

Syllabus

IN THE MATTER OF

THE WATER WORKS VALVE AND HYDRANT GROUP OF
THE VALVE AND FITTINGS INSTITUTE 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 2958. Complaint, Nov. 16, 1936¹—Decision, May 18, 1937*

Where a trade organization or group, the members of which were engaged at their respective places of business in the manufacture of water-gate valves, hydrants, fittings and similar products, and in the sale thereof chiefly to towns, cities, and other municipalities, to State Governments and divisions thereof, to the Federal Government and divisions thereof, and to State and Federal institutions, and which members constituted substantially all manufacturers in the United States of such products for water supply systems and were originally and still would have been, but for the matters and things hereinafter set forth, in price competition with one another; certain individuals constituting the governing committee of said organization or group; an individual, as president commissioner of the institute of group in question and as administrative officer of the Code Authority of the Code of Fair Competition for Industry in question; second individual, as assistant secretary of said institute and also as administrative officer of said authority; and the aforesaid members—

- (a) Entered into and carried out an agreement, combination, understanding and conspiracy to fix and maintain, and did fix and maintain thereby, enhanced uniform delivered prices to be exacted by said members from their purchasers of water-gate valves, hydrants, fittings, and similar products, in commerce between and among the various States and in the District of Columbia; and in pursuance of their said understanding and conspiracy—
- (1) Agreed to and did fix and maintain enhanced uniform delivered prices for products in question sold by said members;
- (2) Agreed to and did divide the United States into zones and fixed and maintained therein enhanced delivered prices to be exacted by the members, as above set forth, from the purchasers of their said products;
- (3) Agreed to and did fix uniform discounts allowed by the members in the sale of their said products to jobbers and distributors; and
- (4) Agreed to and did fix and establish uniform delivered prices at which jobbers and distributors purchasing their said products from them should resell same, and refused to continue selling to such jobbers and distributors as refused to or did not resell at enhanced uniform delivered prices as fixed; and

Where the aforesaid officer individuals, to wit, said Institute's president commissioner and code authority's administrative officers, acting for and in behalf of the others hereinbefore referred to, and for the purpose of accomplishing the aforesaid combination, agreement, etc.—

¹ Amended.

Complaint

24 F. T. C.

(b) Induced certain of such others, by intimidation and persuasion, to raise their quoted prices to the uniform enhanced delivered prices fixed, as above set forth, by said combination, conspiracy, etc.; and

Where a corporation engaged as jobber and distributor of water gate valves, hydrants, fittings, and similar products, and the officers thereof—

(c) Assisted the others hereinbefore set forth in carrying out their said agreement, combination, understanding, and conspiracy, with full knowledge thereof, and thereby became parties thereto;

With a dangerous tendency to, and with effect of, actually hindering and preventing price competition in sale and resale, between and among the various States and in the District of Columbia, of said various products, of increasing the prices therefor paid by jobbers and distributors thereof, and by towns, cities, and other municipalities, and by State and Federal governments and divisions thereof, and by State and Federal institutions, as consequence thereof, and of creating in such various members a monopoly in the sale and resale in interstate commerce of aforesaid products and of unreasonably restraining interstate commerce therein:

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

Mr. Edward L. Smith for the Commission.

Donovan, Leisure, Newton & Lombard, of New York City, and *Donovan, Bond & Leisure*, of Washington, D. C., for The Water Works Valve and Hydrant Group, etc., and its governing committee, and other respondents, and their officers, and, along with *Guggenheimer & Untermeyer* and *Mildred E. Reeves*, of Washington, D. C., for The Ludlow Valve Manufacturing Co. and its officers, *Mr. E. Lowry Humes*, of Pittsburgh, Pa., for J. Roy Tanner, receiver for Pittsburgh Valve Foundry & Construction Co., and *Breed, Abbott & Morgan*, of New York City, for Walworth Co. and its officers.

Adams, Childs, McKaig & Lukens, of Philadelphia, Pa., for The Pittsburgh Valve & Fittings Co. and its officers.

AMENDED COMPLAINT ¹

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 parties described in paragraphs 1 and 2 hereof, hereinafter referred to as respondents, have been and now 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

¹ Extended list of respondents, the State of incorporation, place of business and officers in paragraph 1 of the complaint, and which appears infra at page 1260, in the findings, is omitted in the interest of brevity.

it in respect thereof would be to the public interest, hereby issues its amended complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Charles H. Becker, Dennis O'Brien, Frank A. Miller, Earnest Cochran, and Marshall L. Hough are now and have been for more than three years last past the governing committee of the Water Works Valve and Hydrant Group of the Valve and Fittings Institute, a New York corporation, with its principal office and place of business in the city of New York in said State. Respondent George V. Denny is and has been for more than three years last past president commissioner of said Valve and Fittings Institute and was from December 15, 1933, or thereabouts until June 3, 1935, or thereabouts, an administrative officer of the Code Authority of the Code of Fair Competition for the Valve and Fittings Manufacturing Industry approved by the President of the United States December 15, 1933, under and by virtue of the National Industrial Recovery Act, approved June 16, 1933. Respondent Sam G. Moyers is now and has been for more than three years last past assistant secretary of the aforesaid Valve and Fittings Institute and was from on or about December 15, 1933, until on or about June 3, 1935, an administrative officer of the Code Authority for the aforesaid Code.

The Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute, now is and for more than three years last past has been constituted of the following respondent corporations, whose respective officers are now and have been for more than three years last past the following, such officers being also respondents herein: [Extended list which follows and which is set forth verbatim in the findings, infra, at page 1260 and again in the order is here omitted in the interest of brevity.]

PAR. 2. Respondent Rundle Spence Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin with its principal place of business at Milwaukee, in said State. Its officers, respondents herein, are now and for more than three years last past have been B. R. Spence, president, and Tom M. Spence, secretary-treasurer. It is a subsidiary of respondent The Crane Company, and now and for more than three years last past has been engaged as a jobber and distributor of water gate valves, hydrants, fittings, and similar products, causing the same when sold by it to be transported from its place of business in Milwaukee, aforesaid, to the purchasers thereof, some located in the State of Wisconsin and others located in various other States of the United States and in the District of Columbia.

Complaint

24 F. T. C.

PAR. 3. The aforesaid members of the aforesaid Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute named in paragraph 1 hereof are now and for more than three years last past have been engaged at their respective places of business in the manufacture of water gate valves, hydrants, fittings, and similar products and in the sale thereof, chiefly to towns, cities, and other municipalities, to State Governments and divisions thereof, to the Federal Government and divisions thereof, and to State and Federal institutions.

In the course and conduct of their business, all of the said respondents for more than three years last past have caused and still cause such water gate valves, hydrants, fittings, and similar products, when sold by them to be transported in interstate commerce from their respective places of business to, into and through the District of Columbia and the various States of the United States other than the States in which they respectively have their factories and places of business, to the purchasers thereof in such other States and in the District of Columbia.

The said respondents now constitute and for more than three years last past have constituted substantially all of the manufacturers in the United States of water gate valves, hydrants, and fittings and other articles used for water supply systems. The said respondents were prior to December 1933, or thereabouts, in competition among themselves, as to price, in the sale of water gate valves, hydrants, fittings, and other similar products between and among various States of the United States and in the District of Columbia and but for the combination, agreement, understanding, and conspiracy hereinafter described would have been at all times since December 1933 or thereabouts and would now be in such price competition with one another.

PAR. 4. In December 1933 or thereabouts, the respondents named in paragraph 1 hereof for the purpose of eliminating price competition among the aforesaid members of the Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute in the sale of water gate valves, hydrants, fittings, and other similar articles between and among the various States of the United States and in the District of Columbia, entered into, and have since carried out and are still carrying out an agreement, combination, understanding, and conspiracy among themselves to fix and maintain and by which they have fixed and maintained enhanced uniform delivered prices to be and which have been and are still being exacted by the aforesaid members of the Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute from their purchasers of

water gate valves, hydrants, fittings, and similar products in commerce between and among the various States of the United States and in the District of Columbia. Pursuant to and for the purpose of carrying out aforesaid agreement, combination, understanding, and conspiracy, the said respondents have, among other things, done the following:

(a) Agreed among themselves to fix and maintain, and pursuant to such agreement have fixed and maintained and still fix and maintain enhanced uniform delivered prices for water gate valves, hydrants, fittings, and similar products sold by the aforesaid members of the aforesaid Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute and each of them.

(b) Agreed to divide and pursuant to such agreement have divided the United States into zones in which zones the said respondents have by agreement fixed and maintained and still fix and maintain enhanced uniform delivered prices exacted by the aforesaid members of the aforesaid Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute from their purchasers of water gate valves, hydrants, fittings, and similar products.

(c) Agreed to fix and pursuant to such agreement have fixed and still fix uniform discounts allowed by the aforesaid members of the aforesaid Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute in the sale of water gate valves, hydrants, fittings, and similar products, to their jobbers and distributors.

(d) Agreed to fix and pursuant to such agreement have fixed and established and still fix and establish uniform enhanced delivered prices at which jobbers and distributors buying water gate valves, hydrants, and fittings and similar products from the aforesaid members of the aforesaid Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute should resell the same and, by agreement have refused to continue selling to jobbers and distributors who would refuse to resell or who have not resold at the enhanced uniform delivered prices so fixed.

(e) For the purpose of accomplishing the aforesaid agreement, combination, understanding and conspiracy, the aforesaid George V. Denny, individually and as president commissioner of the aforesaid Valve and Fittings Institute and as administrative officer of the Code Authority for the Valve and Fittings Manufacturing Industry, and the aforesaid Sam G. Moyers, individually, and as administrative officer of the Code Authority for the Valve and Fittings Manufacturing Industry, acting for and in behalf of the other respondents named in paragraph 1 hereof, by intimidation and persuasion induced certain of the aforesaid other respondents to raise

Findings

24 F. T. C.

prices quoted by them to the uniform enhanced delivered prices fixed as aforesaid by the aforesaid combination, conspiracy, understanding and agreement.

PAR. 5. Respondent Rundle Spence Company and its respondent officers having full knowledge of the agreement, combination, understanding, and conspiracy, described in paragraph 4 hereof assisted the other respondents in carrying out such agreement, combination, understanding, and conspiracy. By such assistance they became parties to the said conspiracy and for that reason are made parties respondents herein.

PAR. 6. The acts and practices of the respondents as herein alleged are all to the prejudice of the public and to the prejudice of the competitors of those of the respondents who constitute the aforesaid membership of the aforesaid Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute; have a dangerous tendency to and have actually hindered and prevented price competition in the sale and resale between and among the various States of the United States and in the District of Columbia of water gate valves, hydrants, fittings, and similar products; have increased the prices of water gate valves, hydrants, fittings, and similar products paid by jobbers and distributors thereof and by towns, cities, and other municipalities, State Governments and divisions thereof, the Federal Government and divisions thereof, State and Federal institutions, and consequently by the public; have created in the respondent members of said Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute, a monopoly in the sale and resale in interstate commerce of water gate valves, hydrants, fittings and similar products; have unreasonably restrained interstate commerce in water gate valves, hydrants, fittings and similar products; 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 November 16, 1936, issued and served its amended complaint in this proceeding upon the respondents herein, charging them with the use of unfair methods of competi-

1253

Findings

tion in commerce in violation of the provisions of said act. Subsequent to the issuance and service of said amended complaint, the respondents, excepting the Pittsburgh Valve & Fittings Company and its officers, and H. M. Kessler, Trustee in Bankruptcy for The Vogt Brothers Manufacturing Company, filed their answers thereto in which answers (some of such answers being substituted answers) they stated that they desired to and thereby waived hearing on the charges set forth in the amended complaint insofar as the same refer to alleged unfair methods of competition in commerce within the intent and meaning of Section 5 of the 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, commonly called the Federal Trade Commission Act, that they and each of them for the sole purpose of avoiding the trouble and expense incident to further continuation of this proceeding refrained from contesting the proceeding, that they and each of them consented that all the material facts alleged in said amended complaint might be deemed to be admitted but not within the intent and meaning of any law of the United States other than the Federal Trade Commission Act, such answers not constituting an admission of any conclusions of law and not constituting an admission of fact for any other purpose nor to be used against them in any other proceeding, suit or action, and that they and each of them consented that the Commission might without trial and without further evidence and without any intervening proceeding, make and enter its findings as to the facts and issue and serve upon them and each of them an order to cease and desist from any methods of competition alleged in the amended complaint which constitute violations of Section 5 of the Federal Trade Commission Act.

Thereafter the proceeding regularly came on for final hearing before the Commission on the said amended complaint and the said answers 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. Respondents Charles H. Becker, Dennis O'Brien, Frank A. Miller, Earnest Cochran, and Marshall L. Hough are now and have been for more than three years last past the governing committee of the Water Works Valve and Hydrant Group of the Valve and Fittings Institute, a New York corporation, with its

Findings

24 F. T. C.

principal office and place of business in the city of New York in said State. Respondent George V. Denny is and has been for more than three years last past president commissioner of said Valve and Fittings Institute and was from December 15, 1933, or thereabouts, until June 3, 1935, or thereabouts, an administrative officer of the Code Authority of the Code of Fair Competition for the Valve and Fittings Manufacturing Industry approved by the President of the United States December 15, 1933, under and by virtue of the National Industrial Recovery Act, approved June 16, 1933. Respondent Sam G. Moyers is now and has been for more than three years last past assistant secretary of the aforesaid Valve and Fittings Institute and was from on or about December 15, 1933, until on or about June 3, 1935, an administrative officer of the Code Authority for the aforesaid Code.

The Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute, now is and for more than three years last past has been constituted of the following respondent corporations, whose respective officers are now and have been for more than three years last past the following respondents:

Name and officers	State of Incorporation	Place of business
American Foundry & Manufacturing Company----- J. C. Sanders, Chairman of the Board. H. C. Sanders, President. A. C. Obrock, V. P. J. J. Welsch, Sec. & Treas.	Massachusetts-----	11th and Hebert Sts., St. Louis, Mo.
The Bourbon Copper & Brass Works----- Thomas Bardo, Pres. S. Bardo, Treas. Stella O'Neill, Sec.	Ohio-----	Cincinnati, Ohio.
Cambridge Machine & Tool Company----- Josepheth Pasquina, Pres. H. B. Seron, Treas. & Clk.	Massachusetts-----	Binney and Potter Sts., Cambridge, Mass.
The Chapman Valve Manufacturing Company----- Thomas F. Maher, Pres. E. A. Carter, Vice Pres. John J. Dugan, Treas. & Clk.	Massachusetts-----	203 Hampshire St., Indian Orchard, Mass.
Columbian Iron Works-----	Tennessee-----	2501 Chestnut St., Chattanooga, Tenn.
The Crane Co.----- John R. Berryman, Pres. C. R. Crane II, Vice Pres. W. Evensen, Treasurer. H. P. Bishop, Secretary.	Illinois-----	836 S. Michigan Ave., Chicago, Ill.
The Darling Valve & Manufacturing Company----- Ralph W. Thorne, Pres. Marshall L. Hough, V. Pres. & Treas. A. G. Smith, V. Pres. C. W. Huling, Secretary.	Pennsylvania-----	Williamsport, Pa.
The Eddy Valve Manufacturing Company----- John Knickerbacker, Pres. Howard C. Rogers, V. Pres.	New York-----	Troy, N. Y.
The Fairbanks Company----- Harry T. Peters, Chairman of Board. George M. Naylor, Pres. James A. Cleary, Treas. Betty Valentine, Sec.	New Jersey-----	393 Lafayette St., New York, N. Y.
The Filer & Stowell Company----- J. L. Monaghan, Pres. & Mgr. K. H. Read, Sec. W. R. Read, Treas.	Wisconsin-----	Milwaukee, Wis.

1253

Findings

Name and officers	State of incorporation	Place of business
Iowa Valve Company..... W. W. Corey, Pres. C. S. Howard, V. P. A. W. Read, Sec. H. W. Read, Treas. & Mgr.	Iowa.....	Oskaloosa, Iowa.
Jenkins Bros..... Farnham Yardley, Pres. Bernard J. Lee, V. P. Alfred Engle, Secretary. Edward M. Keating, Treas.	New Jersey.....	Bridgeport, Conn.
The Johnson City Foundry & Machine Company, Inc..... Mrs. Kate R. Setzer, Pres. L. F. Miller, V. P. W. I. Latimer, Sec. & Treas.	Tennessee.....	Johnson City, Tenn.
The Kennedy Valve Manufacturing Company..... Mathew E. Kennedy, Pres., Treas. Clarence H. Kennedy, V. P. in charge of sales. John C. Kennedy, V. P. & Sec. in charge of plant.	New York.....	Elmira, N. Y.
The Ludlow Valve Manufacturing Company..... Livingston W. Houston, Pres. & Treas. Joseph H. Egolf, Asst. Sec. & Treas. Morris Stone, V. P. Fred L. Wheeler, V. P. Randolph S. Lewisohn, Sec.	New Jersey.....	Troy, N. Y.
M. & H. Valve & Fittings Co..... Whitfield Clark, Pres. C. B. Martin, V. P. & Gen. Mgr. J. W. Spradley, Sec. C. N. Evans, Treas.	Alabama.....	Anniston, Ala.
Manistee Iron Works Company..... Tom Ray, Pres. Edward N. Turner, V. P. & Mgr. C. W. O'Donnell, Sec. & Asst. Treas. S. B. Chapman, Treas.	Michigan.....	Manistee, Mich.
The Michigan Valve & Foundry Company..... W. F. Rockwell, Pres. R. J. Goldie, V. P. A. I. Hawkins, Treas. W. C. Wood, Sec.	Michigan.....	3631 Parkinson Ave., Detroit, Mich.
Ohio Injector Co..... Wayne Young, Pres. C. B. Allen, V. P.	Ohio.....	Wadsworth, Ohio.
Pacific States Cast Iron Pipe Company..... William MacWayne, Pres. J. D. Sample, V. P. G. E. Sibbett, V. P. O. H. Harvey King, Treas. A. T. McWane, Sec.	Nevada.....	Provo, Utah.
The Reading-Pratt & Cady Company..... W. B. Lashar, Pres. W. T. Morris, V. P. W. M. Wheeler, Sec. W. F. Wheeler, Treas.	New York.....	Bridgeport, Conn.
The Rensselaer Valve Company..... Ellis L. Rowe, Pres. & Treas. Irving A. Rowe, V. P. & Gen. Mgr. Arthur C. Boughton, V. P. & Sec.	New York.....	Troy, N. Y.
The Rich Manufacturing Company..... D. H. Botchford, Pres. E. F. Alt, V. P. A. A. Carlson, Sec. & Treas.	California.....	Los Angeles, Calif.
A. P. Smith Manufacturing Company..... D. F. O'Brien, Pres. M. C. Perkins, V. P. P. A. Smith, Treas. T. F. Halpin, Sec.	New Jersey.....	East Orange, N. J.
South Park Foundry & Machine Company..... W. Wellisch, Pres. J. M. Brawley, Sec. & Treas.	Minnesota.....	St. Paul, Minn.
Traverse City Iron Works..... J. O. Joynt, Pres. H. G. Royce, V. P. & Treas. Arthur Bachant, Sec.	Michigan.....	Traverse City, Mich.
Walworth Company..... Howard Coonley, Pres. Winfred B. Holton, Jr., V. P.	Massachusetts.....	60 E. 42nd St., New York, N. Y.
Waterous Company..... F. F. Waterous, Pres. F. A. Waterous, V. P. W. Holmes, Sec. & Treas.	Minnesota.....	St. Paul, Minn.

Findings

24 F. T. C.

Name and officers	State of incorporation	Place of business
Western Gas Construction Company..... J. Becker, Pres. J. D. Schaner, Sec. S. T. Brown, Treas. R. A. Wickes, V. P. & Gen. Mgr.	Delaware.....	Ft. Wayne, Ind.
R. D. Wood Company..... Spencer P. Hazard, Pres. E. J. Lame, V. P. E. R. Russell, Sec. & Treas. J. J. Troster, Asst. Sec. & Asst. Treas.	Pennsylvania.....	400 Chestnut St., Philadelphia, Pa.

and of respondents W. E. Malpass and Mrs. Frank Bretz, trading as East Jordan Iron Works, of East Jordan, Mich.; and of respondent J. Roy Tanner, receiver for Pittsburgh Valve Foundry & Construction Company of Pittsburgh, Pa.

PAR. 2. Respondent Rundle Spence Manufacturing Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin with its principal place of business at Milwaukee, in said State. Its officers, respondents herein, are now and for more than three years last past have been E. R. Spence, president, and T. M. Spence, secretary. It is now and for more than three years last past has been engaged as a jobber and distributor of water gate valves, hydrants, fittings, and similar products, causing the same when sold by it to be transported from its place of business in Milwaukee, aforesaid, to the purchasers thereof, some located in the State of Wisconsin and others located in various other States of the United States and in the District of Columbia.

PAR. 3. The aforesaid members of the aforesaid Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute named in paragraph 1 hereof are now and for more than three years last past have been engaged at their respective places of business in the manufacture of water gate valves, hydrants, fittings, and similar products and in the sale thereof, chiefly to towns, cities, and other municipalities, to State Governments and divisions thereof, to the Federal Government and divisions thereof, and to State and Federal institutions.

In the course and conduct of their business, all of the said respondents for more than three years last past have caused and still cause such water gate valves, hydrants, fittings, and similar products, when sold by them to be transported in interstate commerce from their respective places of business to, into and through the District of Columbia and the various States of the United States other than the States in which they respectively have their factories and places of business, to the purchasers thereof in such other States and in the District of Columbia.

1253

Findings

The said respondents now constitute and for more than three years last past have constituted substantially all of the manufacturers in the United States of water gate valves, hydrants, and fittings and other articles used for water supply systems. The said respondents were prior to December 1933, or thereabouts, in competition among themselves, as to price, in the sale of water gate valves, hydrants, fittings, and other similar products between and among various States of the United States and in the District of Columbia and but for the combination, agreement, understanding, and conspiracy hereinafter described would have been at all times since December 1933 or thereabouts and would now be in such price competition with one another.

PAR. 4. In December 1933 or thereabouts, the respondents named in paragraph 1 hereof for the purpose of eliminating price competition among the aforesaid members of the Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute in the sale of water gate valves, hydrants, fittings, and other similar articles between and among the various States of the United States and in the District of Columbia, entered into, and have since carried out and are still carrying out an agreement, combination, understanding and conspiracy among themselves to fix and maintain and by which they have fixed and maintained enhanced uniform delivered prices to be and which have been and are still being exacted by the aforesaid members of the Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute from their purchasers of water gate valves, hydrants, fittings and similar products in commerce between and among the various States of the United States and in the District of Columbia. Pursuant to and for the purpose of carrying out aforesaid agreement, combination, understanding and conspiracy, the said respondents, have, among other things, done the following:

(a) Agreed among themselves to fix and maintain, and pursuant to such agreement have fixed and maintained and still fix and maintain enhanced uniform delivered prices for the water gate valves, hydrants, fittings, and similar products sold by the aforesaid members of the aforesaid Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute and each of them.

(b) Agreed to divide and pursuant to such agreement have divided the United States into zones in which zones the said respondents have by agreement fixed and maintained and still fix and maintain enhanced uniform delivered prices exacted by the aforesaid members of the aforesaid Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute from their purchasers of water gate valves, hydrants, fittings and similar products.

Findings

24 F. T. C.

(c) Agreed to fix and pursuant to such agreement have fixed and still fix uniform discounts allowed by the aforesaid members of the aforesaid Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute in the sale of water gate valves, hydrants, fittings, and similar products, to their jobbers and distributors.

(d) Agreed to fix and pursuant to such agreement have fixed and established and still fix and establish uniform enhanced delivered prices at which jobbers and distributors buying water gate valves, hydrants, and fittings and similar products from the aforesaid members of the aforesaid Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute should resell the same and by agreement have refused to continue selling to jobbers and distributors who would refuse to resell or who have not resold at the enhanced uniform delivered prices so fixed.

(e) For the purpose of accomplishing the aforesaid agreement, combination, understanding and conspiracy, the aforesaid George V. Denny, individually and as president commissioner of the aforesaid Valve and Fittings Institute and as administrative officer of the Code Authority for the Valve and Fittings Manufacturing Industry, and the aforesaid Sam G. Moyers, individually, and as administrative officer of the Code Authority for the Valve and Fittings Manufacturing Industry, acting for and in behalf of the other respondents named in paragraph 1 hereof, by intimidation and persuasion induced certain of the aforesaid other respondents to raise prices quoted by them to the uniform enhanced delivered prices fixed as aforesaid by the aforesaid combination, conspiracy, understanding and agreement.

PAR. 5. Respondent Rundle Spence Manufacturing Co. and its respondent officers having full knowledge of the agreement, combination, understanding, and conspiracy, described in paragraph 4 hereof assisted the other respondents in carrying out such agreement, combination, understanding, and conspiracy. By such assistance they became parties to the said conspiracy.

PAR. 6. The acts and practices of the respondents as herein and hereby found have a dangerous tendency to and have actually hindered and prevented price competition in the sale and resale between and among the various states of the United States and in the District of Columbia of water gate valves, hydrants, fittings, and similar products; have increased the prices of water gate valves, hydrants, fittings and similar products paid by jobbers and distributors thereof and by towns, cities, and other municipalities, State Governments and divisions thereof, the Federal Government and divisions thereof, State and Federal institutions, and consequently by the public; have created in the respondent members of said Water Works Valve and

1253

Order

Hydrant Group of the aforesaid Valve and Fittings Institute, a monopoly in the sale and resale in interstate commerce of wate gate valves, hydrants, fittings and similar products; have unreasonably restrained interstate commerce in water gate valves, hydrants, fittings and similar products.

CONCLUSION

The aforesaid acts and practices of the respondents are all to the prejudice of the public and of competitors of those of the respondents who constitute the aforesaid membership of the aforesaid Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute 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 amended complaint of the Commission and the answers thereto (some of such answers being substituted answers) filed herein by all of the respondents, excepting the Pittsburgh Valve & Fittings Company and its officers and H. M. Kessler, Trustee in Bankruptcy for The Vogt Brothers Manufacturing Company, in which said answers they stated that they desire to and hereby waive hearing on the charges set forth in said amended complaint insofar as the same refer to alleged unfair methods of competition in commerce within the intent and meaning of Section 5 of the 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, commonly called the Federal Trade Commission Act, that they and each of them for the sole purpose of avoiding the trouble and expense incident to further continuation of this proceeding refrained from contesting the proceeding, that they and each of them consented that all of the material facts alleged in said amended complaint might be deemed to be admitted, but not within the intent and meaning of any law of the United States other than the Federal Trade Commission Act, such answers not constituting an admission of any conclusions of law and not constituting an admission of fact for any other purpose nor to be used against them in any other proceeding, suit or action, and that they and each of them

Order

24 F. T. C.

consented that the Commission might without trial and without further evidence and without any intervening proceeding, make and enter its findings as to the facts and issue and serve upon them and each of them an order to cease and desist from any methods of competition alleged in the said amended complaint which constitute violations of Section 5 of the Federal Trade Commission Act; and the Commission having made its findings as to the facts and its conclusion that all of the said respondents (excepting the Pittsburgh Valve & Fittings Company and its officers, and H. M. Kessler, Trustee in Bankruptcy for The Vogt Brothers Manufacturing Company), 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 said respondents, The Water Works Valve and Hydrant Group of The Valve and Fittings Institute and its Governing Committee, Charles H. Becker, Chairman, Dennis O'Brien, Frank A. Miller, Earnest Cochran, and Marshall L. Hough, and as individuals; George V. Denny, and Sam G. Moyers, the following corporate respondents, their and each of their agents, servants and employees, and their respondent officers and their successors, to wit:

- | | |
|--|---|
| <p>American Foundry & Manufacturing Company:</p> <p style="padding-left: 20px;">J. C. Sanders, Chairman of the Board,</p> <p style="padding-left: 20px;">H. C. Sanders, President,</p> <p style="padding-left: 20px;">A. C. Obrock, V. P.,</p> <p style="padding-left: 20px;">J. J. Welsch, Sec. & Treas.</p> <p>The Bourbon Copper & Brass Works:</p> <p style="padding-left: 20px;">Thomas Bardo, Pres.,</p> <p style="padding-left: 20px;">S. Bardo, Treas.,</p> <p style="padding-left: 20px;">Stella O'Neill, Sec.</p> <p>Cambridge Machine & Tool Company:</p> <p style="padding-left: 20px;">Josepeth Pasquina, Pres.,</p> <p style="padding-left: 20px;">H. H. Seron, Treas. & Clk.</p> <p>The Chapman Valve Manufacturing Company:</p> <p style="padding-left: 20px;">Thomas F. Maher, Pres.,</p> <p style="padding-left: 20px;">E. A. Carter, Vice Pres.,</p> <p style="padding-left: 20px;">John J. Dugan, Treas. & Clk.</p> <p>Columbian Iron Works.</p> <p>The Crane Co.:</p> <p style="padding-left: 20px;">John R. Berryman, Pres.,</p> <p style="padding-left: 20px;">C. R. Crane II, Vice Pres.,</p> <p style="padding-left: 20px;">W. Evensen, Treasurer,</p> <p style="padding-left: 20px;">H. P. Bishop, Secretary</p> | <p>The Darling Valve & Manufacturing Company:</p> <p style="padding-left: 20px;">Ralph W. Thorne, Pres.,</p> <p style="padding-left: 20px;">Marshall L. Hough, V. Pres. & Treas.,</p> <p style="padding-left: 20px;">A. G. Smith, V. Pres.,</p> <p style="padding-left: 20px;">C. W. Huling, Secretary</p> <p>The Eddy Valve Manufacturing Company:</p> <p style="padding-left: 20px;">John Knickerbacker, Pres.,</p> <p style="padding-left: 20px;">Howard C. Rogers, V. Pres.</p> <p>The Fairbanks Company:</p> <p style="padding-left: 20px;">Harry T. Peters, Chairman of Board,</p> <p style="padding-left: 20px;">George M. Naylor, Pres.,</p> <p style="padding-left: 20px;">James A. Cleary, Treas.,</p> <p style="padding-left: 20px;">Betty Valentine, Sec.</p> <p>The Filer & Stowell Company:</p> <p style="padding-left: 20px;">J. A. Monaghan, Pres. & Mgr.,</p> <p style="padding-left: 20px;">K. H. Read, Sec.,</p> <p style="padding-left: 20px;">W. R. Read, Treas.</p> <p>Iowa Valve Company:</p> <p style="padding-left: 20px;">W. W. Corey, Pres.,</p> <p style="padding-left: 20px;">C. S. Howard, V. P.,</p> <p style="padding-left: 20px;">A. W. Read, Sec.,</p> <p style="padding-left: 20px;">H. W. Read, Treas. & Mgr.</p> |
|--|---|

1253

Order

- Jenkins Bros.:
 Farnham Yardley, Pres.,
 Bernard J. Lee, V. P.,
 Alfred Engle, Secretary,
 Edward M. Keating, Treas.
- The Johnson City Foundry & Machine Company, Inc.:
 Mrs. Kate R. Setzer, Pres.,
 L. F. Miller, V. P.,
 W. I. Latimer, Sec. & Treas.
- The Kennedy Valve Manufacturing Company:
 Mathew E. Kennedy, Pres., Treas.,
 Clarence H. Kennedy, V. P. in charge of sales,
 John C. Kennedy, V. P. & Sec. in charge of plant.
- The Ludlow Valve Manufacturing Company:
 Livingston W. Houston, Pres. & Treas.,
 Joseph H. Egolf, Asst. Sec. & Treas.,
 Morris Stine, V. P.,
 Fred L. Wheeler, V. P.,
 Randolph S. Lewisohn, Sec.
- M. & H. Valve & Fittings Co.:
 Whitfield Clark, Pres.,
 C. S. Martin, V. P. & Gen. Mgr.,
 J. W. Spradley, Sec.,
 C. N. Evans, Treas.
- Manistee Iron Works Company:
 Tom Ray, Pres.,
 Edward N. Turner, V. P. & Mgr.,
 C. W. O'Donnell, Sec. & Asst. Treas.,
 S. B. Chapman, Treas.
- The Michigan Valve & Foundry Company:
 W. F. Rockwell, Pres.,
 R. J. Goldie, V. P.,
 A. I. Hawkins, Treas.,
 W. C. Wood, Sec.
- Ohio Injector Co.:
 Wayne Young, Pres.,
 C. B. Allen, V. P.
- Pacific States Cast Iron Pipe Company:
 William MacWayne, Pres.,
 J. D. Sample, V. P.,
- Pacific States Cast Iron Pipe Company—Continued.
 G. E. Sibbett, V. P.,
 O. H. Harvey King, Treas.,
 A. T. McWane, Sec.
- The Reading-Pratt & Cady Company:
 W. B. Lashar, Pres.,
 W. T. Morris, V. P.,
 W. M. Wheeler, Sec.,
 W. F. Wheeler, Treas.
- The Rensselaer Valve Company:
 Ellis L. Rowe, Pres. & Treas.,
 Irving A. Rowe, V. P. & Gen. Mgr.,
 Arthur C. Baughton, V. P. & Sec.
- The Rich Manufacturing Company:
 D. H. Botchford, Pres.,
 E. F. Alt, V. P.,
 A. A. Carlson, Sec. & Treas.
- A. P. Smith Manufacturing Company:
 D. F. O'Brien, Pres.,
 M. C. Perkins, V. P.,
 P. A. Smith, Treas.,
 T. F. Halpin, Sec.
- South Park Foundry & Machine Company:
 W. Wellisch, Pres.,
 J. M. Brawley, Sec. & Treas.
- Traverse City Iron Works:
 J. O. Joynt, Pres.,
 H. G. Royce, V. P. & Treas.,
 Arthur Bachant, Sec.
- Walworth Company:
 Howard Coonley, Pres.,
 Winfred B. Holton, Jr., V. P.
- Waterous Company:
 F. F. Waterous, Pres.,
 F. A. Waterous, V. P.,
 W. Holmes, Sec. & Treas.
- Western Gas Construction Company:
 J. Becker, Pres.,
 J. D. Schauer, Sec.,
 S. T. Brown, Treas.,
 R. A. Wickes, V. P. & Gen. Mgr.
- R. D. Wood Company:
 Spencer P. Hazard, Pres.,
 E. J. Lane, V. P.,
 E. R. Russell, Sec. & Treas.,
 J. J. Troster, Asst. Sec. & Asst. Treas.

and respondents, W. E. Malpass and Mrs. Frank Bretz, trading as East Jordan Iron Works, of East Jordan, Mich., their servants, agents, and employees, and respondent, J. Roy Tanner, receiver for Pittsburgh Valve Foundry & Construction Company, his successors, agents, servants, and employees, cease and desist in connection with the business of selling and of offering for sale in interstate commerce water gate valves, hydrants, and fittings, from carrying out and from entering into any agreement, combination, understanding, and conspiracy in violation of the Federal Trade Commission Act among themselves or among or between any of them or with any other person, firm, partnership, or corporation to fix and maintain uniform delivered prices, whether enhanced or otherwise, to be exacted by them or by any of them from their purchasers of water gate valves, hydrants, fittings, and similar products, and pursuant to and for the purpose of carrying out any such agreement, combination, understanding, and conspiracy, from doing any of the following:

(a) Agreeing among themselves to fix and maintain uniform delivered prices for water gate valves, hydrants, fittings and similar products sold by the members of the aforesaid Water Works Valve and Hydrant Group of The Valve and Fittings Institute, and each of them;

(b) Agreeing to divide and dividing the United States into zones and in which zones fixing and maintaining by agreement, uniform delivered prices to be paid by purchasers of water gate valves, hydrants, fittings, and similar products;

(c) Agreeing to fix uniform discounts allowed by the members of the aforesaid Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute in the sale of water gate valves, hydrants, fittings and similar products, to their jobbers and distributors;

(d) Agreeing to fix uniform delivered prices at which jobbers and distributors purchasing water gate valves, hydrants, fittings, and similar products from the members of the aforesaid Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute should resell the same, and from refusing by agreement among themselves to continue selling to jobbers and distributors who refuse to resell or who have not resold at the uniform delivered prices so fixed.

And it is further ordered, That the aforesaid George V. Denny, individually, and as president commissioner of the aforesaid Valve and Fittings Institute, and the aforesaid Sam G. Moyers, their respective agents, servants, and employees, forthwith cease and desist by means of intimidation, persuasion, or any other method, from

1253

Order

inducing any of the respondents offering water gate valves, hydrants, fittings, and similar products for sale in interstate commerce, to raise prices quoted by them to uniform delivered prices fixed in combination, conspiracy, understanding, and agreement among and between the respondents, or any of them.

And it is further ordered, That respondent, Rundle Spence Manufacturing Company, its agents, servants, and employees, and its respondent officers, E. R. Spence, president and T. M. Spence, secretary, and their successors, cease and desist from assisting any of the aforesaid respondents in entering into and carrying out any agreement, combination, understanding, and conspiracy from which the aforesaid respondents are herein and hereby ordered to cease and desist.

And it is further ordered, That all of the respondents hereinabove mentioned 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.

And it is further ordered, Because of the dissolution of respondent, Pittsburgh Valve & Fittings Company on March 18, 1936, that the complaint herein be, and the same is hereby dismissed as to said respondent, Pittsburgh Valve & Fittings Company and its respondent officers, E. C. Bostock, president, C. L. Silkregg, vice president, and B. F. Donahue, secretary-treasurer.

And it is further ordered, Because of the discharge on or about August 19, 1935, by the District Court of the United States for the Western District of Kentucky of respondent H. M. Kessler, Trustee in Bankruptcy for The Vogt Brothers Manufacturing Company, that the complaint herein be, and the same is hereby dismissed as to said respondent H. M. Kessler, Trustee in Bankruptcy for The Vogt Brothers Manufacturing Company.

IN THE MATTER OF
TYRRELL H. DUNCOMBE, TRADING AS DUNCOMBE
RESEARCH LABORATORY

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

Docket 2580. Complaint, Oct. 11, 1935—Decision, May 19, 1937

Where an individual engaged in sale and distribution, to physicians, hospitals, laboratories, and individuals, of a preparation made or compounded by him and generally designated "Germex"—

- (a) Represented, in folders, circulars, pamphlets, and cards distributed by him, that said preparation was a safe, non-poisonous, antiseptic which might safely be used internally, externally, and intravenously, and that it would kill or prevent growth of, or drive from the body, pathogenic or disease-bearing or forming parasites, bacteria, germs, or microbes; and
- (b) Represented that cancer cures attained by said preparation were "beyond all comprehension," and that it was a cure for syphilis, arthritis, pernicious anemia, and gangrene, and a remedy for tuberculosis, and that notable results were being obtained by use thereof in such diseases as cancer, sinus, catarrh, etc., and that it was used most successfully for various other diseases and was recommended for or effective in various other ailments, including kidney and liver trouble, pyorrhea, etc., and variously recommended same as a competent cure and remedy for everything that local doctors are called upon to treat and for any diseases caused by parasites or bacteria, and made use of circulars and other literature containing purported testimonials by various people to the effect that they had been suffering from cancer, ulcers and other diseases and had been relieved or cured thereof or completely restored to health by use of said preparation, and represented that he had thus cured numerous people;

Facts being said individual never took a course in medicine, was without personal or scientific knowledge as to the origin, course, etc., of the diseases which he claimed to be able to cure or to have cured, and for which he recommended his said remedy, as hereinabove set forth, preparation in question was not antiseptic, but highly contaminated and non-sterile and unsafe and unfit for intravenous use, would not kill or drive out disease-bearing or forming bacteria and had no therapeutic value or qualities whatever, and was of no benefit in the treatment of the aforesaid various diseases thus indicated;

With tendency and capacity to cause members of the purchasing public to form mistaken and erroneous beliefs that his said aforesaid product was a true and genuine antiseptic and sterile, and might safely be taken intravenously, had therapeutic value in the treatment of various diseases, and would relieve pain and produce beneficial results in connection therewith, and constituted a remedy or cure therefor, as above set forth, and with result that many members of the public, acting under such erroneous beliefs, induced by such various misrepresentations, purchased his said product, and with capacity and tendency unfairly to divert to him trade of competitors engaged in selling in interstate commerce drugs, prepara-

1270

Complaint

tions, or remedies which are truthfully advertised and represented and recommended for use in connection with the treatment of the various diseases and ailments enumerated by said individual; 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. W. W. Sheppard*, trial examiner.

Mr. Marshall Morgan for the Commission.

Mr. Robert M. Drysdale, of Detroit, Mich., for respondent.

COMPLAINT

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Tyrrell H. Duncombe, trading as Duncombe Research Laboratory, has been and is using unfair methods of competition in interstate commerce, as commerce is defined in said act, in violation of the provisions of Section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent Tyrrell H. Duncombe is an individual, residing at 14049 Woodward Avenue, Highland Park, Mich., and maintaining an office and conducting a laboratory at said address under the name and style Duncombe Research Laboratory. Respondent is now and for more than two years last past has been engaged, as hereinafter described, in the sale and distribution in commerce among the several States of the United States, and more particularly in the States of Ohio and Florida, of a preparation manufactured at the above stated address, and variously termed "Germex," "Epi-Phi," and "Hindoo Prescription." Said preparation so manufactured and sold by respondent has been described by respondent as a cure or remedy for cancer, arthritis, ulcers, pernicious anemia, syphilis, fistula, eczema, pyorrhea, catarrh, trench mouth, athlete's foot, diabetes, scarlet fever, sinus, tuberculosis, tumor, gangrene, and other diseases and maladies, as will be more fully and hereinafter shown. In the course and conduct of such selling respondent has been and now is engaged in competition with corporations, firms, partnerships, and individuals offering for sale or selling in like commerce preparations or compounds or medicines for use in the treatment of the same or similar ailments or diseases.

PAR. 2. In the course and conduct of his said business respondent has offered for sale and sells in interstate commerce his product called "Germex," "Epi-Phi," and "Hindoo Prescription," as described in

Complaint

24 F. T. C.

paragraph 1 hereof, by means of letters, circulars, leaflets, and otherwise, and has caused various false, deceptive, and misleading statements to be inserted and to appear in said letters, circulars, and leaflets so distributed by him. The statements contained in said letters, circulars, and leaflets are addressed to and are and have been distributed among doctors, laboratories, and individuals. Said physicians, laboratories, and individuals have been induced to purchase the goods offered for sale and sold by Tyrrell H. Duncombe, trading as Duncombe Research Laboratory under the erroneous belief, that said false and misleading statements and representations were true.

In the course and conduct of his said business as described in paragraph 1 hereof, respondent Tyrrell H. Duncombe, trading as Duncombe Research Laboratory, has offered his product for sale and has sold and transported or caused the same to be transported in commerce among the several States of the United States, direct to consumers. Said goods are and were shipped in response to orders received through the mail and transported or caused to be transported in commerce among the several States of the United States. Respondent has further planned and undertaken to sell his product throughout the United States, among other methods, by the granting, by contract, of exclusive sales rights covering an entire State.

PAR. 3. Respondent Tyrrell H. Duncombe, trading as Duncombe Research Laboratory, in further connection with the sale and distribution of the aforementioned product has printed, and has distributed and distributes in interstate commerce, folders or circulars and letters in which it is represented that the aforesaid product "Germex" was and is a cure and remedy for numerous dangerous and malignant diseases of the body, some of which are regarded by medical science as incurable.

Among the representations made through such media were the following:

Hindoo Prescription (Genital)
Epl-Phi (Athletic Foot)

Non-Poisonous Antiseptic Germex
External and Internal (Carcinoma)

GERMEX

A Non-poisonous Antiseptic Destroying Parasites and Bacteria

and in which the following claims among others were made for Germex:

* * * We welcome your case, whether it is CANCER, ulcers of the stomach, pernicious anemia, syphilis, arthritis, or any other disease which has been caused by parasite or bacteria.

1270

Complaint

Can be applied externally, taken internally, and when especially prepared and administered by a qualified physician, used intra-venously.

Germex is not a patent medicine, but rather a pharmaceutical—a new discovery to be used by physicians and public as well.

In cancer cases the pain is relieved in 24 hours and the odor will disappear in 48 hours, according to the condition of the patient.

Where others have failed heretofore, Germex will do the trick.

The Research Laboratory has had many cases where no tissue examinations, or biopsies were made and have notable results, not only for cancer, also sinus, catarrh, trench mouth, eczema, difficult sores, syphilitic sores, ulcers of the stomach. It appears that it also is a remedy for tuberculosis, but little research has been made with this disease. It is also recommended for kidney and liver troubles, giving a yielding effect to bacterial and germ life when taken internally. Germex contains no alkaloids, is non-poisonous, and has no therapeutical action, having rather a mechanical action and is safely used externally, internally and intra-venously.

Germex is a non-poisonous antiseptic which may be used freely, with only beneficial effects.

It acts only as an antiseptic, destroying the pathogenic bacteria and parasites in the intestinal tract, liver, kidneys and etc. Most all of the diseases are caused by pathogenic bacteria, hence it is curing a great many diseases heretofore incurable.

For gastric ulcer we recommend the internal as well as the intra-venous. The internal dose would be one table-spoonful, clear three times a day and the intra-venous in two c. c. twice a week,

Germex is a saprophyte that lives on dead tissues or substances and living pathogenic bacteria, and is used for antiseptic purposes possessing a peculiar action.

We are having success with diseases in general where diseases like arthritis, pernicious anemia, syphilis, septicemia, gangrene and many like diseases, including cancer, ulcers, fistula and rheumatic fever.

The preparation we are placing before the physicians is a non-poisonous antiseptic called Germex. It constitutes a saprophyte developed in a bitter media, which is harmless, yet it destroys the pathogenic, a harmful bacteria or parasite.

Germex covers a lot of territory in its action, having very distinct effect upon the following diseases, ulcers of all kinds, sores that usually are difficult to heal, fistula, syphilis, with a negative result, arthritis, pernicious anemia, cancer and septicemia, along with new results most every day reported.

At first thought the medical man thinks Oh a cure all. We have only the one preparation that covers also diabetes, as you mention in your letter, they are also using it for diphtheria.

We do not build an antibody as has been the custom by immunizing the phagocytes.

* * *

We believe it is a revolution in medicine, and would be the greatest seller in history. Germex is curing pernicious anemia, arthritis and many diseases heretofore known as incurable.

* * *

Complaint

24 F. T. C.

Germex, being a non-poisonous liquid antiseptic, is taken internally and applied externally. Bacteria and parasites live upon the saccharine fluids of the body and the young cells, which contain the nourishment (Islets). Germex deprives them of this food, due to its peculiar bitter contents, and renders them inactive, thus permitting nature to function, and allowing the cells to rebuild.

Germex does not contain alkaloids, alkalies, or acids and acts only as an antiseptic therapeutically.

* * *

We recommend Germex for pernicious anemia, various forms of ulcer, eczema, trench mouth and similar diseases that require a positive antiseptic.

* * *

Germex is a non-poisonous antiseptic for both internal and external use. Antiseptics usually may only be used externally.

It is conceded that most of the ills of men are due to bacteria.

Germex does not destroy the tissues; in fact, does not kill bacteria in a test tube, but acts as an agent to prevent the development of bacteria, thus driving them out. We do know that desired results have been obtained with many heretofore considered incurable diseases, such as cancer, pernicious anemia, ulcers, fistula, syphilis, and eczema, including pyorrhea, pink toothbrush, athlete's foot, catarrh, trench mouth, and more simple diseases.

Respondent Duncombe has further represented and represents that the product Germex is a cure likewise for such diseases and ailments as ringworm, Cuban itch, streptococcus throat, lice on cows, Florida itch, scarlet fever, Psoriasis Lingae and carcinoma eczema.

PAR. 4. Respondent had further, in the course and conduct of his business issued and distributed in interstate commerce circulars and other literature containing testimonials in which statements are made by various persons to the effect that they were or had been suffering from cancer, ulcers and other diseases and had been relieved or cured or completely restored to health, and has represented that he has cured numerous persons living in various States of the United States of cancer, ulcers, and similar diseases, by the use of his remedy Germex, when in truth and in fact respondent was and is without personal knowledge as to the disease, ailment or disorder from which said persons were or had been actually suffering.

PAR. 5. The truth and facts are that respondent's product Germex, advertised and represented by him as a remedy and cure for such diseases as cancer, ulcers of stomach, pernicious anemia, syphilis, arthritis, sinus, catarrh, trench mouth, eczema, sores, syphilitic sores, kidney and liver troubles, septicemia, fistula, rheumatic fever, diabetes, diphtheria, pyorrhea, and pink toothbrush, does not possess such therapeutic value or medicinal qualities as to be truthfully represented, designated or referred to as a cure or safe remedy for or as giving lasting relief to sufferers from cancers, arthritis, ulcers, and other diseases next above enumerated, or other similar ailments, there being no known remedy or cure for several of them, respondent's

Findings

remedy being at most an antiseptic wash or application and possessing admittedly no therapeutic qualities and virtues.

PAR. 6. The above and foregoing representations of respondent in connection with the offering for sale and sale in interstate commerce of his product Germex as set forth in this complaint have and have had the capacity and tendency to mislead and deceive and have misled and deceived the purchasing public into the belief that respondent's product known variously as "Germex," "Epi-Phi," and "Hindoo Prescription" is a remedy for cancer, ulcers of stomach, pernicious anemia, syphilis, arthritis, sinus, catarrh, trench mouth, eczema, sores, syphilitic sores, kidney and liver troubles, septicemia, fistula, rheumatic fever, diabetes, diphtheria, pyorrhea, and pink toothbrush, or "any other disease which has been caused by parasite or bacteria" and "everything that local doctors are called upon to treat," and have tended to induce, and have induced the purchase of respondent's so-called Germex in reliance upon such erroneous belief and have tended to divert from, and have diverted trade from the competitors of respondent who manufacture and sell in interstate commerce preparations intended for treatment of diseases and ailments enumerated by respondent but who refrain from making false representations in connection with the advertisement and sale thereof.

PAR. 7. The above false, misleading, and deceptive acts, practices and methods of respondent, under the circumstances and conditions herein alleged, are untruthful, are all to the prejudice of the public and of respondent's competitors 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 October 11, 1935, issued and served its original complaint on this proceeding on respondent, Tyrrell H. Duncombe, trading as Duncombe Research Laboratory, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by Marshall Morgan, attorney for the Commission, before W. W. Sheppard, an examiner of the Commission theretofore

duly designated by it, and in opposition to the allegations of the complaint by Robert M. Drysdale, attorney for the respondent, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, and the brief of the Commission in support of the complaint; 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. The respondent, Tyrrell H. Duncombe, is an individual, residing at 14049 Woodward Avenue, Highland Park, Mich., and maintaining an office and conducting a laboratory at said address under the name and style of Duncombe Research Laboratory. Respondent is now and for more than two years prior to the issuance of the complaint herein had been engaged in the sale and distribution to physicians, hospitals, laboratories and individuals of a preparation manufactured or compounded by him at the above stated address, variously termed "Germex" and "Epi-Phi," but generally designated as "Germex."

PAR. 2. In the course and conduct of his said business as described in paragraph 1 hereof, respondent, Tyrrell H. Duncombe, has offered the said product for sale and has sold and transported or caused the same to be transported in commerce among the several States of the United States direct from the aforesaid place of business to consumers located at points in States of the United States other than the State of Michigan, in response to orders received through the mails. Respondent has further planned and undertaken to sell his product throughout the United States, among other methods, by granting, or attempting to grant by contract, exclusive sales' rights covering an entire State.

In the course and conduct of such selling, respondent has been, and now is, engaged in competition with corporations, firms, partnerships, and individuals offering for sale and selling in like commerce preparations, compounds or medicines for use in the treatment of the same or similar ailments or diseases.

PAR. 3. Respondent, in connection with the sale and distribution of the aforementioned product, "Germex," has distributed and now distributes in interstate commerce, folders, circulars, pamphlets and cards, and letters in which he represents that "Germex" is a safe,

Findings

non-poisonous antiseptic and is a cure or remedy for numerous dangerous and malignant diseases of the body, including many heretofore regarded as incurable. Typical of such recommendations are those to the effect that "Germex" is a non-poisonous antiseptic which may safely be used internally, externally and intravenously, and that it destroys pathogenic, or disease-causing bacteria, germs, and parasites. Respondent has further represented that the cancer cures attained by "Germex" are "beyond all comprehension"; that "Germex" is a cure for syphilis, arthritis, pernicious anemia, and gangrene; that said preparation is a remedy for tuberculosis; that notable results are being obtained by the use of "Germex" in such diseases as cancer, sinus, catarrh, trench mouth and ulcers of the stomach; that it is being used most successfully for diphtheria, scarlet fever and septicemia, fistula and rheumatic fever; that it is recommended for kidney and liver troubles; and that desired results are also being obtained in the treatment with "Germex" of fistula, pyorrhea, pink tooth brush, athlete's foot, catarrh, trench mouth, ring worm, eczema, Cuban and Florida itch, psoriasis lingae, streptococcus throat, and carcinoma. Respondent in his advertising has, in fact, variously recommended "Germex" as a competent cure and remedy for everything that local doctors are called upon to treat, and for any disease caused by parasites or bacteria and requiring a positive antiseptic.

Respondent has further, in the course and conduct of his business, issued and distributed in interstate commerce, circulars and other literature containing purported testimonials by various persons to the effect that they were, or have been, suffering from cancer, ulcers, and other diseases and have been relieved or cured, or completely restored to health by the use of respondent's "Germex." Respondent has represented that he has cured numerous persons living in various States of the United States of cancer, ulcers, arthritis and other diseases, by the use of his product "Germex."

PAR. 4. In truth and in fact, respondent is without personal or scientific knowledge as to the origin, course, nature, and characteristics of the diseases which he claims to be able to cure, or to have cured, and for which he recommends "Germex" as a remedy or cure in his literature and advertising material, and has no actual or scientific knowledge concerning either the diagnosis of or the proper treatment of such diseases.

Although respondent is, or at one time was, a pharmacist, he is not registered as such in Detroit or Wayne County, Mich. Respondent never took a course in medicine and holds no degree in medicine. Respondent, however, in written communications prescribing and selling "Germex" has signed himself "Dr. T. H. Duncombe." Re-

spondent explains that he uses the word or title "Dr." because he is a chiropractor. When questioned in regard to chiropractic, respondent was unable to state accurately the number of vertebrae in the spinal column. The laws of the State of Michigan do not permit chiropractors or osteopaths to use the title "Doctor."

Respondent never read, nor could he give the name or title of, any book on the subject of arthritis, anemia, syphilis, trench mouth, or scarlet fever. Respondent could name no book or article he had ever read on septicemia, gangrene, ulcers, diabetes, tuberculosis, or other diseases enumerated in his advertising material.

Notwithstanding the fact that respondent is not a doctor and is without medical education, he has not hesitated to consult with patients, to undertake to diagnose their troubles and to prescribe his product "Germex" for them.

PAR. 5. Respondent claims to have discovered the preparation "Germex" accidentally about the year 1895. The preparation was first tried out on insect life, being sprayed on potato plants and being called "Bug Yellow." Respondent then recommended the preparation as being destructive to various kinds of insect life, including lice on cattle and vermin on men. Respondent thereafter recommended the preparation in the treatment of, and as a cure and remedy for, various diseases and ailments of the body, including cancer, arthritis, syphilis, and tuberculosis.

Bacteriological examinations of "Germex" disclose that it is not an antiseptic, is not sterile and contains pathogenic or disease-causing bacteria. Smears from "Germex" were found to contain, among others, such types of bacteria as the Monilia, or dangerous type of yeast, Gram-negative rods, Gram-positive rods and cocci. Healthy mice injected with the Gram-positive rods became sick the following day. The yeast culture was injected intravenously into a mouse; the mouse was killed, and the autopsy showed abscesses in the liver, spleen, and intestines, thus indicating that the yeast organisms obtained from "Germex" were pathogenic; that is, disease-forming to animals. Microscopic smears made from these abscesses were in turn positive for yeast. The tests showed that the yeast, Gram-positive rods, cocci, and Gram-negative rods increased in the fluid "Germex." The yeast test also revealed that "Germex" is not a bactericide; that is, that it does not kill or destroy bacteria. Organisms grew in specimens of "Germex" from which, theretofore, all organisms had been removed. The tests further disclosed that "Germex" is not a sterile product, but contains living micro-organisms, one of which at least, as stated, was pathogenic to animals. Bacteriological examinations made by a medical technologist of the Herman Kiefer Laboratory at

Detroit, Mich., disclosed that "Germex" does not inhibit or stop the growth of such organisms as bacillus typhosis, the typhoid fever bacteria, and staphylococcus, a type of bacteria containing various round pathogenic organisms. Further bacteriological examinations made by an expert employed by respondent resulted in the finding that "Germex" is not a sterile product and should not be used intravenously.

In a further test to determine the bacteriological qualities or aspects of "Germex," a prominent Detroit hospital planted tuberculosis bacilli in a culture and then added drops of "Germex" according to instructions given by respondent, with the result that the growth of the tuberculosis bacilli could not be determined because of the rapid overgrowth of other bacteria which were present in "Germex."

PAR. 6. The product "Germex" contains no therapeutic ingredients that would be helpful in the treatment or cure of the diseases enumerated by the respondent and the representations of respondent in such relations are false and misleading in their entirety. The record discloses that the respondent has steadfastly refused to inform anyone as to the nature or identity of the ingredients entering into the composition of "Germex." Respondent even refused to inform the American Medical Association, the Wayne County Medical Society, or the Michigan or Detroit Health authorities as to the contents of "Germex."

As a result of qualitative and quantitative analyses, the ingredients of "Germex" were determined. The analysis also indicated the absence of certain specific substances. Chemical analyses of a sample of "Germex" as made by the Laboratories of the Detroit Department of Health disclosed the product to be a brown liquid, cloudy in appearance, with a yellowish residue on the bottom and a scum on the surface of the liquid standing in the bottom. The sample contained 8.18% of ethyl alcohol by volume, a deficiency of .82%, had a musty odor, a slightly acid reaction, small amounts of resin and glucocides, total solids of .97% of this .14% representing a composition of ash, largely sodium carbonate, and a trace of potassium carbonate. The laboratory found "Germex" to be an aqueous-alcoholic solution of organic drug extractives with a very small percentage of inorganic solids. The drug extractives in "Germex" were found to be similar to, or identical with, the drug extractives of the echinacea root. The small amount of alcohol added was not found to be an efficient preservative.

The chemical analysis further disclosed the absence in "Germex" of a number of drugs, chemicals or metals commonly accepted and used by the medical profession in the treatment of various of the diseases for which the respondent recommends and administers his "Germex." No mercury or mercury salts, no bismuth or bismuth compounds, no

iron or iron salts, no arsenic or arsenic compounds, no heavy metals, no salicylic acid or salicylates, and no chemical caustics were found in "Germex."

The drug echinacea was the subject of careful investigation and report by the Council on Pharmacy and Chemistry of the American Medical Association as far back as 1909. The drug had been used as a "blood purifier" by one Dr. H. F. C. Meyer of Pawnee City, Nebr., being guaranteed by that individual as an absolute cure for rattlesnake bite within twenty-four hours. The Council on Pharmacy and Chemistry of the American Medical Association referred to the claims of Dr. Meyer as the "absurd claims of an evidently ignorant man" and recommended the rejection of echinacea.

The Department of Agriculture in 1920 made exhaustive experimental studies of echinacea therapy. These studies reported that the use of echinacea as a remedy for various disorders in both humans and animals originated with the American Indians. Echinacea root, it was stated, has entered into the composition of a number of patent, proprietary and nonsecret mixtures, but has never been officially recognized in the United States Pharmacopoeia. Those using the root, the Department reported, had recommended it in the case of blood poison, snake, bite, typhoid and malarial fevers, goiter, smallpox, anthrax, hydrophobia, tetanus, erysipelas, ulcers, gangrene, burns and syphilitic nodules. The department of Agriculture, after elaborate tests on animals, found that echinacea does not possess remedial value against tetanus, that results were negative in septicemia and that echinacea does not appear to be of value as a remedy for anthrax nor for rattlesnake bite, tuberculosis, botulism, or chronic dourine conditions.

PAR. 7. The various representations of the respondent in respect to the diseases he claims "Germex" to be a remedy or cure for were carefully considered and checked in connection with the ingredients found and those not found in "Germex" as disclosed by chemical analyses and in the light of a knowledge of medicine and the accepted methods of the treatment of such diseases. As a result of their investigations competent medical authorities state and report: That "Germex" cannot be considered as a remedy for arthritis, as it contains nothing that could be employed as an an analgesic and does not show the presence of any salicylates; that "Germex" is not a remedy for anemia, as it contains no iron or iron salts; that "Germex" would not be effective in the treatment of syphilis, as it contains no arsenic or arsenic salts, no heavy metals, and no bismuth or mercury salts; that "Germex" would not be effective in the treat-

ment of trench mouth, as it contains no substance used for such purpose; that "Germex" could not be used in the treatment of scarlet fever, as it is not a biological product and is not of a germicidal nature; that "Germex" contains nothing to combat the bacteria found in the condition of septicemia; that "Germex" cannot be used in the treatment of diphtheria, as it contains no antitoxin; that "Germex" could have no influence on the cause of gangrene or serve as a cure therefor and could only be used in any event as a wash for such condition; that "Germex" would have no value in the treatment of stomach ulcers as a neutralizer of hydrochloric acid, its alkaline content being very slight; that "Germex" could not be used as a remedy for diabetes, as nothing remotely approaching insulin is found in it; that "Germex" is not a remedy for streptococcus throat, as it is not a germicide, and for the same reason could not be used locally as a treatment for tuberculosis lesions on the surface and would be ineffectual in treating tuberculosis systematically; that nothing was found in the compound suggesting that it would be useful even as an eliminant in kidney and liver trouble; that "Germex" would not be effective in the treatment of rheumatic fever; that it could not even be used as a germicide applied locally to ulcerations of an eczematous nature; and that "Germex" could not be used in the treatment of even superficial forms of cancer, as it was not found to contain anything of a caustic nature.

"Germex" was found by medical experts to be an aqueous extract of an organic substance, probably of vegetable origin, possessing no indicated pharmaceutical properties and being highly contaminated with several types of bacteria. The intravenous use of "Germex" was condemned by medical experts as being dangerous. It would be taking a terrible risk to put it in the veins of an individual, due to its contaminated condition. The yeast cells of the *Monilia* type found in "Germex" would expose a person using it to possible infection, the *Monilia* type of yeast being pathogenic and having virulent characteristics when introduced into the tissues, frequently producing destruction of tissues and abscess formation.

Medical experts, in the light of their investigations, term the claims made for "Germex," either as a medicine or an antiseptic, as "highly exaggerated and not based on any actual fact;" as a "bid for business," "fallacious," "not supported by the facts," "contradictory in many respects," "not to be believed in the light of a knowledge of medicine and the accepted methods of treatment," "highly exaggerated," and "generally untrue." One prominent medical expert termed "Germex"

Findings

24 F. T. C.

as just a "sort of mess" and "entirely inert and without any pharmacological action whatsoever." As the outstanding requirement of a preparation for intravenous administration depends upon its being sterile, this expert would be very much opposed to having "Germex" get into the circulation of any patient he was responsible for.

PAR. 8. There are no positive cures known to the medical profession for cancer in an advanced state, but such profession does use or employ certain accepted treatments for cancer. It cannot be said that the cause of cancer is known. The successful eradication of a cancer is accomplished by its destruction. The accepted methods for the treatment and attempted destruction of cancer as known to medical science are three:

1. Surgical removal;
2. Destruction with X-ray;
3. Radium.

No cancer specialist would undertake to predict that a cancer would not recur. Antiseptics have no value in the treatment of cancer.

The respondent devoted more attention to the treatment of cancer than to any other diseases covered by the advertising claims and representations made by him for "Germex." The claims for cancer cure or cancer relief as made by respondent are not established. The record discloses the fact that the respondent in some instances thought or claimed that patients had cancer when they did not have it, and that those who did have cancer and were treated by respondent either died, or still have the cancer. The accepted method of diagnosing a cancer or suspected cancerous growth or condition is to cut or slice off a part of the diseased area and make an examination of such piece of tissue. This method is known as a biopsy. The respondent made or took no biopsies in connection with cancer cases treated by him with "Germex," did not diagnose the patient's trouble and frequently knew no one else who had. Nevertheless, respondent has made a practice of prescribing for patients, some of whom he has never seen, undertaking from time to time to treat them through the mails.

PAR. 9. The respondent is now selling "Germex" under the name "Neutro-Plasm" through the medium of a Detroit organization called "Neutro-Plasm Foundation," supplying the foundation with the product in 100-gallon lots. Advertisements are being run in six different medical magazines. The members of the foundation group do not know what "Germex" contains, the respondent being "unwilling at present to tell us exactly what is in it." "Neutro-Plasm" is being put out primarily as a cancer deodorant, but advertising used by the

Findings

foundation in selling the product also contains the following statement:

It would seem that Neutro-Plasm checks the development and the spread of various forms of carcinoma, sarcoma and endothelioma, and in some instances corrects the condition to effect a restoration to normal of the patient.

PAR. 10. The various statements and representations made by respondent, through the medium of letters, circulars, pamphlets, and other advertising media employed in selling and offering for sale his product "Germex" in the respective States of the United States were and are deceptive and misleading. "Germex" is not antiseptic, and is not a germicide. It will not kill, destroy or drive out disease-forming bacteria. It has no therapeutic value or qualities whatsoever. It is not a remedy or cure for, nor will it produce beneficial results in the treatment of such diseases as arthritis, pernicious anemia, syphilis, septicemia, gangrene, cancer, ulcer, fistula, rheumatic fever, trench mouth, diphtheria, scarlet fever, diabetes, cancer, catarrh, sinus, ulcers of the stomach, tuberculosis, kidney and liver troubles, rheumatic fever, or any other disease or ailment to which mankind is subject. "Germex," being highly contaminated, is not sterile and therefore is unsafe and unfit for intravenous use.

PAR. 11. There are among the competitors of respondent as referred to hereinbefore, corporations, partnerships, firms and persons who are engaged in the sale of preparations which are recommended for use in the treatment of such diseases or ailments as those mentioned by respondent in his advertising material but who truthfully represent their products and their therapeutic value and honestly vend the same.

PAR. 12. The use of the aforesaid false and misleading representations and practices on the part of the respondent in the sale and offering for sale of his product known and designated as "Germex" has had, and now has, the tendency and capacity to cause members of the purchasing public to form the mistaken and erroneous beliefs that respondent's said product "Germex" is a true and genuine antiseptic, is sterile, may be safely taken intravenously, has therapeutic value in the treatment of various diseases; and that it will relieve pain in connection with, will produce beneficial results in the treatment of, or is a remedy or cure for the diseases named in paragraph 3 herein. Acting under such erroneous beliefs, induced by the various misrepresentations of the respondent as herein detailed, many of said members of the public have purchased respondent's product "Germex." The aforesaid representations and practices on the part

Order

24 F. T. C.

of respondent have and have had the capacity and tendency to unfairly divert to respondent the trade of competitors engaged in selling in interstate commerce, drugs, preparations, or remedies which are truthfully advertised and represented and which are recommended for use in connection with the treatment of the various diseases and ailments enumerated by the respondent. Thereby substantial injury has been done, and is being done, by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, Tyrrell H. Duncombe, an individual trading as Duncombe Research Laboratory, 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 thereto, testimony and other evidence in support of the allegations of the said complaint and in opposition thereto, taken before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, and the brief in behalf of the Commission filed herein, and the Commission having made its findings as to the facts and its 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 said respondent, Tyrrell H. Duncombe, individually, and trading as Duncombe Research Laboratory, or under any other trade name or through any corporate or other device, his servants, employees, or agents, individual or corporate, in connection with the offering for sale, sale and distribution in interstate commerce or in the District of Columbia, of a preparation or product in liquid, salve, or other form, designated as "Germex" or "Epi-Phi," or any other product of substantially the same ingredients so designated or designated by any other word, name, legend, or title, do forthwith cease and desist from representing:

1270

Order

1. That said product, "Germex" is sterile;
2. That "Germex" is antiseptic in its action or is an antiseptic; that it will kill, destroy, prevent growth of, or drive from the human body, pathogenic or disease-bearing or forming parasites, bacteria, germs, or microbes; and that it may be used safely as an antiseptic or may be taken safely internally, externally, or used intravenously;
3. That "Germex" is a cure or remedy for, will relieve pain in connection with, or will produce any beneficial results in the treatment of, such diseases or ailments as cancer, pneumonia, tuberculosis, scarlet fever, ulcer, syphilis, arthritis, pernicious anemia, gangrene, diphtheria, trench mouth, septicemia, fistula, eczema, streptococcus sore throat, diabetes, sinus, pyorrhea, catarrh, athlete's foot, rheumatic fever, or any other disease or ailment to which human beings are subject.

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

IN THE MATTER OF
LASALLE EXTENSION UNIVERSITY

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

Docket 2654. Complaint, Dec. 11, 1935—Decision, May 19, 1937

Where a corporation, long since organized, and in business, for profit, and which (1) conducted a school for vocational training, principally, by both correspondence and classroom plans, (2) as thus engaged, offered correspondence courses, its chief concern and interest, in a large number of subjects falling, primarily, within the divisions of law and business management and accountancy, (3) sold or supplied, as incident thereto, textbooks, used to some extent by a large number of schools, colleges and universities, prepared by it and also for it by others, (4) advertised its said courses in business magazines, trade journals, and other periodicals of wide interstate circulation, and also extensively in the lower priced so-called "pulp" magazines, and solicited purchasers therefor through some 300 so-called "Registrars" on commission basis, (5) had no entrance requirements other than competency to master the courses, (6) conferred no degree other than that in its law course, and gave no courses leading to graduate degrees or available for credit for such degrees upon transfer of the student to college or university offering the same, and (7) in connection with its classroom courses provided no facilities for its pupils other than said classrooms—

Represented, through use of term "Extension University" in its corporate name and in its advertising literature, that it conducted a university or extension university, notwithstanding fact it was not a university and did not possess the qualities and attributes considered by educators and members of the public generally as requisites for an institution to make it such or to entitle it thus to be designated, such as being an institution (1) of higher learning with a nucleus of a college of arts and sciences, with courses in such subjects as music, painting, architecture, literature, history, etc., and surrounded by a graduate school and one or more professional schools, and conferring academic and graduate and professional degrees, and with a faculty of learned persons acting as instructors in the various branches of instruction involved, as attested to a considerable extent by number of degrees earned, and (2) one not operated to make a profit from its educational operations that does not go entirely back into its funds for upkeep or expansion, or engaged in securing registrations through paid salesmen, and (3) with, as a rule, dormitories, laboratories and research facilities, and with students already adequately trained by previous study in colleges of arts and sciences leading into special fields of learning through study and seminar and laboratory instruction and research work, and notwithstanding fact it was not engaged in extension activities of a university, as indicated by said word;

With tendency and capacity to create in the minds of a part of the public, and especially those interested in obtaining education by correspondence courses, an erroneous and mistaken conception and belief as to its true character