

IN THE MATTER OF
SERVICE PRODUCTS, INC., 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 2824. Complaint, May 28, 1936—Decision, Oct. 22, 1936

Where a family group of three individuals, and two corporations organized and controlled by them, and engaged in manufacturing, rectifying, compounding, and selling hair tonic, bay rum, cosmetics, lotions, and like products—

(a) Featured the words "West Point," and the corporate name of said manufacturing corporation, including the words "West Point Laboratories," upon the containers of their said products and in periodicals, papers, pamphlets, and on letterheads and stationery, together with depictions of a cadet in full dress military uniform, and such statements as "In Hollywood as at WEST POINT a well-groomed appearance is essential. Men and women who know and care use WEST POINT natural vegetable oil hair tonic," etc.;

Notwithstanding fact they were never granted permission to use name "West Point," or depiction of a cadet in military hat and uniform, as a trade name, mark, or brand on their products by the authorities of the West Point Military Academy, the Army, or the United States Government, and use by them of the name "West Point," as aforesaid, was objectionable to said authorities, etc.;

With result that various members of the purchasing public received impression and came to conclusion and belief that products thus marked, etc., emanated, or were of a quality and nature endorsed and approved by aforesaid authorities, and substantial numbers of said purchasing public were induced to make purchases thereof by virtue of such belief; and

(b) Included upon their aforesaid labels, etc. a circular red seal with flat surface and irregular outer edges, in center of which was inscribed "Seal of Approval" encircled within the words "Official Research Bureau of the State of New York, Inc.," conveying false and misleading impression that it was an official seal of the State of New York and that said research bureau was a bureau or branch of the State Government;

Notwithstanding fact that officials of said State never granted them permission to use the great seal of the State, and said bureau was not a branch of the State Government, and use by them of any seal or words conveying impression that their products were approved or endorsed by said State, or any bureau or branch thereof, was objectionable to the authorities thereof;

With result that various members of purchasing public received impression and formed conclusion and belief that said products thus stamped or marked with a seal, as above set forth, were authorized and approved by said State, and substantial numbers of said public were induced, by virtue of such belief or impression, to make purchases thereof;

With tendency and capacity to mislead and deceive a substantial portion of such public into the mistaken belief that the goods in question were derived from, or had the approval of a branch of the United States Govern-

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ment or the New York State Government, though neither made by nor for the authorities of said Academy or said respective Governments, nor possessed of their approval, and with result that a number of the purchasing public bought a substantial volume of their said products, and trade was unfairly diverted to them from competitors who do not misrepresent their merchandise by the use of false and misleading corporate and trade names, marks, brands, and devices; to the injury of competition in commerce among the various States:

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

Mr. Carrel F. Rhodes for the Commission.

Mr. Philip E. Rosenblum and *Mr. Irving Seidman*, of New York City, 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 Service Products, Inc., and Sam Hagler, Harry Hagler, and Irving Hagler, individually and as officers, directors, and stockholders of Service Products, Inc., and trading under the name of West Point Laboratories, hereinafter referred to as 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 thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. (a) Respondent, Service Products, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York.

(b) Respondent, Sam Hagler, is the manager and principal owner of the stock of respondent, Service Products, Inc.

(c) Harry Hagler is president and a stockholder in respondent, Service Products, Inc.

(d) Irving Hagler is secretary and treasurer and a stockholder of respondent, Service Products, Inc.

(e) Respondents, Sam Hagler, Harry Hagler, Irving Hagler, and Service Products, Inc., also operate under the trade name "West Point Laboratories" and all of the business of said respondents is carried on at 125 Rivington St., New York City, State of New York.

PAR. 2. Respondents are and have been for more than three years last past, engaged in the business of manufacturing or compounding sundry toilet articles which respondents sell to dealers, distributors, and the public and shipping said products from their place of business

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in the city of New York, State of New York, through and into other States of the United States, to the purchasers thereof, in commerce in competition with other individuals, companies, and corporations engaged in the sale and transportation of like merchandise in like commerce. Among the articles so manufactured or compounded and sold by respondents are hair tonic, hair dye, bay rum, lotions, ointment, witch hazel, rubbing alcohol, and shampoo preparations.

PAR. 3. Respondents in the course and conduct of their business as set out in paragraphs 1 and 2 mark, brand, and advertise their said products variously as follows, viz:

(a) "West Point—Natural Vegetable Oil—Hair Tonic—West Point Laboratories, N. Y." and other matter together with pictorial representation of a cadet in full military uniform and/or the head of a cadet with full dress military hat simulating the dress and make-up of students of the West Point Military Academy, West Point, N. Y., U. S. A.

(b) "West Point Bay Rum—West Point Laboratories, N. Y."

(c) "West Point" with other matter descriptive of the particular products.

Respondents cause said advertising matter to be marked or stamped upon the bottles, jugs, jars, and containers and upon the cartons and boxes in which the products are packed when sold and shipped and upon letterheads and bill heads; inserted in newspapers and magazines; printed on cards and posters placed in drug stores, department stores and barber shops and in circulars and theater programs and to be used in programs broadcast over the radio featuring "West Point Hair Tonic", and "West Point Bay Rum" and other respondent's products, as "West Point Laboratories" products.

Featuring the products as herein described by use of such terms gives the impression and conveys the idea that the said products are manufactured or compounded according to United States Government specifications or adopted by the War Department for the use of cadets at West Point Military Academy, contrary to the facts, and is false, deceptive and misleading.

PAR. 4. Respondents, cooperating among themselves and together with Shelley Braverman—operating under the name "Official Research Bureau of New York, Inc.", 271 Madison Avenue, New York City, State of New York, in addition to the advertising matter describing the products put out by respondents upon the containers of which is printed the picture of a cadet in military uniform and the name "West Point" and "West Point Laboratories" and other matter as described in paragraph 3, have printed on said containers and boxes an endorsement bearing a red seal imprinted thereon in a circle with flat surface and irregular outer edges in the center of which is inscribed "Seal of Approval" which words are encircled within the

words "Official Research Bureau of New York, Inc.", simulating the great seal of the State of New York and conveying the impression that respondents' products are approved as to quality and merit by authorities of the State of New York, contrary to the fact.

PAR. 5. The implied and positive representation made (as set out in paragraphs 2, 3, and 4) by respondents hold out these and other products as "West Point Laboratories" products and that said products have the approval of the "Official Research Bureau of New York, Inc." Said representations are misleading and deceptive, and purchasers are thereby deceived and led to believe that the products held out to the purchasing public by respondents are made for or according to specifications authorized and approved by the United States War Department of which West Point Military Academy is a branch and that said products are approved by the authorities of the State of New York, contrary to the facts. In truth, the fact is that none of respondents' products are made according to specifications authorized and approved by the War Department or authorities of the United States Government, or by authorities of the State of New York.

PAR. 6. The West Point Military Academy located at West Point in the State of New York was created by Act of Congress, March 16, 1802 (U. S. Stat. at L., Ch. 9, Sec. 28), and is a branch of the Army and a part of the United States Government. The name "West Point" when used, together with pictorial representation of a cadet in full military uniform or the head of a cadet in full dress military hat refers to, represents and suggests in the minds of the purchasing public, said West Point Military Academy. It is universally recognized and conceded that West Point Military cadets are well groomed and caparisoned. The name "West Point" has a popular appeal for and commands the high respect of the American public and induces emulation of its cadets. Respondents have never been granted permission to use the name "West Point" or the representation of a cadet in military hat and uniform as a trade name, mark, or brand on their products by the authorities of said West Point Military Academy, the Army, or the United States Government. The authorities of said West Point Military Academy, the Army, and the United States Government object to the use by respondents of the name "West Point" as a trade name, mark or brand on products manufactured and sold by respondents.

PAR. 7. The State of New York is a sovereign State of the United States and has adopted and uses an official seal. The name New York and the official seal of the State when properly used are recognized and respected by the several States and all authorities with the

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United States. This seal when properly used by officials of the State or by *bureaus* created by authority of the State, vouchsafe the authority, credit, and good faith of the sovereign State of New York. The officials of the State of New York have not granted respondents (or Shelley Braverman) permission to use the great seal of the State of New York. The seal used by respondents as described in paragraph 4, that is, a circular red seal with flat surface and irregular outer edges in the center of which is inscribed "Seal of Approval" encircled within the words "Official Research Bureau of the State of New York, Inc.", is false and misleading and conveys the impression that it is an official seal of the State of New York and that the "Official Research Bureau of the State of New York, Inc." is a *bureau* or branch of the Government of the State of New York, which it is not. The authorities of the State of New York object to the use by respondents of any seal or words which convey the impression that respondents' products are approved or are endorsed by the State of New York, or any *bureau* or branch of the State Government.

PAR. 8. There are among competitors of respondents, individuals, partnerships, corporations, engaged in the sale and distribution of like and similar products to those manufactured and sold by respondents within the State of New York and other States of the United States who do not misrepresent their merchandise by the use of false and misleading corporate and trade names, marks, brands, and devices.

PAR. 9. The practices of respondents as stated have had and have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the belief that the goods to be purchased of respondents are derived from or have the approval of a branch of the U. S. Government, or the Government of the State of New York, when in fact they are not so derived and do not have such approval. In truth and in fact none of the products manufactured and sold by respondents are manufactured by or for or have the approval of the authorities of the West Point Military Academy, the U. S. Government, or the Government of the State of New York.

Further, as a direct consequence of mistaken and erroneous beliefs induced by the acts and representations of respondents as herein detailed, a number of the purchasing public have purchased a substantial volume of respondents' products with the result that the trade has been unfairly diverted to respondents from competitors referred to in paragraph 8. As a result thereof, injury has been and is now being done by respondents to competition in commerce among and between the various States of the United States.

PAR. 10. The above alleged acts and things done by respondents are all to the injury and prejudice of the public and the competitors of respondents in interstate commerce and constitute unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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 28th day of May 1936, issued and served its complaint in this proceeding upon the respondents Service Products, Inc., Sam Hagler, Harry Hagler, and Irving Hagler individually, and as officers, directors, and agents of said corporation, and upon Service Products, Inc., Sam Hagler, Harry Hagler, and Irving Hagler trading under the name "West Point Laboratories, Inc.", charging them with the use of unfair method of competition in commerce in violation of the provisions of said act. On the 15th day of June 1936, the respondents filed their answer and on the 16th day of September 1936, respondents filed a motion to withdraw their answer and to file a supplemental answer in lieu thereof, and on October 2, 1936, respondents submitted a motion to withdraw their said answer and supplemental answer and submitted a substitute answer therefor, in which substitute answer respondents admitted all the material allegations of the complaint to be true and stated that they waived hearing on the charges set forth in the said complaint and consented that, without further evidence or other intervening procedure, the Commission might issue and serve upon them findings as to the facts and conclusion, and an order to cease and desist from the violations of law charged in the said complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint and the substitute answer thereto and the Commission having duly considered the same and being now 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. Respondent, Service Products, Inc., is a corporation organized in 1931 under and by virtue of the laws of the State of

New York, by respondents Sam Hagler, Harry Hagler, and Irving Hagler. It is a corporation owned by a family group composed of respondents Sam Hagler (the father and his two sons), Harry Hagler, and Irving Hagler. Said respondents Service Products, Inc., Sam Hagler, Harry Hagler, and Irving Hagler are and have been doing business in interstate commerce, and in the District of Columbia, since the organization of said company.

PAR. 2. Respondent individuals also organized under and by virtue of the laws of the State of New York "West Point Laboratories, Inc.", which company they operate and control. This company manufactures, distills, rectifies and compounds hair tonic, bay rum, cosmetics, lotions, and like products which are marketed, sold and shipped by respondent Service Products, Inc., under the trade name "West Point Laboratories". Respondent individuals caused said trade name "West Point" to be registered in the United States Patent Office on November 22, 1932, and they have used and now use said name "West Point" as a trade name and as a part of the corporate name of the said "West Point Laboratories, Inc.", continuously since long prior to date of registration.

PAR. 3. During the operation and conduct of their said business respondents sell and ship their said products from their place of business in the city and State of New York through and into other States of the United States other than the State of New York and into the District of Columbia to purchasers thereof in competition with other manufacturers and dealers engaged in the sale of like products in interstate commerce.

PAR. 4. Respondents make use of the following designations, indorsements and recommendations upon the bottles, jugs, boxes, and containers in which their said hair tonic, bay rum and other products are packed and in magazines, papers, pamphlets, and other periodicals, and upon letterheads and stationery printed and circulated in commerce as herein set out:

1. "WEST POINT natural vegetable oil hair tonic, WEST POINT LABORATORIES, New York", with a picture superimposed thereon of the head of a cadet in military cap, together with a seal affixed thereto, upon which seal are the words

"SEAL OF APPROVAL
OFFICIAL RESEARCH BUREAU OF NEW YORK"

2. "WEST POINT hair tonic".

3. "WEST POINT natural vegetable oil hair tonic, WEST POINT LABORATORIES, New York", with a picture of a cadet in full dress military uniform superimposed thereon.

4. "WEST POINT bay rum, WEST POINT LABORATORIES, New York."

5. "In Hollywood as at WEST POINT a well-groomed appearance is essential. Men and women who know and care use WEST POINT natural vegetable

oil hair tonic, sold at all leading drug and department stores", together with a full figure pictorial representation of a WEST POINT cadet, lieutenant.

PAR. 5. Various members of the purchasing public upon observing the words "West Point" together with a picture representing the head of a cadet in military cap, or a cadet in military uniform accompanying the name "West Point Laboratories, Inc.", on the products manufactured and sold by respondents or in circulars and advertisements put out by respondents as herein set out and described, have received the impression and formed the conclusion and belief that the products so marked, printed and advertised emanated from or were of a quality and nature endorsed and approved by authorities of the United States Military Academy at West Point, New York, and that such products stamped or marked with a seal and the words "Seal of Approval Official Research Bureau of New York" in conjunction therewith are authorized and approved by the State of New York. Substantial numbers of the purchasing public have been induced by virtue of such belief or impression to make purchases of said products.

PAR. 6. The United States Military Academy located at West Point in the State of New York was created by Act of Congress, March 16, 1802 (U. S. Stat. at L., Ch. 9, Sec. 28), and is a branch of the Army and a part of the United States Government. The name "West Point" when used, together with pictorial representation of a cadet in full military uniform or the head of a cadet in full dress military hat refers to, represents and suggests in the minds of the purchasing public, said United States Military Academy at West Point, New York. It is universally recognized and conceded that West Point Military cadets are well groomed and caparisoned. The name "West Point" has a popular appeal for and commands the high respect of the American public and induces emulation of its cadets. Respondents have never been granted permission to use the name "West Point" or the representation of a cadet in military hat and uniform as a trade name, mark, or brand on their products by the authorities of said West Point Military Academy, the Army, or the United States Government. The authorities of said West Point Military Academy, the Army, and the United States Government object to the use by respondents of the name "West Point" as a trade name, mark or brand on products manufactured and sold by respondent.

PAR. 7. The State of New York is a sovereign State of the United States and has adopted and uses an official seal. The name New York and the official seal of the State when properly used are recognized and respected by the several States and all authorities of the United States.

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This seal when properly used by officials of the State or by *bureaus* created by authority of the State, vouchsafe the authority, credit, and good faith of the sovereign State of New York. The officials of the State of New York have not granted respondents (or Shelley Braverman) permission to use the great seal of the State of New York. The seal used by respondents as described in paragraph 4, that is, a circular red seal with flat surface and irregular outer edges in the center of which is inscribed "Seal of Approval" encircled within the words "Official Research Bureau of the State of New York, Inc.", is false and misleading and conveys the impression that it is an official seal of the State of New York and that the "Official Research Bureau of the State of New York, Inc." is a *bureau* or branch of the Government of the State of New York, which it is not. The authorities of the State of New York object to the use by respondents of any seal or words which convey the impression that respondents' products are approved or are endorsed by the State of New York, or any *bureau* or branch of the State Government.

PAR. 8. There are among competitors of respondents, individuals, partnerships, corporations, engaged in the sale and distribution of like and similar products to those manufactured and sold by respondents within the State of New York and other States of the United States who do not misrepresent their merchandise by the use of false and misleading corporate and trade names, marks, brands, and devices.

PAR. 9. The practices of respondents as stated have had and now have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the belief that the goods to be purchased of respondents are derived from or have the approval of a branch of the U. S. Government, or the Government of the State of New York, when in fact they are not so derived and do not have such approval. In truth and in fact none of the products manufactured and sold by respondents are manufactured by or for or have the approval of the authorities of the West Point Military Academy, the U. S. Government, or the Government of the State of New York.

Further, as a direct consequence of the mistaken and erroneous beliefs induced by the acts and representations of respondents as herein detailed, a number of the purchasing public have purchased a substantial volume of respondents' products with the result that trade has been unfairly diverted to respondents from competitors referred to in paragraph 8. As a result thereof, injury has been and is now being done by respondents to competition in commerce among and between the various States of the United States.

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CONCLUSION

The aforesaid acts and practices of the respondent, Service Products, Inc., and respondents Sam Hagler, Harry Hagler, and Irving Hagler, are to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce, within the intent and meaning 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 upon the complaint of the Commission and the substitute answer of the respondents, in which substitute answer respondents admit all the material allegations of the complaint to be true, and state that they waive hearing on the charges set forth in said complaint and consent that, without further evidence or other intervening procedure, the Commission may issue and serve upon them findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its findings as to the facts and conclusion that said 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 the respondent Service Products, Inc., its officers, representatives, agents, and employees, and respondents Sam Hagler, Harry Hagler, and Irving Hagler, their representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of their hair tonic, bay rum and other products in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, directly or by inference, through use of the imprint of a seal and the words, "Seal of Approval—Official Research Bureau of New York", or any other words, or through any other means, or in any other manner that the business conducted by them or the various products sold by them have been approved or endorsed by the State of New York or any branch or bureau thereof.

2. Representing, directly or by inference, through the use of either a picture of a head of a cadet with military cap, or a picture of a cadet in military uniform, or any other picture of a person in military cap or military uniform, standing alone or in conjunction with the words "West Point" or any other words, or through the use of the words, "West Point", alone or in conjunction with other words, or

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through any other means, that said products have been made or compounded under any specification set or approved by the War Department of the United States Government or have been adopted and approved for use in U. S. West Point Military Academy—provided that nothing herein shall prohibit the use of the words “West Point” as set out in subsection 3 hereof.

3. The use of the words “West Point” in connection with the marks or brands stamped or printed upon the bottles, jugs and containers, or upon wrappers, cartons and packages in which the products are packed, sold and shipped, or in advertising matter, circulars, catalogs, letterheads or stationery, or in any other media describing respondents’ products; and the use of the words “West Point” in connection with or as a part of the corporate, company or trade name “West Point Laboratories, Inc.”, unless and until the words “West Point” in the said corporate, company, trade and brand name “West Point Laboratories, Inc.” are in every instance accompanied by qualifying words in close proximity to the words “West Point” or “West Point Laboratories, Inc.”, in letters approximately one-half as large and in color and shape equally as conspicuous as the said words “West Point” or “West Point Laboratories, Inc.”, which shall contain a statement showing clearly that the products are not the products of the United States Military Academy at West Point, New York, and have not been authorized or consented to by authorities of the United States Military Academy at West Point, New York.

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

Syllabus

IN THE MATTER OF

GUSTAVE GOLDSTEIN, TRADING AS HUMANIA HAIR
& SPECIALTY MFG. CO.¹COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2724. Complaint, Feb. 18, 1936—Decision, Oct. 26, 1936*

Where an individual, engaged in the sale of hair goods, cosmetics, and toilet preparations, mailed or shipped to purchasers in various States—

- (a) Represented, through pamphlets, catalogs, and other advertisements circulated generally throughout the United States, and through labels attached to his merchandise, that he was a manufacturer of hair and specialty goods; facts being he had no factory which he owned, leased, or controlled, but bought his said merchandise from various manufacturing companies and jobbers;
- (b) Represented, as aforesaid, that he was an importer of hair goods; facts being he was not such an importer, though he did, in fact, sell some imported hair goods purchased by him in this country;
- (c) Falsely represented, as aforesaid, that his "Requas Ear Oil" would bring relief from deafness, and that his "Magic Shaving Powder" did not affect the growth of hair nor injure the skin;
- (d) Falsely represented, as aforesaid, that his "La-Em-Strait" and "Madam Walker's Hair Grower" prevented dandruff and falling hair and promoted hair growth, and that his "High Brown Hair Grower" was a combination hair grower and straightener, and falsely set forth that other preparations sold by him under various names made harsh hair soft and silky, promoted growth of hair on the temples, made kinky hair glossy, long, and straight, or grew hair, or restored white and gray hair to a lustrous black, etc.; and
- (e) Falsely represented that his "High Brown Beauty Ointment," "Dr. Ford Palmer's Skin Whitener," and other preparations sold by him under various names, rid the face of blemishes, pimples, etc., got rid of eczema, whitened and lightened dark blotchy skin almost over night, etc., without injury, and that other cosmetics and toilet preparations sold by him were efficacious in the restoration and treatment of the hair and skin and not injurious to latter or to the scalp;

With effect of misleading and deceiving a substantial portion of the purchasing public into the belief that he owned, operated or controlled a plant for the manufacture of the various products dealt in by him, as aforesaid, and that in purchasing of him they were dealing directly with the factory and securing for themselves advantages of closer prices and superior quality, as well as eliminating middleman, and that he actually imported certain of his hair goods, and that the various products sold by him would actually accomplish the results represented or claimed, as aforesaid, and

¹ Prior findings of facts and conclusion and order to cease and desist in this matter made as of May 13, 1936, were vacated and set aside by order of the Commission on October 26, 1936.