and eighty-five percent cottonseed oil, or corn oil—

Labeled containers thereof with name "Italy Brand Table Oil", and set forth thereon Italian and English statements, and words "Packed by A. Morici & G. Matalone Co.", etc., and also pictorial representations of Italian medals or coins depicting persons showing Italian characteristics, and decorative floral sprays similar to those found on other Italian products, notwithstanding fact that no part of said product was produced in or imported from Italy, and same was not packed by the fictitious concern indicated through use of name "A Morici & G. Matalone Co.", but by aforesaid corporation, the ordinary American name of which included one of the great American cities;

With tendency and capacity to deceive and mislead purchasers and prospective purchasers thereof into belief that said product's olive oil ingredient was produced in or imported from Italy, and that said A. Morici and G. Matalone Company was an Italian or Italian-American concern engaged in importing olive oil from Italy, and distributors and purchasing public into erroneous belief that said statements and representations were true, and with effect of inducing members of public to purchase said product on account of such erroneous belief, and of unfairly diverting trade to it from competitors, among whom there are those who, as manufacturers, blenders, sellers, and distributors of olive oil, table oil and other like and similar products in interstate commerce, truthfully advertise and represent the merit, origin, and packing of their respective products, and do not advertise and represent the same or any part thereof as produced in or imported from Italy when such is not the case; to the substantial injury of competition in commerce:

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

Mr. Joseph C. Fehr for the Commission.

Mr. John A. Sbarbaro, of Chicago, Ill., for respondent.

COMPLAINT

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