

IN THE MATTER OF
HADDORFF PIANO COMPANY

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

Docket 3041. Complaint, Jan. 27, 1937—Decision, June 5, 1937

Where a corporation engaged in the manufacture of pianos and in sale and distribution thereof to retailers for resale, in competition with those who make and sell such products similar to its so-called "Vertichord Grand" type and not in any way represent their respective products as having mechanical features and other properties similar to grand pianos, and thus designate their respective products, and in competition with others who make pianos with same mechanical features and other qualities possessed by grand pianos and do thus designate same; in advertising aforesaid type, among others made and dealt in by it, in periodicals and trade journals of general circulation, and in pamphlets, folders, suggested sales talks and other advertising literature circulated to its customers and prospective customers—

Made use of word "Grand" in trade name "Vertichord Grand" to designate and describe its aforesaid type, and represented that said piano possessed same mechanical or operating features as those of the type generally designated and referred to as grand pianos, through such statements as " * * * designed to * * * maintain grand piano tone quality," " * * * volume and tone of a fine grand without taking up a grand's space," "All the advantages of a large grand piano," " * * * deep mellow tone of a large grand piano," and urged, in its said suggested sales talks, use of name "Vertichord Grand" to describe said product, and, in pamphlets distributed to retailers for members of the purchasing public, emphasized economy of space along with featured characteristics of the grand, notwithstanding fact it did not have, among distinctive operating or mechanical features different from and in some cases superior to those of pianos of other types, strings placed horizontally, gravity action of hammers and shifting soft pedal, and, while possessing tonal qualities comparable to those of baby grand, it did not possess such qualities comparable to those of the large or concert size grand piano;

With tendency and capacity to mislead members of the purchasing public into the erroneous and mistaken belief that its said pianos, thus designated, possessed same operating or mechanical features as present in grand pianos, as long designated, described and known to piano trade and purchasing public, and preferred by many users, and into purchase of its so-called "Vertichord Grand" type piano by reason of such belief, and with result of thereby placing in the hands of retailers instrument and means whereby they might misrepresent the operating or mechanical features and other properties of said products and induce members of purchasing public to buy the same by reason thereof, and with result that trade was diverted to it from competitors, likewise engaged in distribution and sale of pianos, who have not made use of like or similar statements and representations in sale of their respective products in commerce:

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

Mr. J. T. Welch for the Commission.

Mr. Axel A. Hofgren, 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 Federal Trade Commission, having reason to believe that Haddorff Piano Company, a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Haddorff Piano Company, is a corporation, existing and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 1900 Harrison Avenue, in the city of Rockford, State of Illinois. Respondent is now, and has been for a number of years, engaged in the business of manufacturing, distributing, and selling pianos to retail dealers for resale, in commerce as herein set out.

PAR. 2. Respondent, being engaged in business as aforesaid, causes said pianos, when sold by it, to be transported from its office and principal place of business in the State of Illinois to the respective purchasers thereof located at various points in the States of the United States other than the State of Illinois. For more than one year last past, the respondent has maintained a constant current of trade in the pianos manufactured, distributed, and sold by it, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business the respondent is now, and has been for many years, in substantial competition with other corporations and with firms and individuals likewise engaged in the business of distributing and selling pianos, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. One of the various types of pianos manufactured and distributed in commerce as hereinabove set out by the respondent is designated and described by it as the "Vertichord Grand." Upon each of the pianos of this type there is imprinted upon the center of the

Complaint

25 F. T. C.

front panel thereof the words "Haddorff Vertichord Grand." In the course of the operation of said business, and for the purpose of inducing customers and prospective customers to purchase said pianos, the respondent has, from time to time, caused advertisements to be inserted in periodicals and trade journals of general circulation throughout the United States and has printed and circulated throughout the several States to said customers and prospective customers, through the United States mails and otherwise, pamphlets, folders, suggested sales talks, and other advertising literature, some of which literature is designed and intended to be used by the retailers purchasing said pianos in the offering for sale and sale of respondent's pianos. In said advertising literature above referred to, the respondent has caused its corporate name, Haddorff Piano Company, to be prominently and conspicuously displayed, together with such statements as follows:

Cleverly designed to take much less space than a grand and yet to maintain grand piano tone quality.

Tone of a parlor grand.

It solves the problem of creating a piano that literally has the volume and tone of a fine grand without taking up a grand's space.

Haddorff's ingenious piano engineers have devised a way of using longer strings in less space (and we can prove the paradox) thus giving full, rounded grand piano tone.

All the advantages of a large grand piano.

It has the deep mellow tone of a large grand piano.

In its suggested sales talk distributed to retailers appear such statements as:

In conversation there is a tendency to shorten this to just "Vertichord". "Vertichord" indicates "vertical strings" or "vertically strung", but that by itself is not a complete description of the instrument. It is a horizontal piano, vertically strung. Vertichord Grand is therefore an accurate and proper name. Its constant use in full has been proved to have a very favorable effect in the promotion and sale of the instrument.

In pamphlets which it distributes to its retailers for distribution to members of the purchasing public in connection with the offering for sale and sale of its pianos appear such statements as:

The name chosen for the new instrument, Vertichord Grand, is descriptive of the new form. In its main mass and main effect the piano is horizontal (grand), but at that point in the structure of an ordinary grand where the curve in the rim begins, the strings are up-ended (which is the significance of "Vertichord"). The result is a piano which combines the grace and decorative charm of the old spinet, with the string length, sounding board area, and general tonal character of a sizeable grand of excellent quality, projects into the room only twenty-five and one-half inches, and costs much less than any other piano of the same style, appeal and a comparable musical quality.

All of said statements, together with other similar statements not herein set out, purport to be descriptive of the type of pianos manufactured and distributed by the respondent under the name "Vertichord Grand." In all of said advertising literature, in the statements above set out, and in many other statements, the respondent represents, either directly or through implication, that the type of pianos referred to in said statements is the same as or is comparable to and has the same operating or mechanical features, tonal qualities and other merits as the type of pianos generally known to and designated by the trade and public generally as Grand pianos.

PAR. 5. For a period of many years, one type of piano has been designated, described and known, both to the trade and to the purchasing public, as a Grand piano. Many users of pianos have expressed, and actually have, a preference for pianos of this type. Pianos of this type possess distinctive operating or mechanical features and tonal qualities different from and superior to the operating or mechanical features and tonal qualities of pianos of any other type. Among these features and tonal qualities are horizontal stringing, gravity action of hammers, placement and resonance of sounding board, shifting soft pedal, superior touch and, in many pianos, the presence of a true sostenuto pedal. When members of the purchasing public purchase pianos designated, described and referred to as Grand pianos, they expect to receive pianos possessing the operating or mechanical features and tonal qualities above referred to.

PAR. 6. The pianos manufactured and distributed by the respondent, in commerce as herein set out, and designated as "Vertichord Grand" pianos do not possess the same operating or mechanical features and tonal qualities as are possessed by the type of pianos generally known and referred to as Grand pianos. The so-called "Vertichord Grand" pianos do not possess horizontal stringing of the chords or strings and do not have sounding boards that are placed horizontally or that have the same resonance and tonal qualities as sounding boards found in the type of pianos generally known and referred to as Grand pianos. The so-called "Vertichord Grand" pianos do not have a gravity action of hammers that strike the strings or chords and do not have the superior touch found in pianos of the type commonly known as Grand pianos. The respondent's so-called "Vertichord Grand" pianos do not have shifting soft pedals and do not have sostenuto pedals. The general mechanical features and tonal qualities of the so-called "Vertichord Grand" pianos are not comparable to the mechanical features and tonal qualities of that type of pianos hereinabove referred to as Grand pianos.

PAR. 7. There are among respondent's competitors those who manufacture and sell in commerce, as herein set out, pianos having many of the same mechanical features and tonal qualities as respondent's "Vertichord Grand" pianos and having a similar general appearance to said pianos, who do not, in any way, misrepresent the character and quality of their respective pianos or the mechanical features and tonal qualities thereof and who do not designate their respective pianos of this type as being Grand pianos. There are also among respondent's competitors those who manufacture pianos designated by them as Grand pianos which do have the same mechanical features and tonal qualities possessed by the type of pianos hereinabove referred to as Grand pianos and who truthfully designate their pianos as Grand pianos and truthfully advertise and represent the true character and nature of their respective products.

PAR. 8. The acts and practices of the respondent in using the aforesaid statements and representations in its advertising literature and in advertising literature furnished by it to retailers, in offering for sale and selling its so-called "Vertichord Grand" pianos have had, and now have, the tendency and capacity to mislead and deceive members of the purchasing public into the false and erroneous belief that said pianos possess the same operating or mechanical features and tonal qualities present in pianos of the type generally known and designated as Grand pianos and into the purchase of respondent's so-called "Vertichord Grand" pianos on account of said belief induced as aforesaid. The acts and practices of the respondent as hereinabove set out also place in the hands of retail dealers an instrument and a means whereby said retail dealers may misrepresent the operating or mechanical features and tonal qualities thereof and induce members of the purchasing public to buy said pianos on account of such misrepresentations. As a result thereof, trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of distributing and selling pianos who truthfully advertise and represent the nature and character of their respective products. As a consequence thereof, substantial injury has been, and is now being, done by respondent to competition, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 9. The above and foregoing acts, practices, and representations of the respondent have been, and are, all to the prejudice of the public and respondent's competitors as aforesaid, and constitute unfair methods of competition within the meaning and intent of Section 5 of an Act of Congress approved September 26, 1914, en-

titled "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 January 27, 1937, issued and served its complaint in this proceeding upon respondent Haddorff Piano Company, charging it 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, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, briefs and oral arguments of counsel having been waived, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Haddorff Piano Company is a corporation existing and doing business under and by virtue of the laws of the State of Illinois. Its principal office and place of business are located at 1900 Harrison Avenue, in the city of Rockford, State of Illinois. For a number of years, respondent has been engaged in the business of manufacturing pianos. It sells and distributes its pianos to retail dealers for resale.

PAR. 2. Respondent causes its pianos, when sold, to be transported from its office and principal place of business in the State of Illinois to the respective purchasers thereof located at various points in States of the United States other than the State of Illinois. Respondent now maintains, and has for several years last past maintained, a constant current of trade in the pianos manufactured, distributed and sold by it in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business, respondent is now, and has been for many years, in substantial competition with other corporations and with firms and individuals likewise engaged in the business of distributing and selling pianos to retail dealers for resale in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. The respondent manufactures pianos of various types including pianos commonly designated as Grand pianos and also pianos commonly designated as Upright pianos. In addition to the pianos of the types above referred to, the respondent manufactures another type of piano which has been designated and described as "Vertichord Grand." Upon each of the pianos of this type, there has been imprinted upon the center of the front panel thereof the words "Haddorff Vertichord Grand."

In the course of the operation of its business, and for the purposes of inducing customers and prospective customers to purchase its pianos of this type, the respondent has caused advertisements to be inserted in periodicals and trade journals of general circulation throughout the United States. It has also printed and circulated throughout the several States, to its customers and prospective customers, pamphlets, folders, suggested sales talks, and other advertising literature. Some of the above mentioned literature is designed and intended to be used by the retailers in the offering for sale and sale of respondent's pianos to retail customers. In the advertisements and advertising literature above referred to, the respondent has caused its corporate name, Haddorff Piano Company, to be prominently and conspicuously displayed, together with such statements as the following:

Cleverly designed to take much less space than a grand and yet to maintain grand piano tone quality.

Tone of a parlor grand.

It solves the problem of creating a piano that literally has the volume and tone of a fine grand without taking up a grand's space.

Haddorff's ingenious piano engineers have devised a way of using longer strings in less space (and we can prove the paradox) thus giving full, rounded grand piano tone.

All the advantages of a large grand piano.

It has the deep mellow tone of a large grand piano.

In its suggested sales talks distributed to retailers appear such statements as:

In conversation there is a tendency to shorten this to just "Vertichord." "Vertichord" indicates "vertical strings" or "vertically strung," but that by itself is not a complete description of the instrument. It is a horizontal piano, vertically strung.

Vertichord Grand is therefore an accurate and proper name. Its constant use in full has been proved to have a very favorable effect in the promotion and sale of the instrument.

In pamphlets which it distributes to its retailers for distribution to members of the purchasing public in connection with the offering for sale and sale of its pianos appear such statements as:

The name chosen for the new instrument, Vertichord Grand, is descriptive of the new form. In its main mass and main effect the piano is horizontal (grand), but at that point in the structure of an ordinary grand where the curve in the rim begins, the strings are up-ended (which is the significance of "Vertichord"). The result is a piano which combines the grace and decorative charm of the old spinet, with the string length, sounding board area, and general tonal character of a sizable grand of excellent quality, projects into the room only twenty-five and one-half inches, and costs much less than any other piano of the same style, appeal and a comparable musical quality.

All of said statements, together with other similar statements not herein set out, purport to be descriptive of the type of pianos manufactured and distributed by the respondent under the name "Vertichord Grand." In all of said advertising literature, in the statements above set out, and in many other statements, the respondent represents, either directly or through implication, that the type of pianos referred to in said statements is the same as or is comparable to and has the same operating or mechanical features, tonal qualities, and other merits as the type of pianos generally known to and designated by the trade and public generally as Grand Pianos.

PAR. 5. For a period of many years, one type of piano has been designated, described and known, both to the piano trade and to the purchasing public, as a Grand piano. Many users of pianos have expressed, and actually have, a preference for pianos of this type. Pianos of this type possess distinctive operating or mechanical features different from and in some cases superior to the operating or mechanical features of pianos of any other type. Among these features are: horizontal stringing, gravity action of hammers, placement of sounding board, and shifting soft pedal. In many pianos of the type generally designated and described as Grand pianos, there is also the additional feature of a true sostenuto pedal. The tonal qualities of pianos are determined to a large extent by the quality, character and placement of the sounding board, the size of the string plate and the length and number of strings. Some pianos of the type generally designated and known as Grand pianos, especially those of large or concert size, do have tonal qualities superior to the tonal qualities of any other type piano. When members of the purchasing public purchase pianos designated, described and referred to as

Grand pianos, they expect to receive pianos possessing the operating or mechanical features above referred to.

PAR. 6. The pianos manufactured, distributed and sold by the respondent in commerce as herein described and designated as "Vertichord Grand" pianos do not possess the same operating or mechanical features as are possessed by the type of pianos generally known and referred to as Grand pianos. The so-called "Vertichord Grand" pianos do not have a gravity action of hammers that strike the strings or chords. They do not have shifting soft pedals and do not have sostenuto pedals.

The sounding boards in respondent's "Vertichord Grand" pianos are not comparable in placement and tonal resonance to the sounding boards used in large or concert size Grand pianos. The size of the string plate and the length and number of strings in respondent's "Vertichord Grand" pianos are not comparable to those of the large or concert size Grand pianos. Consequently, the tonal qualities of respondent's "Vertichord Grand" pianos are not comparable to those of the large or concert size Grand pianos.

Because of the reduction in the size of the sounding board and in the size of the string plate and the length and number of strings necessitated in Grand pianos of the smaller sizes often referred to as "Baby Grand" pianos, the tonal qualities of respondent's "Vertichord Grand" pianos are comparable to the tonal qualities of such pianos.

PAR. 7. There are among respondent's competitors those who manufacture and sell in commerce as herein set out pianos having many of the same mechanical features and tonal qualities as respondent's "Vertichord Grand" pianos and having a similar general appearance to said pianos who do not, in any way, represent that their respective pianos have mechanical features and other qualities similar to Grand pianos and do not designate their respective pianos of this type as being Grand pianos. There are also among respondent's competitors those who manufacture pianos which do have the same mechanical features and other qualities possessed by the type of pianos hereinabove referred to as Grand pianos and who designate such pianos as Grand pianos.

PAR. 8. The respondent changed the name of its pianos of this type from "Vertichord Grand" pianos to "Vertichord" on or about October 15, 1936. Since that time, it has not designated its pianos of this type as being Grand pianos. It has already eliminated from its advertisements and advertising literature similar to that described in paragraph 4 hereof any reference to pianos of this type as Grand pianos.

PAR. 9. The acts and practices of the respondent in using the aforesaid statements and representations in its advertising literature and in advertising literature furnished by it to retailers, in offering for sale and selling its "Vertichord Grand" pianos have had the tendency and capacity to mislead members of the purchasing public into the erroneous and mistaken belief that said pianos so designated possess the same operating or mechanical features as are present in pianos of the type generally known and designated as Grand pianos and into the purchase of respondent's so-called "Vertichord Grand" pianos on account of such belief. The acts and practices of the respondent as hereinabove set out also place in the hands of the retail dealers an instrument and a means whereby said retail dealers may misrepresent the operating or mechanical features and other qualities of said pianos and induce members of the purchasing public to buy said pianos on account of such misrepresentations. As a result thereof, trade has been diverted to the respondent from competitors likewise engaged in the business of distributing and selling pianos who have not made use of like or similar statements and representations in the sale of their respective products in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent Haddorff Piano Company 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 and the answer filed herein by the respondent admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said respondent had 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, Haddorff Piano Company, its officers, representatives, agents, and employees, in connection with the

Order

25 F. T. C.

offering for sale, sale and distribution of vertically strung pianos formerly designated as "Haddorff Vertichord Grand" and now designated as "Haddorff Vertichord" in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

(1) The use of the word "Grand," alone or in conjunction with any other word or words, as a trade name by which to designate or describe any piano not having its strings placed horizontally, gravity action of hammers, and shifting soft pedal, and not possessing those tonal and other qualities associated by the trade and the general public with Grand pianos;

(2) Representing that said pianos possess the same mechanical or operating features as are possessed by pianos of the type generally designated and referred to as Grand pianos;

(3) Representing that said pianos possess the same or comparable tonal qualities as pianos of the type generally designated and referred to as Grand Pianos, except as to the smaller sizes or Baby Grand pianos.

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
KOLYNOS COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3074. Complaint, Mar. 11, 1937—Decision, June 5, 1937*

Where a corporation engaged in sale and distribution of a toothpaste or dentifrice known as "Kolynos," in substantial competition with others engaged in sale and distribution of dentifrices, and including those who do not in any manner misrepresent the ingredients or efficacy of their respective products; in advertising its said "Kolynos" in newspapers of general circulation—

- (a) Falsely represented that it conquered or removed "Bacterial Mouth," caused, as asserted, by germs which sweep in with every breath and attack tooth and gum, and killed germs which were known cause of most gum troubles, and contained important germicidal ingredients exceptional to it;
- (b) Falsely represented that it cleaned and polished teeth down to the naked white enamel without injury and erased stain and tartar, and gave teeth a double cleansing that could not be obtained with ordinary or other toothpastes or dentifrices, and contained "essential ingredients" which remove tartar, and cleaned teeth down to the natural white enamel and gave them sparkling whiteness, and restored their natural whiteness, and made them look shades lighter almost at once, and gleam like pearls; and
- (c) Falsely represented that it did what ordinary toothpaste could not do, and contained properties not found in ordinary pastes and powders, and was new and totally different, and was "the approved" toothpaste and "the" antiseptic dental cream, and that dentists throughout the world recommended it because of its ability to remove tartar;

With result that a substantial number of the consuming public, as a consequence of its said false and misleading representations, purchased substantial volume of its said preparation and thereby unfairly diverted substantial volume of trade and business to it which would otherwise have gone to competitors who have not made use of such unfair methods:

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

Mr. Wm. T. Chantland for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that the Kolynos Company, 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, Kolynos Company, is a Connecticut corporation, which has its principal office and place of business in the city of New Haven, State of Connecticut. Respondent is now, and has been for some time, engaged in the business of distributing and selling, in commerce as herein set out, a certain tooth paste, known as "Kolynos."

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said tooth paste, when sold, to be transported from its office and place of business in the State of Connecticut to purchasers thereof located at various points in States of the United States other than the State from which said shipments were made. Respondent now maintains a constant current of trade in commerce in said product, distributed and sold by it, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent is now, and has been, in substantial competition with other corporations and with firms and individuals likewise engaged in the business of distributing and selling tooth pastes and kindred preparations in commerce among and between the various States of the United States and in the District of Columbia.

In the course and operation of said business, and for the purpose of inducing the purchase of said tooth paste, respondent has made use of advertisements carried in newspapers, magazines, and periodicals having a general circulation throughout the various States of the United States and has also made use of other types of advertising generally circulated to purchasers and prospective purchasers located in all of the States. In all of said advertisements, respondent has caused its name to be prominently displayed, together with such statements as the following:

Teeth whiten 3 shades in 3 days when you remove Bacterial-Mouth.

Within 3 days teeth will look whiter—fully 3 shades.

Germs sweep into the mouth with every breath and attack tooth and gum. They cause the condition known as Bacterial-Mouth but Kolynos quickly conquers this foe * * *.

It cleans and polishes teeth down to the naked white enamel without injury.

Erases stain and tartar.

KOLYNOS GIVES TEETH A DOUBLE-CLEANSING YOU CAN'T GET WITH ORDINARY TOOTH PASTE.

1. Foams into every crevice, over every tooth surface and kills millions of germs.

2. Erases dingy film and stain. Before you know it your teeth are cleaned right down to the beautiful, natural white enamel without injury.

* * * Kolynos does what ordinary toothpastes can't do. As it cleans up ugly stain and tarnish—it foams into every crevice and kills millions of germs that are the known cause of most tooth and gum troubles.

The dentist can stimulate the practice of oral hygiene in the home by explaining the relationship to the patient between mouth bacteria and tooth decay. The patient can aid in maintaining a healthy condition of the oral cavity, as established by the dentist, through the use of KOLYNOS DENTAL CREAM, which not only neutralizes the acid formed by mouth bacteria, but reduces the oral flora from 80% to 92% with each brushing.

Just one brushing with Kolynos in the unique Kolynos way—a half-inch of this amazing dental cream on a dry brush, use no water—and you'll see how important it is to use an antiseptic dental cream that kills germs always collecting on the teeth and disfiguring them.

IT'S EASY TO MAKE DULL, DINGY TEETH ATTRACTIVE. GIVE THEM SPARKLING WHITENESS!

New—and totally different—way of antiseptic cleaning transforms dull teeth in a hurry. * * *

This modern antiseptic dental cream contains properties not found in ordinary pastes and powders. It instantly kills 80% to 92% of the germs present in the mouth. Removes the ugly germ-spots, the stain and discoloration. Cleans every tooth surface, between the teeth, every tiny crevice. And gives to teeth a clearness and brilliance that is wonderful to see.

Now discover what more than 2,000,000 Americans already know. Start cleaning your teeth with antiseptic Kolynos.

Your teeth look shades lighter; they gleam like pearls.

* * * Makes them look shades lighter almost at once.

* * * Actually kills harmful germs in a few seconds and keeps teeth and mouth thoroughly clean and healthy.

Important ingredients exceptional to KOLYNOS actually kill the germs of dental decay in a few seconds.

The approved antiseptic and germicidal tooth paste.

* * * KOLYNOS Dental Cream * * * destroys from 80 to 90% of oral bacteria with each brushing * * *

KOLYNOS, the Antiseptic Dental Cream.

Dentists throughout the world recommend KOLYNOS because of its ability to remove unsightly stain and tartar.

Other essential ingredients remove unsightly stain and dissolve tartar.

Its action is exactly like that of a jeweler's polish on tarnished silver. It erases the yellowish colored coating that disfigures your teeth and restores their natural whiteness.

All of said statements, together with many other statements appearing in respondent's advertising literature, purport to be descriptive of respondent's product and its effectiveness in use. In all of its advertising literature, respondent represents, through the statements and representations hereinabove set out and other statements of similar import and effect that its tooth paste erases or removes stain and tartar; that it will whiten teeth several shades in a few days; that it cleans teeth down to the white enamel without injury; that it almost instantly kills millions of germs which cause most tooth and gum

Complaint

25 F. T. C.

troubles; that it keeps the teeth and mouth thoroughly clean and healthy on account of its germicidal and antiseptic properties; that it gives dull, dingy teeth sparkling whiteness; that said tooth paste will remove or conquer bacterial mouth; and that it accomplishes results which other tooth pastes cannot accomplish.

PAR. 4. The representations made by the respondent, as above set out, with respect to the effect, when used, of its said product, are grossly exaggerated, false, misleading and untrue. The truth and facts are that said tooth paste does not have any of the qualities, nor achieve any of the results thus represented and claimed. Respondent's tooth paste will not erase or remove all stain and tartar and it will not, in all cases, clean teeth to the natural white enamel without injury. It does not almost instantly kill millions of germs which are the cause of most tooth and gum troubles and it does not keep teeth and mouth thoroughly clean and healthy on account of germicidal and antiseptic properties or on any other account. Its use does not render all dull and dingy teeth sparkling white. Respondent's tooth paste does not accomplish results that cannot be accomplished by use of other tooth pastes.

PAR. 5. There are among respondent's competitors many who distribute and sell tooth pastes or dentifrices, or similar preparations, who do not in any way misrepresent the effectiveness of their respective products.

PAR. 6. Each and all of the false and misleading statements and representations made by the respondent as to the effectiveness of its said product, as hereinabove set out, in its advertising, in the course of distributing its products, were and are calculated to, and had, and now have a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true, and that the results claimed by the respondent will be obtained by the purchasers thereof upon the use of said products. Further, as a true consequence of the mistaken and erroneous beliefs induced by the acts, advertisements and representations of respondent, as hereinabove set out, a substantial number of the consuming public has purchased a substantial volume of respondent's product with the result that trade has been unfairly diverted to the respondent from individuals, firms, and corporations likewise engaged in the business of distributing and selling similar products, who truthfully advertise their respective products and their respective effectiveness in use. As a result thereof, substantial injury has been and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 7. The above and foregoing acts, practices and representations of the respondent have been, and are, all to the prejudice of the public and of respondent's competitors as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on the 11th day of March 1937, issued and served its complaint in this proceeding upon said respondent, Kolynos Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Thereafter on May 19, 1937, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent and W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may 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 may proceed upon said statement of facts to make its report, stating its findings as to the 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 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 finding as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Kolynos Company is a corporation duly organized and existing under the laws of the State of Connecticut, with its office and principal place of business in the city of New Haven, Conn. Respondent is now and for some time has been engaged in the business of selling and distributing in interstate commerce a tooth paste or dentifrice known as "Kolynos."

PAR. 2. Respondent, being engaged in business as aforesaid, causes said preparation, when sold, to be transported from its place of busi-

ness in the State of Connecticut to the purchasers thereof located at various points in States of the United States other than the State from which shipments are made. Respondent now maintains a constant current of trade in commerce in said product distributed and sold by it between and among the various States of the United States.

PAR. 3. Respondent is now and has been, in the course and conduct of its said business, in substantial competition with other corporations and with firms and individuals likewise engaged in the business of distributing and selling tooth pastes or dentifrices in commerce among and between the various States of the United States.

PAR. 4. Respondent, in the course and conduct of its business in said commerce, for the purpose of inducing the purchase of its said product, Kolynos tooth paste, caused advertisements to be placed in newspapers having a general circulation in the various States of the United States and in the District of Columbia. These advertisements contained statements concerning the ingredients in and the efficacy of the product, Kolynos tooth paste, in the care, preservation, and treatment of the teeth and gums.

Prior to October 2, 1933, at which time respondent executed a stipulation with the Commission wherein it agreed to discontinue certain practices, the following statements were made in said advertisements:

Teeth whiten 3 shades in 3 days when you remove Bacterial-Mouth.
Within 3 days teeth will look whiter—fully 3 shades.

Germs sweep into the mouth with every breath and attack tooth and gum. They cause the condition known as Bacterial-Mouth but Kolynos quickly conquers this foe * * *.

It cleans and polishes teeth down to the naked white enamel without injury.
Erases stain and tartar.

None of the statements above set out have been so used since the date of the execution of said stipulation, except for such of said statements as were in outstanding advertising copy on that date, and none have been used at all since January 1, 1934, except a statement which was inadvertently included in certain advertisements placed in newspapers circulated in the State of Alabama, to the effect that the product, Kolynos tooth paste, would remove tartar from the teeth. Upon discovery of the inclusion of such statement in said advertisements, the respondent, by letter dated February 10, 1937, and prior to the issuance of the complaint herein, ordered said statement removed from such advertisements.

PAR. 5. Subsequent to January 1, 1934, and up to date of the issuance of the complaint herein, March 11, 1937, respondent in said

newspaper advertisements made in substance the following statements concerning the efficacy of the product, Kolynos tooth paste, in the care, preservation, and treatment of the teeth and gums: that "Kolynos gives teeth a double-cleansing you can't get with ordinary tooth paste"; that "Kolynos does what ordinary tooth pastes can't do"; that "This modern antiseptic dental cream contains properties not found in ordinary pastes and powders"; that by the use of Kolynos teeth are cleaned down to the natural "white" enamel; that the use of Kolynos gives teeth "sparkling whiteness"; that its use restores to teeth "their natural whiteness"; that Kolynos kills germs that are the known cause of "most gum troubles"; that "Kolynos is new—and totally different"; that using Kolynos makes "your teeth look shades lighter," "gleam like pearls" and "look shades lighter almost at once"; that Kolynos contains important ingredients, "exceptional to Kolynos," which kill germs; that Kolynos is "the approved" tooth paste and is "the" antiseptic dental cream and that dentists "throughout the world recommend Kolynos because of its ability to remove * * tartar," and that other "essential ingredients" found in Kolynos remove tartar.

PAR. 6. The use of Kolynos tooth paste will not whiten teeth "3 shades within 3 days." Kolynos does not "conquer the condition known as bacterial-mouth caused by germs which sweep into the mouth with every breath and attack tooth and gum." It does not "clean and polish teeth down to the naked white enamel without injury." It does not "erase or remove tartar"; nor does it "erase or remove stains" other than superficial stains. It does not give teeth a "double cleansing" not obtainable from ordinary tooth paste. Its use does not give teeth which are naturally discolored "sparkling whiteness" nor "restores" to such teeth their natural whiteness. It does not kill germs that are "the known cause of most gum trouble." Kolynos is not "new" nor is it "totally" different from other tooth pastes. Its use will not make teeth "look shades lighter almost at once" nor will it make teeth "gleam like pearls." It does not contain important ingredients "exceptional to Kolynos" which kill germs. It is not "the approved" tooth paste or "the" antiseptic dental cream in the sense that it has been approved or recommended by dentists or the purchasing public to the exclusion of other tooth pastes.

PAR. 7. Among the competitors of the respondent above mentioned are many who do not in any manner misrepresent the ingredients in or the efficacy of their products in selling and distributing the same in said commerce and as a result of respondent's said false and misleading representations a substantial number of the consuming public has purchased a substantial volume of respond-

ent's preparations and so unfairly diverted a substantial volume of trade and business to respondent which would otherwise have gone to competitors who have not used such unfair methods.

CONCLUSION

The aforesaid acts and practices of the respondent, Kolynos Company, are to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the stipulation as to the facts filed herein on May 19, 1937, whereby respondent admits all the material allegations of the complaint to be true, and waives all other intervening procedure, 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 respondent, Kolynos Company, its officers, representatives, agents and employees, in connection with the offering for sale, sale, and distribution of Kolynos toothpaste in interstate commerce or in the District of Columbia, do forthwith cease and desist from directly or indirectly representing:

1. That Kolynos toothpaste conquers or removes bacterial mouth allegedly caused by germs which sweep into the mouth with every breath, and attack tooth and gum.

2. That Kolynos toothpaste kills germs that are allegedly the cause of most gum troubles, or that it contains ingredients exceptional to Kolynos that kill germs.

3. That Kolynos toothpaste cleans and polishes teeth down to the naked white enamel without injury.

4. That Kolynos toothpaste erases and removes tartar, or erases and removes stains other than superficial stains.

5. That Kolynos toothpaste restores all teeth to sparkling whiteness, or natural whiteness, or makes teeth shades lighter almost at once, or makes teeth gleam like pearls.

6. That Kolynos toothpaste gives teeth a double-cleansing that can't be obtained with ordinary or other toothpastes or dentifrices.

7. That Kolynos toothpaste does for the teeth and gums what ordinary or other toothpastes or dentifrices cannot do.

8. That Kolynos toothpaste is new, or totally different from other toothpastes or dentifrices.

9. That Kolynos toothpaste is "the approval" toothpaste or "the" antiseptic dental cream, in the sense of having been approved or recommended by dentists or the purchasing public to the exclusion of other toothpastes and dentifrices;

or from making any other representations of similar meaning, import and effect.

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.

IN THE MATTER OF
PROVINCIAL DISTILLERIES, LTD., INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3
OF TITLE I OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933¹

Docket 2404. Complaint, May 22, 1935—Decision, June 8, 1937

Where a corporation engaged in rectifying and bottling, at its rectifying plant and under rectifier's permit, whiskies, gins, and other spirituous beverages, and in producing gin with still used therefor by redistillation of purchased alcohol, not produced by it, over juniper berries and other aromatics, and in selling its aforesaid various products to wholesalers and distributors in various States other than State of origin and in District of Columbia, in substantial competition with those engaged in manufacture by true distillation of whiskies, gins, and other spirituous beverages from mash, wort, or wash, and in sale thereof in trade and commerce among the various States and in the District of Columbia, and with those engaged in purchasing, rectifying, blending, and bottling such various beverages in rectifying plants and under rectifiers' permits, and in similarly selling same, and including among its said competitors those who, as manufacturers and distillers by original and continuous distillation of mash, wort, or wash through closed pipes and vessels until manufacture is complete, of whiskies, gins, and other spirituous beverages sold by them, truthfully use words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names and on their stationery and advertising and on the labels of the bottles in which they sell and ship their said products, and those who, engaged in purchasing, rectifying, blending, and bottling such various products in their respective rectifying plants and under their rectifiers' permits, do not use aforesaid words as above set forth—

Represented, through use of word "Distilleries" in its corporate name, printed on its stationery and catalogs and on the labels attached to the bottles in which it sold and shipped its said products, and in various other ways, to its customers, and furnished them with the means of representing to their vendees, both retailers and consuming public, that it was a distiller, and that the said whiskies, gins, cordials, brandies, and other alcoholic beverages contained in such bottles were by it made through process of distillation from mash, wort, or wash, notwithstanding fact it did not own, operate, or control any place or places where such beverages are made by process of original and continuous distillation from mash, wort, or wash, as long definitely understood from word "Distilleries" when used in connection with liquor industry and products thereof, by trade and ultimate purchasing public, as meaning place where spirituous liquors are made by original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until manufacture is complete, and was not a distiller, requirements of which, in the way of bond, plant, etc., are more exacting and extensive than in case of rectifier, and for the

¹ Count two of the complaint, under the National Industrial Recovery Act, dismissed.