

Complaint

IN THE MATTER OF
THE L. D. CAULK COMPANY

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

Docket 2750. Complaint, Mar. 21, 1936—Decision, Nov. 13, 1936

Where a corporation engaged in manufacture and sale of dental materials and dental specialties, including a dental amalgam alloy sold to dentists for dental filling, and to dental supply houses for resale—

Falsely represented in its advertisements in trade papers and periodicals circulating among the dental profession and dealers in dental supplies in various States, and in circulars, etc., distributed in packages in which its said product was sold, as aforesaid, that its said alloy markedly resisted the effects of over and under manipulation and was adapted to any technic followed in the preparation of dental amalgam therefrom;

With effect of deceiving and misleading public, purchasers of dental amalgam alloy, into belief that such statements and representations were true, and into buying its said alloy instead of that sold by its competitors, and of diverting trade in such product to it; to the substantial injury and prejudice of its competitors:

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

Mr. Edward E. Reardon for the Commission.

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 L. D. Caulk Company, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the 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. Respondent, The L. D. Caulk Company, is a corporation, organized on or about April 30, 1913, and existing under the laws of the State of Delaware, and having at all times since its organization its principal place of business at Milford, Del., and branch offices, places of business, or retail depots in several cities in other States.

PAR. 2. During all the times above mentioned, the respondent is and has been engaged in the business of the manufacture and sale

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of dental materials and dental specialites and it has sold the same, including a dental amalgam alloy, which it sells under the brand or trade name, The Twentieth Century Alloy Improved (Caulk), to purchasers, located in the District of Columbia and in various States of the United States other than Delaware or the State of origin of the shipment, including dentists, who use and have used the respondent's amalgam alloys as dental filling for teeth of members of the public, and dental supply houses who purchase it for resale to dentists for such use.

PAR. 3. The respondent during all the times above mentioned and referred to, has caused and still causes its dental amalgam alloy, when so sold by it, to be transported, in containers packed in cartons with labels printed on or attached thereto bearing the above brand or trade name and various representations concerning the product, from Delaware, or the State of origin of the shipment to, into, and through other States and the District of Columbia to the purchasers located in said other States.

PAR. 4. During all the times above mentioned and referred to other individuals, firms, and corporations, hereinafter referred to as sellers, located in various States of the United States, are and have been engaged in the business of the sale of dental amalgam alloys. They have sold their dental alloys under their respective brand names for the same purposes of use mentioned in paragraph 2 hereof, in containers packed in cartons with labels printed on or attached thereto, bearing their respective brand names, to dentists and to dental supply houses located in the District of Columbia and in the various States of the United States other than the State of the seller, or the State of origin of the shipment, for use by the dentists or for resale by the dental supply houses to dentists for the use above referred to.

The sellers have caused their dental amalgam alloys, when so sold by them, respectively, to be transported from the State of the seller or from the State of origin of the shipment to, into, and through the District of Columbia and States other than the State of the seller or the State of origin of the shipment to the purchasers located in said other States.

PAR. 5. During all the times above mentioned and referred to the respondent is and has been in substantial competition in interstate commerce, in the sale of its dental amalgam alloys, with the other individuals, firms, and corporations referred to as sellers in paragraph 4 hereof.

PAR. 6. During the times above mentioned the respondent has caused advertisements of its dental amalgam alloy to be published in trade papers and periodicals circulating among the members of the dental

profession and dealers in dental supplies in the various States of the United States and has caused advertisements to be printed in circulars, etc., and distributed in the packages in which its dental amalgam alloy has been sold by it to dentists and to the trade. In its advertisements it has caused statements to be made, among others similar, that its Twentieth Century Alloy has a crushing strength of 58,000 pounds per square inch; that some batches of it exceed 60,000 pounds per square inch; that no other amalgam approaches so high a crushing strength average—that none other assures such durability; that its Twentieth Century Alloy markedly resists the effects of over and under manipulation and is adapted to any technic; that it has a slight flow of 1.5% to 2%; and, in this connection, the respondent represented therewith that the American Dental Association limit for flow is 5%.

PAR. 7. The crushing strength of respondent's Twentieth Century Alloy, when used following the technic prescribed by respondent in connection with its use, varies from 41,500 pounds to 43,100 pounds, or is of an average of 42,300 pounds per square inch, and the statements in its advertisements above referred to that its said alloy has a crushing strength of 58,000 to 60,000 pounds per square inch were untrue.

The crushing strength of several of the alloys, sold by competitors of respondent, including the alloys of some of the competitors referred to in paragraph 4 hereof, when subjected to the manipulation usual to their use, following the directions of the respective competitors, or an average dental technic, varies from 46,000 pounds to 48,000 pounds per square inch, and the statements made by respondent in its advertisements that no other amalgam approaches so high a crushing strength average as respondent's Twentieth Century Alloy and that none other assures such durability were untrue.

Respondent's Twentieth Century Alloy and any other alloy, including alloys of the competitors of respondent, when subjected to the technic of a user of amalgam alloys, whose technic departs substantially from that prescribed by the manufacturer of the alloy, does not markedly resist the effects of over or under manipulation with the result that, for example, the alloy will be caused to show contraction whereas it is essential that such alloys show no contraction, and the statements in respondent's advertisements that its Twentieth Century Alloy markedly resists the effects of over and under manipulation and is adapted to any technic were untrue.

The flow of respondent's Twentieth Century Alloy when used, following average dental technic is from 3.5% to 4%, and the statements in respondent's advertisements that its Twentieth Century Alloy has a slight flow of 1.5% to 2% were untrue.

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PAR. 8. The statements and representations above referred to in paragraph 6 hereof, made by the respondent in its advertisements, were untrue and they each and all had the capacity and tendency to deceive and mislead dentists and dealers in dental supplies and, in consequence thereof, dentists and dealers in dental supplies, purchasers of respondent's Twentieth Century Alloy who bought the same for use in the filling of teeth of members of the public or for resale to dentists for such use were deceived and misled thereby; into the belief that in purchasing respondent's alloy they were purchasing an alloy which was as represented by the respondent by the statements and representations in its aforesaid advertisements; into the belief that in so purchasing it they were purchasing an alloy having crushing strength as represented by the respondent; into the belief that no other amalgam alloy had as high a crushing strength or assured such durability as the respondent's; into the belief that the respondent's alloy resisted and was proof against objectionable effects of over and under manipulation when subjected to any technic which might reasonably be expected to be employed by dentists in the use thereof; and, into the belief that it had the property of a slight flow of 1.5% to 2%, and was even better in that respect than alloys of competitors which had the flow recognized by the American Dental Association as satisfactory for dental amalgam alloy. And trade in amalgam alloys was thereby diverted from competitors to respondent.

PAR. 9. The respondent in its advertisements represented its Twentieth Century Alloy to be "The World's Best Alloy" and, in connection with the false statements and representations of the respondent, mentioned and referred to in paragraph 6 hereof, such as that no other amalgam approaches so high a crushing strength average and that none other assures such durability thereby; directly as well as indirectly and by inference falsely represented that the alloys sold by respondent's competitors had a lesser crushing strength and lesser durability; were not adaptable to the variable technic of dentists in using such alloys; that the use of alloys of competitors by dentists would be likely to develop results such as contraction of the amalgam with its consequent injurious effects; also, that the alloys of competitors did not have as slight a flow as the respondent's; and, these statements and representations of the respondent falsely disparage the alloys of its competitors. Thus, also, trade in dental amalgam alloys was thereby diverted from respondent's competitors to the respondent.

PAR. 10. The above acts and things done and caused to be done by the respondent were, and are, each and all to the prejudice of the public and of respondent's competitors and constitute unfair methods

of competition in commerce within the meaning and intent 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 March 21, 1936, issued its complaint in this proceeding and caused it to be served upon the respondent, The L. D. Caulk Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent filed its answer to the complaint herein, and thereafter, a stipulation as to the facts, in lieu of testimony and evidence in support of or in opposition to the allegations of the complaint, was entered into by and between the respondent and counsel for the Commission, subject to the approval of the Commission, and it was further stipulated and agreed that the Commission may proceed upon said stipulation as to the facts to make its report, stating its findings as to the facts (including inferences which it may draw from the stipulated facts) and its conclusion based thereon, and to enter its order disposing of the proceeding without further notice.

Thereafter, the Commission duly approved and filed the said stipulation as to the facts, and this proceeding regularly came on for final hearing by the Commission on the complaint, the answer, and the said stipulation as to the facts; 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, the L. D. Caulk Company, is a corporation, organized on or about April 30, 1913, and existing under the laws of the State of Delaware, and having at all times since its organization its principal place of business at Milford, Del., and branch offices, places of business, or retail depots in several cities in other States.

PAR. 2. During the times above mentioned, the respondent is and has been engaged in the business of the manufacture and sale of dental materials and dental specialties and it has sold the same, in-

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cluding a dental amalgam alloy, which it sells under the brand or trade name, The Twentieth Century Alloy Improved (Caulk), to purchasers, located in the District of Columbia and in various States of the United States other than Delaware or the State of origin of the shipment, including dentists, who use and have used the respondent's amalgam alloy as dental filling for teeth of members of the public, and dental supply houses who purchase it for resale to dentists for such use.

PAR. 3. The respondent during all the times above mentioned and referred to, has caused and still causes its dental amalgam alloy, when so sold by it, to be transported, in containers packed in cartons with labels printed on or attached thereto bearing the above brand or trade name and various representations concerning the product, from Delaware, or the State of origin of the shipment to, into, and through other States and the District of Columbia to the purchasers located in said other States.

PAR. 4. During all the times above mentioned and referred to other individuals, firms, and corporations, hereinafter referred to as sellers, located in various States of the United States, are and have been engaged in the business of the sale of dental amalgam alloys. They have sold their dental alloys under their respective brand names for the same purposes of use mentioned in paragraph 2 hereof, in containers packed in cartons with labels printed on or attached thereto, bearing their respective brand names, to dentists and to dental supply houses located in the District of Columbia and in the various States of the United States other than the State of the seller, or the State of origin of the shipment, for use by the dentists or for resale by the dental supply houses to dentists for the use above referred to.

The sellers have caused their dental amalgam alloys, when so sold by them respectively, to be transported from the State of the seller or from the State of origin of the shipment to, into, and through the District of Columbia and States other than the State of the seller or the State of origin of the shipment to the purchasers located in said other States.

PAR. 5. During all the times above mentioned and referred to the respondent is and has been in substantial competition in interstate commerce, in the sale of its dental amalgam alloys, with the other individuals, firms, and corporations referred to as sellers in paragraph 4 hereof.

PAR. 6. During the times above mentioned the respondent has caused advertisements of its dental amalgam alloy to be published in trade papers and periodicals circulating among the members of the

dental profession and dealers in dental supplies in the various States of the United States and has caused advertisements to be printed in circulars, etc., and distributed in the packages in which its dental amalgam alloy has been sold by it to dentists and to the trade. In its advertisements it has caused statements to be made, among others similar, that its Twentieth Century Alloy has a crushing strength of 58,000 pounds per square inch; that some batches of it exceed 60,000 pounds per square inch; that no other amalgam approaches so high a crushing strength average—that none other assures such durability; that its Twentieth Century Alloy markedly resists the effects of over and under manipulation and is adapted to any technic; that it has a slight flow of 1.5% to 2%; and, in this connection, the respondent stated therewith the limit for flow in the specifications of the American Dental Association. The limit for flow in the specifications of the Dental Association was formerly 5% and is now 4% as shown herein-after.

PAR. 7. The National Bureau of Standards of the Department of Commerce has conducted a laboratory for dental research work since sometime prior to November 1925. As a result of the research conducted by the Bureau of Standards, specifications were adopted by the Federal Specifications Board for the use of the departments and independent establishments of the United States Government in the purchase of dental amalgam alloy, entitled Federal Specification U. S. G. M. 356, effective November 30, 1925, and mandatory in the purchase of that commodity by the United States Government.

Federal Specification No. 356 for dental amalgam alloy, among other things provided, under the title General Requirements, that amalgam shall possess certain features, or satisfactory working qualities, two of which were thorough amalgamation in 3 minutes and susceptibility to carving for at least 15 minutes after amalgamation.

Under the title Detail Requirements, Specification No. 356, provided as follows:

1. Chemical Composition.—The chemical composition shall be within the following limits:

Silver.....	64 to 70 percent
Tin.....	26 to 29 percent
Copper.....	3 to 6 percent
Zinc.....	0 to 2 percent

2. Ultimate compressive strength.—The average ultimate compressive strength values of three or more tests shall not fall below 2,500 kilograms per square centimeter (approximately 35,500 pounds per square inch).

3. Flow.—Specimens subjected to a constant pressure of 250 kilograms per square centimeter (approximately 3,550 pounds per square inch) shall not show more than 5 percent flow (i. e., more than 5 percent shortening in length of specimen, in a period of 24 hours.

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4. **Setting changes.**—Twenty-four hours after amalgamation the length shall have increased between 1 and 10 microns per centimeter. If at any time during the test a contraction of more than 4 microns per centimeter is detected, the alloy shall be rejected.

Under the title, **Method of Sampling and Tests, Specification No. 356**, among other things provided as follows:

1. At least 1 ounce shall be taken at random from every 500 ounces or fraction thereof for test at time of delivery.

2. **Ultimate compressive strength.**—Specimens shall be cylinders 6 mm. in diameter and 12 mm. long. These shall be prepared by condensing the amalgam into a cavity of these dimensions in a rigid block, using a reasonable technic (approximately that given in the sheet of instructions accompanying the alloy).

The ends of the cylinders shall be surfaced at right angles to the axis. Strength tests shall be made 5 days after condensing and the actual time consumed in applying the load shall not be over 5 minutes nor under 2 minutes. Tests shall be made at temperatures between 20 and 25 degrees centigrade.

3. **Flow.**—Specimens shall be cylinders 4 mm. in diameter and 8 mm. long and shall be prepared in the same manner as those for crushing. Three hours after condensing, the specimen shall be subjected to a constant pressure of 250 kilograms per square centimeter (approximately 3,550 pounds per square inch). During this test, the specimen shall be maintained at a temperature between 20 and 25 degrees centigrade.

4. **Setting changes.**—Specimens shall be prepared by condensing into a cavity or matrix. These shall be removed as soon as condensation is completed, and shall begin 15 minutes after amalgamation. (Time spent in mulling and condensing to be included as a part of the 15 minutes.)

Under the title, **Packing, Specification No. 356**, provided that the alloy shall be packed in moisture resisting containers and in quantities of 1 or 5 ounces as may be specified, and that the instructions for manipulation must accompany each package.

Under the title, **Notes, Federal Specification No. 356**, provided:

1. The foregoing specification is for the so-called "silver" amalgams which are to be used for restorations in the mouth.

2. Instruments and methods suitable for measuring the physical properties of alloys are described in Bureau of Standards Technologic Paper No. 157 and in the Dental Cosmos, March, 1920, pp. 305-335. It is not desired to limit the tests to the types of apparatus mentioned therein; on the contrary, any approved device, the accuracy of which is proved equal to those named, may be used.

PAR. 8. The Federal Specification Board on March 31, 1931, adopted Federal Specification U-A-451, superseding Federal Specification No. 356, and mandatory on and after September 1, 1931, in the purchase of dental amalgam alloy by the United States Government. Specification U-A-451 included without change the General Requirements in Federal Specification No. 356, above set forth. The

Detail Requirements in Specification U-A-451 are the same as they were in Specification No. 356, except as to chemical composition, which in Specification U-A-451 now are as follows:

1. Chemical composition.—The chemical composition shall be within the following limits:

	<i>Percent</i>
Silver-----	65-70
Tin-----	20-29
Copper-----	3- 6
Zinc-----	0- 2

PAR. 9. The American Dental Association is a voluntary association of approximately 40,000 dentists, or about 70 per cent of the 58,000 practising dentists in the United States. The Association adopted specifications for dental amalgam alloy which were substantially the same as Federal Specification U. S. G. M. 356, and U-A-451 as to the General and Detail Requirements thereof above set forth. On January 1, 1934, the Association adopted a revised Specification for dental amalgam alloy, the General Requirements of which were the same as in its previous Specification but in which the Detail Requirements and Method of Sampling and Tests were changed to read as follows:

Detail Requirements:

1. Chemical composition shall be within the following limits:

- Silver, 65 per cent minimum.
- Copper, 6 per cent maximum.
- Zinc, 2 per cent maximum.
- Tin, 25 per cent minimum.

Gold and platinum will not be regarded as foreign materials.

2. Flow.—Specimens subjected to a constant pressure of 250 kg. per square centimeter (approximately 3,550 pounds per square inch) shall not show more than 4 per cent flow (i. e., more than 4 per cent shortening in length of specimen) in a period of twenty-four hours.

3. Setting changes.—Twenty-four hours after amalgamation the length shall have increased between 3 and 13 microns per centimeter.

Methods of Sampling and Tests:

The test specimens shall be made according to the published directions which shall accompany each package. These directions shall not require complicated equipment and shall be in harmony with recognized dental practice. The following details shall be included in these directions: ratio of alloy to mercury, type of mortar and pestle, whether the alloy and mercury shall be stirred or ground, mixing time, mixing speed (revolutions of pestle or number of times amalgam is spread out and rolled up in the hand), when and how the excess mercury shall be expressed and the method of packing. The following details relative to test methods shall be observed:

1. Flow.—Specimens shall be cylinders 4 mm. in diameter and 8 mm. long. These shall be prepared by condensing the amalgam into a cavity

of these dimensions in a rigid block using the technic given in the sheet of instructions accompanying the alloy.

The ends of the cylinders shall be surfaced plane at right angles to the axis. Tests shall be made at temperatures between 20° and 25° C. Three hours after condensing, the specimen shall be subjected to a constant pressure of 250 kg. per square centimeter (approximately 3,550 pounds per square inch).

2. Setting changes.—Specimens shall be prepared by condensing into a cavity or matrix. These shall be removed as soon as condensation is completed and shall not be subject to restraint during the test. Measurements shall begin fifteen minutes after amalgamation (time spent in mulling and condensing to be included as a part of the fifteen minutes).

PAR. 10. In the manufacture of dental amalgam alloy, including respondent's, the metals used, mentioned in the foregoing specifications, are melted together and cast into bars. These bars are then cut or filed into finely divided particles and the alloy, usually in the shape of filings, is then ready to be combined with mercury by the dentist to form an amalgam for making dental restorations. The amalgam is made by the dentist who mixes the alloy and the mercury in certain proportions, usually in the proportions indicated by the manufacturer in directions which accompany the packages of the alloy when sold.

The manufacturer of the alloy usually specifies the type and condition of the mortar and pestle to be used and furnishes directions for the proper mixing of the alloy and mercury and for packing or condensing the amalgam in printed instructions on the packages of the alloy or in circulars which accompany the alloy when sold for use. The directions for mixing the alloy and mercury include the time and rate of trituration; the number of revolutions of the pestle per minute (R. P. M.); and, the pressure applied to the pestle by the hand of the operator.

The respondent, in circulars which accompanied each package of its alloy when sold, has indicated the proportions of mercury to be used with its alloy and the directions for mixing the mercury with its alloy and for packing or condensing the amalgam.

PAR. 11. Variations from the proportions of mercury recommended by the manufacturer to be mixed with its alloy produce varying results in the physical properties of the amalgam produced.

Variations from the specified condition of the surface of the mortar and pestle and from any of the directions for mixing mercury with the alloy; the length of trituration time; rate of rotation of the pestle; in the pressure applied to the pestle by the hand of the operator; and, variations in the technic of the operator, in condensing or packing the amalgam into a cavity, or into a matrix used for forming specimens of the amalgam for making tests of its properties,

produce varying results in the properties of the resulting amalgam. For instance, following directions in the condensing of the amalgam, the greater part of the mercury mixed with the alloy to form the amalgam is expressed therefrom during the process of condensing, making the amalgam more dry and harder, according to the amount of the mercury that is expressed, and the last portion of the condensed amalgam is quite dry, as all the mercury is expressed from it as far as possible by the dentist or operator, using generally a chamois or an amalgam squeeze cloth as an aid for that purpose.

No dental alloy, including respondent's, resists the affects of over or under manipulation in producing dental amalgam and any amalgam subjected to over or under manipulation will be caused to show substantial changes in its properties, some of which changes will be undesirable.

PAR. 12. During the year 1935, at the instance of the Dental Division of the Bureau of Standards, a certain portion of dental alloy from a quantity of alloy produced in one and the same manufacturing operation was submitted to each of nineteen operators who were qualified and competent technicians to test dental alloys. Seven of these operators were connected, respectively, with seven universities equipped with dental laboratories and twelve of the operators were connected, respectively, with twelve manufacturers of dental alloy, all of whom maintain laboratories in connection with the manufacture of dental alloy for commercial sale. The operators were furnished with identical and very detailed directions for testing the alloy submitted to them and they were requested to report the results of three tests each of the amalgam produced with the alloy, among other things as to the flow of the amalgam. In the case of one of these operators, the results of three tests of amalgam produced showed, respectively, a flow of 4.7%; 4.9%; 6%, for an average of 5.2%. The results of three tests by another operator showed a flow of 4.7%; 5.2%; 4.5%; for an average result of 4.8% flow. These results were the highest of those reported by the nineteen operators. In the case of two other of the operators the results of three tests were: for one of the operators 1.3%; 1.8%; 1.6% of flow for an average flow of 1.6%. For the second operator the results were 1.9%; 2%; 1.9%, for an average flow of 1.9%.

At the time these tests of the flow of the amalgam produced from the alloy mentioned was made, both the Federal and the American Dental Association's specifications gave 4% as the maximum limit for flow of dental amalgam. While in the case of the tests made by two of the operators, the average result for the flow was slightly in excess of 4% of flow, the average results of the tests of all nineteen

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operators was within the limit for flow in the specifications above mentioned. The difference between the results of the tests made by the nineteen operators is accounted for largely by the variation in the individual operations of the operators, although each was following the same detailed directions.

PAR. 13. The statements and representations made by the respondent in its advertisements, in connection with the sale of respondent's said alloy: that its said alloy ----- markedly resists the effects of over and under manipulation and is ----- adapted to any technic, were untrue statements and representations and they had the capacity and tendency to deceive and mislead the public, and they have deceived and misled the public, purchasers of dental amalgam alloy, into the belief that the said statements and representations were true, and, in reliance upon such belief, into purchasing respondent's alloy instead of dental amalgam alloy sold by the respondent's competitor.

PAR. 14. In consequence of the practices of the respondent in representing that its said dental amalgam alloy markedly resisted over and under manipulation and was adapted to any technic, trade in dental amalgam alloy was diverted to the respondent to the substantial injury and prejudice of its competitors.

CONCLUSION

The aforesaid practices of the respondent, The L. D. Caulk Company, in representing that its said alloy markedly resists the effects of over or under manipulation and that it is adapted to any technic in the preparation of dental amalgam therefrom, under the conditions and circumstances described in the foregoing findings, were to the prejudice and injury of the competitors of respondent and were to the prejudice and injury of the public and were unfair methods of competition and constitute a violation of 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."

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, and the stipulation as to the facts, filed in lieu of testimony and evidence in support of or in opposition to the allegations of the complaint, oral argument and filing of briefs having been waived, and, the Commission having made its findings as to the facts and its conclusion that the respondent had violated the provisions of an Act of

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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, The L. D. Caulk Company, its officers, representatives, agents, and employees, in connection with the offering for sale, and the sale and distribution of its Twentieth Century Alloy in interstate commerce and in the District of Columbia, do forthwith cease and desist from representing: that its said alloy or any dental alloy substantially of the same composition sold or offered for sale by respondent under the said trade name, or any other trade name, markedly resists the effects of over or under manipulation and that it is adapted to any technic followed in the preparation of dental amalgam therefrom.

It is further ordered, That the respondent shall, within 30 days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF
CHARLES N. MILLER COMPANY

OPINION AND DECISION AND MODIFIED ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

*Docket 2826. Complaint, Mar. 29, 1936—Order, Nov. 14, 1936*¹

Dismissal of complaint, hereinbefore issued, requested on ground that respondent had discontinued unfair methods of competition therein charged, namely, use of a lottery scheme in sale of its candy, rejected, but prior order modified for reasons set forth in opinion and decision as respectively applicable.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

Mr. Harold W. Knowlton and *Jacobs & Jacobs*, of Boston, Mass., for respondent.

OPINION

The complaint in this case charged the Charles N. Miller Company, a Massachusetts corporation, with principal office and place of business at Boston, in that State, with the violation of Section 5 of the Federal Trade Commission Act (38 Stat. 717, 719; 15 U. S. C. A. Sec. 45), in selling and distributing candy, in interstate commerce, by methods involving lotteries.

The respondent in due course filed answer, in which it stated that, before issuance of the complaint, it had ceased to sell its candy by the methods charged. Subsequently, it filed a second answer, admitting all the material allegations of the complaint, denying that at the time the complaint was issued or since that time it was using lottery methods in the sale of its products, and waiving all further proceedings.

Thereafter, the proceeding came on regularly for final hearing before the Commission on the complaint and answers, and the Commission, having duly considered the record and being fully advised in the premises, on August 4, 1936, made and entered its report in writing in which it stated its findings as to the facts and conclusion, and issued and served on respondent an order which directed the respondent, and its officers, agents, representatives, and employees, in the manufacture, sale, and distribution in interstate commerce of candy and candy products, to cease and desist from:

(1) Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, candy so packed and

¹ For text of complaint and findings, as heretofore issued, and not modified, see ante at page 211.