

Syllabus

IN THE MATTER OF
PERFECT MANUFACTURING COMPANY

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

Docket 2899. Complaint, Aug. 14, 1936—Decision, Apr. 30, 1937

Where a corporation engaged in manufacture, and sale to purchasing and consuming public in various parts of the United States, through use of trade name "Sav-An-Upper Company," of preparation, among others, known and designated as "Sav-An-Upper," and thus branded, labeled, and packed for sale and distribution by it, trading under name "Sav-An-Upper Company," and by its agent-salesmen to purchasing and consuming public; in advertising its said product, in the course and conduct of its said business and as a means of obtaining services of such agent-salesmen to handle and sell the same, in sales magazines and periodicals of general circulation and in circulars and other mail matter distributed to prospective agents and containing sales talks and instructions, and through representations in said advertisements, distributed as aforesaid, and which were eventually communicated to customers and consumers, actual and prospective—

- (a) Represented that its said product had unusual sales appeal, or that selling qualities or possibilities thereof were most exceptional, and that large sums of money might commonly or easily be made by agents in handling and selling the same, through such statements as that men and women everywhere were making tremendous profits, up to 202%, in the sale thereof, that an investment of \$1.50 could build itself into tens, hundreds, and thousands of dollars in just a short while, and that earnings up to \$5,000 a year should be reached by quite a few, and others of like import and effect;
- (b) Represented that its said product, when applied to objects, possessed and imparted the quality, condition, and effect of permanency and would renew articles to which it was applied, such as trunks, luggage, school and shopping bags, or make scuffed shoe tops look as neat and good as the day they left the factory, and similar statements; and
- (c) Represented that it owned or operated the million dollar company which was, or would be, back of salesmen selling its said product, and that such company had a world-wide business and prospering agents everywhere;

Facts being such statements and representations were false, deceptive, misleading and exaggerated in various particulars, its said product did not possess the sales appeal or possibilities claimed for it, agents and salesmen could not and did not realize, through sale thereof, large earnings and profits held out to them, product did not produce or impart a coating which was permanent in character or which would renew or restore objects, no matter how old, worn or scuffed they might be, to a new or like new condition, and it did not own, control, or operate any million dollar company or business with world-wide trade or connections, or any company or business even approximating such financial size, status, or importance;

With tendency and capacity to cause agents and salesmen to form mistaken and erroneous beliefs that such a company, and with world-wide business and prosperous agents everywhere, was back of them, and that product in question had a selling power or appeal which it did not possess, and that large and

Complaint

24 F. T. C.

substantial profits could be earned from sale thereof, and with effect of causing members of purchasing public to form mistaken and erroneous beliefs concerning character and qualities of said product and usage to which it properly and successfully might be put, and with further result that salesmen and agents were thereby induced to handle and sell the same, and members of the public to purchase said product under erroneous belief that misleading and extravagant claims made for it were true, to the detriment and injury of manufacturers and sellers of similar products, and with capacity and tendency unfairly to divert to it trade of competitors engaged in selling such products and who fairly and accurately advertise and represent the same:

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

Mr. Marshall Morgan for the Commission.

Parton & Seasongood, of Cincinnati, Ohio, 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 Federal Trade Commission, having reason to believe that Perfect Manufacturing Company, a corporation, hereinafter referred to as "respondent," has been, and is now, 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, Perfect Manufacturing Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 3325 Madison Road, in the city of Cincinnati, Ohio. Respondent is now and for more than two years last past has been engaged, as hereinafter described, in the business of manufacturing and selling to retail dealers, agents, and salesmen in various parts of the United States, through the use of trade name companies, various appliances, products, and preparations. Among the appliances, products, and preparations so manufactured and sold by respondent, is a liquid shoe polish, enamel, dressing, or finish, for shoes, made in different colors, known and designated as "Sav-An-Upper," and sold to retail dealers, salesmen, and agents in various parts of the United States. The said preparation, Sav-An-Upper, is manufactured, as stated in Cincinnati, Ohio, where it is branded, labelled, and packed by respondent for sale and distribution by itself through the use of a trade name company, known and designated

1163

Complaint

as "Sav-An-Upper Company," and by its agent-salesmen, or dealer-customers, to the purchasing and consuming public of the United States. In consummating such sales and in distributing such product, respondent causes the said shoe polish, enamel, dressing, or finish to be transported and delivered from its place of business in Cincinnati, State of Ohio, through and into various other States of the United States to the respective purchasers thereof at their respective points of location. In the course and conduct of its business the respondent has been and is now engaged in direct and substantial competition with various corporations, partnerships, and individuals likewise engaged in the sale and distribution of shoe polishes, enamels, finishes, or dressings for shoes and offering such products for sale in commerce between and among the various States of the United States and within the District of Columbia.

PAR. 2. In the course and conduct of its said business respondent has offered its products for sale and has sold and transported or caused the same to be transported in commerce among the several States of the United States to the consuming public through the medium of salesmen, agents, and dealers. Said products are and were shipped in response to orders received from said salesmen, agents, or dealers transported or caused to be transported in commerce among the several States of the United States. As a means of obtaining the services of such salesmen, agents, or dealers, said respondent causes and has caused advertisements to appear in sales magazines and periodicals having general circulation, and, in addition, distributes and has distributed circulars and other mail matter containing sales talks and instructions.

In the course and conduct of its said business, as hereinabove related, respondent has caused various false, deceptive, and misleading statements to be inserted and to appear in said advertisements and in circulars and other mail matter distributed by it. The statements contained in said advertisements, circulars, and mail matter are addressed to and are and have been distributed among salesmen, agents, and dealers throughout the United States and are intended to be and constitute instructions to them in connection with sales talks to be made to retail stores, boot-black stands, customers and consumers, actual and prospective. In this manner the said various false and misleading statements and representations inserted in said trade magazines, circulars, bulletins and other communications by respondent, including claims set forth in describing respondent's products, are and have been passed on to the ultimate consumer by respondent's salesmen, dealers, and agents, and the consuming public have been induced to purchase the products thus offered for sale and sold by

Complaint

24 F. T. C.

respondent in the erroneous belief that said false and misleading statements and representations concerning such products were and are true.

PAR. 3. In the course and conduct of its business, respondent, in advertisements, circulars, bulletins, and sales communications having a general circulation, as stated, represents in advertising:

Picture appearing in a display advertisement of an old, creased and wrinkled looking shoe coupled with the words:

Before Using Sav-An-Upper.

Picture of same shoe in glistening black surface, and, new in appearance, coupled with the words:

After Using Sav-An-Upper.

Shoes like new as low as 2¢ a pair. It's easy. Shoes like new 6¢ a pair.

Earn up to \$2 in an hour.

Sensational new discovery—completely covers scuffed, discolored and faded uppers of any shade with wear proof highly polished coating. Makes them look new. Quick, easy economical. Takes only a minute. Just brush it on. Gives glossy, good-looking, long wearing, crack proof finish.

Sav-An-Upper has found a hearty welcome in every city, town, village, and on millions of farms.

Free Sample—Men and women representatives making tremendous profits. Unlimited demand. Write today for free sample that proves all claims and territory offer. Send no money.

Not a polish. Not a dye.

Saves buying shoes.

* * * makes the scuffed, discolored and faded uppers glossy, neat and good-looking as the day they left the factory.

Sav-An-Upper completely covers the scuffed, unsightly leather, canvas, suede, reptile skin, satin or linen with a tough, water-proof, long-wearing, flexible coating that *won't rub off*. Sav-An-Upper preserves the uppers and adds months and months of extra wear.

Men and women everywhere making tremendous profits—up to 202%. Desirable territories are being "snapped up" by hustlers. Get your share of the Big Money * * *

* * * Not only makes old shoes like new but it is also excellent for renewing trunks, luggage, school bags, shopping bags, brief cases, leather upholstery, and cushions, auto tops, harness, reins, saddles, bits, wallets. Leather gloves, etc. * * *

* * * Enormous margin of profit on quick easy sales. * * *

Most sensational money maker ever offered to direct sellers.

Waterproof, crack-proof—long wearing—Needs no polishing.

Your \$1.50 investment can build itself into tens, hundreds, and thousands of dollars in just a short while. Act today!

Just got back to my room from a date with a shoe man. He surely gave Sav-An-Upper every test he knew and then some. When he got through he told me it was the best product he had ever seen.

Every demonstration makes you sales and profits galore. * * *

Your profits are guaranteed—you have a fortune to gain and you cannot lose.

Your territory is open but it will not stay that way long.

Your territory is a regular "gold mine" ready for digging.

Be financially Independent.

You can earn as much money as you want because the amount of your income depends entirely on your own efforts.

You simply make the sensational one-second demonstration and the prospect **BUYS.**

A self-polished, good-looking flexible coating that is longer wearing, crack-proof, waterproof and permanent.

If you act quickly you can begin making as much as \$2.00 in an hour at once, beginning the first day.

* * * Its big margin of profit (up to 186%) means that just a few sales will pay you \$30.00, \$50.00, \$80.00 a week or more.

* * * Even beginners are so swamped with orders that they must hire sub-agents to help handle their business. Earnings up to \$5000.00 in a year should be reached by quite a few.

* * * I want to see you own your own home, your own car, and have a bank account. That's what Sav-An-Upper is doing for other men and women everywhere.

* * * Demonstrations of this kind made in a busy section, at fairs, at carnivals or markets, bring as high as \$12.00 worth of sales in an hour, which can mean as much as \$7.95 in profits to you.

* * * Depending on the size of your territory and the number of sub-agents you put to work, you can make as high as \$18.00 in a day, besides what you make on your personal sales to consumers and stores and through demonstrations.

* * * this sensational new discovery affords **YOU AN OPPORTUNITY TO GET IN ON THE GROUND FLOOR** of a gigantic, world-wide business with prospering representatives everywhere.

Our entire plant including manufacturing department, chemical laboratories, raw material storage, offices, occupies 5 acres with three railroad sidings, * * *

A million dollar company is back of you!

PAR. 4. When in truth and in fact said statements and representations made by said respondent with respect to its product and the earnings to be derived from the sale thereof, were and are false, deceptive and misleading in the following among other particulars:

1. Agents, dealers, solicitors and other selling respondent's product cannot and do not earn up to \$2.00 an hour.

2. Men and women everywhere are not making tremendous profits—up to 202%, or getting their share of “the Big Money”, or realizing an enormous margin of profit on quick easy sales.

3. Investments of \$1.50 are not building themselves into tens, hundreds and thousands of dollars in just a short time.

4. Every demonstration of respondent's product does not make “sales and profits galore”.

5. Territories in which respondent's product has not been sold are not “gold mines, ready for digging”.

6. Profits to the sellers of respondent's products are not “guaranteed” nor have they a fortune to gain which they cannot lose.

Complaint

24 F. T. C.

7. Salesmen are not being made "independent" in handling respondent's product, nor are they earning as much as they want, nor are the amounts of earnings limited only by their own effort.

8. One-second demonstrations do not cause prospective purchasers to buy.

9. Agents and sellers cannot and do not make as much as \$2.00 in an hour at once by acting quickly or otherwise, beginning the first day; nor \$12.00 an hour nor \$18.00 in a day.

10. The sale of respondent's product is not providing and has not provided homes, cars and bank accounts for men and women selling such product.

11. A few sales an hour of respondent's product will not pay \$30, \$50, \$80 and more a week, and beginners are not so swamped with orders that they must hire sub-agents to help handle their business.

12. Earnings up to \$5,000 in a year are not reached by "quite a few."

13. Respondent's business is not "a gigantic, world-wide business with prospering representatives everywhere"; and no million dollar company, including chemical laboratories, occupying 5 acres and having three railroad sidings, is back of those selling respondent's products.

14. Respondent's product is not crack-proof, nor water-proof, nor permanent, nor does it renew trunks, luggage, school bags, shopping bags, brief cases, leather upholstery and cushions, auto tops, harness, and other articles of leather.

15. Respondent's product cannot and does not make scuffed shoe tops look as neat and good as "the day they left the factory" or make old shoes like new for 2¢ and 6¢ respectively.

16. The "attractive, polished, glowing neatness of brand new shoes" is not restored to old uppers of shoes by use of respondent's product no matter "how soiled, discolored, scuffed, scratched or faded the old uppers may be."

PAR. 5. Among the competitors of respondent referred to in paragraph 1 hereof, there are those who manufacture and sell in commerce products like or similar to those sold by respondent, and who do not make false, misleading, and extravagant claims and representations concerning such products, but advertise and represent the same fairly and accurately.

PAR. 6. Respondent by the use of the hereinbefore described advertising in interstate commerce has thereby falsely represented to prospective agents, salesmen, dealers, or others, that large or substantial sums of money are being or could be easily and quickly made in the sale of its said product, when in truth and in fact the selling

Findings

possibilities and sale qualities thereof are not and never have been of the character represented, and respondent has further, as herein shown, falsely represented in advertising matter the nature, character and qualities of its said product.

By the use of these false and misleading representations appearing in respondent's circulars, bulletins, sales talks, or instructions, advertisements in trade magazines and in other advertising matter employed by respondent, which representations are passed on to the purchasing public by salesmen, agents, and dealers selling respondent's product, the consuming public and those induced to sell such product, are and have been thereby deceived concerning the character and qualities of the said product and the uses to which it properly and successfully may be put, and are and have been thereby induced to purchase respondent's product under the erroneous belief that the false and extravagant claims made for it are and were true. The aforesaid practices of respondent are further to the detriment and injury of manufacturers and sellers of products similar to those sold by respondent, and have had the capacity and tendency to divert to respondent the trade of competitors engaged in selling in interstate commerce products of the nature of that sold by respondent, and who fairly and accurately advertise and represent such products.

PAR. 7. The above false, misleading, and deceptive acts, practices and methods of respondent under the circumstances and conditions hereinabove alleged are unlawful and constitute unfair methods of competition 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."

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 14th day of August 1936, issued and on the 17th day of August 1936, served its complaint in this proceeding upon respondent, Perfect Manufacturing Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On September 5, 1936, the respondent filed its answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts executed by the respondent through its counsel, Messrs. Paxton and Seasongood, and by W. T. Kelley, Chief Counsel, of the Commission, subject to the approval of the Commis-

sion, might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission might proceed upon said statement of facts to make its report, stating its findings as to the facts (including inferences which it might draw from said facts), and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation, said stipulation having been approved and accepted, 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 its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Perfect Manufacturing Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 3325 Madison Road, in the city of Cincinnati, Ohio. Respondent is now and for more than two years last past has been engaged in the business of manufacturing and selling to the purchasing and consuming public in various parts of the United States, through the use of trade name companies, various appliances, products, and preparations. Among such is a liquid finish for shoes, made in different colors, known and designated as "Sav-An-Upper." The said preparation, Sav-An-Upper, is manufactured in Cincinnati, Ohio, where it is branded, labeled, and packed for sale and distribution by respondent trading under the name "Sav-An-Upper Company," and by its agent-salesmen, to the purchasing and consuming public in the United States. In consummating such sales and in distributing such product, respondent causes the said shoe finish to be transported and delivered from its place of business in Cincinnati, State of Ohio, through and into various other States of the United States to the respective purchasers thereof at their respective points of location.

PAR. 2. Respondent, in the course and conduct of its business, is now, and has been at all times mentioned herein, engaged in substantial competition with other corporations, and with firms and individuals likewise engaged in the manufacture, sale and distribution of liquid finishes for shoes in commerce between and among the various States of the United States.

PAR. 3. Respondent, in the course and conduct of its said business, and as a means of obtaining the services of agent-salesmen to handle and sell its product "Sav-An-Upper" causes and has caused advertisements to appear in sales magazines and periodicals having a general circulation throughout the United States and in addition distributes and has distributed to prospective agents, circulars and other mail matter containing sales talks and instructions. The representations contained in said advertisements distributed as aforesaid among agent-salesmen throughout the United States are and have been eventually communicated to customers and consumers, actual and prospective.

PAR. 4. Respondent, in the course and conduct of its business, in circulars, bulletins, sales communications and through other advertising media having general circulation, has made various claims, statements and representations concerning its product "Sav-An-Upper." In certain of its advertisements respondent represents that its product "Sav-An-Upper" has unusual sales appeal, or that selling qualities or possibilities of "Sav-An-Upper" are most exceptional and that large sums of money may commonly or easily be made by agents in handling and selling such product. In certain other statements and advertisements, respondent makes various representations concerning the permanent, wearing, lasting, and restorative qualities of the said product and concerning the size, scope, and character of respondent's business. Typical of the representations contained in said advertising matter of respondent, are statements that men and women everywhere are making tremendous profits, up to 202%, in the sale of "Sav-An-Upper," that an investment of \$1.50 can build itself into tens, hundreds, and thousands of dollars in just a short while, that earnings up to \$5,000 a year should be reached by quite a few, and other statements of like import and effect. In other statements it is represented that "Sav-An-Upper," when applied, has the characteristic of permanency and will renew articles to which it is applied, such as trunks, luggage, school and shopping bags, or will make scuffed shoe tops look as neat and good as the day they left the factory, or that when applied to old shoes they can be made to look new for as little as 2¢ to 6¢ respectively, and that old shoe uppers to which "Save-An-Upper" is applied, no matter how soiled or discolored, scuffed, scratched, or faded, will be restored to the glowing neatness of brand-new shoes. Further typical of respondent's representations are representations to the effect that respondent is, owns or operates a million dollar company which is, or will be, back of the salesmen selling its product "Sav-An-Upper," and that

such company has a world-wide business and prospering agents everywhere.

PAR. 5. The statements and representations made by respondent in selling and offering for sale its product "Sav-An-Upper" were, and are, false, deceptive, misleading, and exaggerated in various particulars. Respondent's product does not possess the sales appeal or possibilities that are being and have been claimed for it. Agents and salesmen can not and do not realize, as a result of the sale of said product, the large earnings and profits that have been held out to them by respondent as an inducement to have them handle and undertake the sale of said product. The respondent does not own, control or operate any million dollar company or business with world-wide trade or connections or any company or business even approximating such financial size, status or importance, and respondent's product "Sav-An-Upper," when applied to objects, does not produce or impart a coating which is permanent in character or which can or will renew or restore objects, no matter how old, worn or scuffed they may be, to a new or like-new condition.

PAR. 6. Among the competitors of the respondent referred to in paragraph 1 hereof, there are those who manufacture and sell in commerce, products like or similar to those sold by respondent, and who do not make false, misleading and extravagant claims and representations concerning such products, but advertise and represent the same fairly and accurately.

PAR. 7. The use of the hereinbefore mentioned false and misleading representations on the part of respondent and its agents, which are typical of the methods employed by respondent in the sale and offering for sale of its product, the said liquid finish for shoes known and designated as "Sav-An-Upper" has had, and now has, the tendency and capacity to cause agents and salesmen to form the mistaken and erroneous beliefs that a million dollar company, with a world-wide business and prosperous agents everywhere, is back of them, that the product has a selling power or appeal which it does not possess, and that large and substantial profits can be earned from the sale thereof. The use of respondent's representations has further caused members of the purchasing public to form mistaken and erroneous beliefs concerning the character and qualities of the said product and the uses to which it properly and successfully may be put. Salesmen and agents have thereby been induced to handle and sell respondent's product and members of the purchasing public have thereby been induced to purchase said product under the erroneous belief that the misleading and extravagant claims made for it are and were true.

1163

Order

The aforesaid representations and practices of respondent are further to the detriment and injury of manufacturers and sellers of products similar to that sold by respondent and have the capacity and tendency unfairly to divert to respondent the trade of competitors engaged in selling in commerce among and between the various States of the United States and within the District of Columbia products of the nature of that sold by respondent, and who fairly and accurately advertise and represent such products.

CONCLUSION

The aforesaid acts and practices of the respondent, Perfect Manufacturing Company, a corporation, are to the prejudice of the public and of respondent's 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, the answer of respondent, and the agreed stipulation as to the facts entered into between the respondent herein, Perfect Manufacturing Company, and W. T. Kelley, Chief Counsel for the Commission, which stipulation provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts (including inferences which it may draw from the said stipulated facts) and the conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has 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, Perfect Manufacturing Company, its officers, representatives, agents, individual or corporate, and its employees, in connection with the offering for sale, sale, and distribution in interstate commerce or in the District of Columbia of a liquid finish or product for shoes known as "Sav-An-Upper," or designated or described under any other name, do forthwith cease and desist from:

Order

24 F. T. C.

1. Representing that agents or salesmen can or do earn or have ever earned certain specified sums daily, weekly, monthly, or for or during any stated period of time through the sale of respondent's said product unless and until said agents or salesmen actually have so made the earnings stated;

2. Representing that respondent's product when applied to objects possesses and imparts the quality, effect or condition of permanency, or has the renewing and restoring qualities or characteristics, which have been ascribed to it by the respondent, and which it does not possess.

3. Representing that respondent is a million dollar company, and that it has assets or a volume of business or business connections or operations substantially in excess of those which it actually possesses.

It is further ordered, That the respondent shall, within 60 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.

Complaint

IN THE MATTER OF

FOOD DISPLAY MACHINE CORPORATION

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

Docket 2726. Complaint, Feb. 19, 1936—Decision, May 1, 1937

Where a corporation engaged in the sale and distribution of potato chip machines; in advertising same in various periodicals, pamphlets, form letters, and other advertising media of interstate circulation—

- (a) Represented and held out, as possible or maximum earnings for any fixed period, amounts in excess of those actually earned during such period by operators of its machines under normal conditions in due course of business, through use of such statements or expressions as "up to" or "as much as," or others of similar import and effect, such as "Make as much as \$23.00 a day on the capacity of one machine selling wholesale only," "Work at home. Make up to \$117.00 a week";
- (b) Represented or held out, as usual or customary earnings or profits to be derived from the operation of its machines, sums or amounts in excess of the average, usual and customary sums or amounts actually thus earned under normal conditions in due course of business, through such statements as "Every time you invest \$11.48 in raw materials, you get back \$35.00 in cash on the spot * * *," with \$23.50 thereof "net profit for you," and, theretofore, such statements as "There is no way to tell whether you'll make \$5,000 or \$15,000 the first year"; and
- (c) Represented that its said machines had a retail value or sales price greater than that for which they were usually and customarily sold in due course of business;

With effect of misleading a substantial portion of purchasing public into erroneous belief that said representations were true, and with result that such public, as a consequence of the mistaken and erroneous beliefs induced by such false and misleading statements and representations, bought a substantial volume of its products, and trade was unfairly diverted to it from competitors engaged in sale and distribution of such machines, or in manufacture, sale, and distribution thereof, and who truthfully represent possible and actual earnings of operators of their said machines; to the substantial injury of competition in commerce:

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

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

Mr. DeWitt T. Puckett for the Commission.

Bussian & DeBolt, 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