

IN THE MATTER OF
WOLF DRUG COMPANY 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 3124. Complaint, May 6, 1937—Decision, Sept. 3, 1937

Where four corporations engaged in sale, distribution, and transportation of products of a purported medicinal character, into and through the various States and the District of Columbia, under direction and control of certain individuals, owners of all, or virtually all, of their capital stock, and said individuals, in substantial competition with others engaged in sale, distribution, and transportation, as aforesaid, of medicinal products sold and intended for sale and use for same purposes for which said products of said corporations and individuals were sold and intended for sale and use, and including among their competitors those engaged in manufacture, sale, and distribution in commerce, as above set forth, of commodities represented as effective remedies or cures for similar diseases, but who do not falsely represent the curative value thereof or falsely represent that they maintain an "institute," laboratories or other establishments at Battle Creek, Mich., or at any other place, or that the commodities to be purchased from them have been prepared and manufactured according to a prescription of an accredited physician or physicians, or tested by accredited chemists—

- (a) Caused trade name "Health Institute, Battle Creek, Michigan," to be prominently and conspicuously displayed and featured, together with various statements describing their aforesaid products, in newspaper advertisements, advertising folders, pamphlets, circulars, letters, and other literature, circulated through the several States and aforesaid District to customers and prospective customers, and through radio broadcasts into other States, notwithstanding fact they maintained no laboratories or clinics at aforesaid city or at any other place, had in their employ no chemists or others trained in the conduct of analyses, and neither undertook nor carried on any researches, experiments, or analyses, and, other than maintenance or a mailing address for reception and forwarding of mail to their various places of business, had no connection with aforesaid city, but adopted aforesaid term to capitalize upon the particular significance associated by medical profession and general public with name "Battle Creek" as standing for locality associated with efficient, reliable, and successful conduct of institutions, asylums, sanitoriums, and hospitals;
- (b) Represented, as aforesaid, through use of such words as "W. J. Jones, M. D.," or "Dr. Kenyon," in connection with commodities offered and sold by them, that commodities in question were made according to formula, or under the supervision, of a doctor of medicine, notwithstanding facts none of such commodities, as sold or offered by them, were or had been prepared according to any formula discovered or prescribed by any such doctor, there was no accredited physician bearing such name or names connected with them in any capacity, and commodities thus sold were not

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prepared according to prescription or formula of any physician or physicians; and

- (c) Represented that one of their said preparations, offered under designation "Bio-Tabs," was a cure or remedy for obesity, through such statements as "Take Bio-Tabs after meals for one month. W. J. Jones, M. D.," "For years doctors have been prescribing it (Bio-Tabs) for over-weight patients with astonishing results," "Many cases have been reported in which patients have lost from 10 to 20 lbs. a month," "* * * now on the market only after a long process of painstaking research, checking and rechecking," etc., notwithstanding fact preparation in question was not an effective cure and remedy for aforesaid condition;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into false belief that statements made as aforesaid were true, and with result that a number of such members purchased substantial quantities of the commodities thus advertised and sold by them, believing in truth of such representations, and trade was unfairly diverted to them from competitors engaged, as aforesaid, in sale and distribution of products designed, intended, and sold for cure, relief, and treatment of the said various diseases, afflictions, and ailments, and who do not falsely represent the effectiveness of the commodities vended by them; to the substantial injury of competitors in commerce:

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

Mr. Alden S. Bradley for the Commission.

Jacobi & Jacobi, of Washington, D. C., for respondents, along with *Sevrin & Goldstein*, of Newark, N. J., for respondent William Goldstein.

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 Wolf Drug Company, Henry Wolf Wholesale Druggist, Inc., Charmley Drug Shop, William Wolf Sales Company, Inc., corporations, and Henry Wolf, William Wolf, William Goldstein, and David Cohen, individuals, hereinafter referred to as respondents, have been and are 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. Respondents herein named are Wolf Drug Company, Henry Wolf Wholesale Druggist, Inc., each of which is a corporation existing and doing business under and by virtue of the laws of the State of New Jersey and having their principal office and place of business at 683 Broad Street, Newark, N. J.; Charmley

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Drug Shop, a corporation existing and doing business under and by virtue of the laws of the State of New Jersey and having its principal office and place of business at 164 Halsey Street, Newark, N. J.; William Wolf Sales Company, Inc., a corporation existing and doing business under and by virtue of the laws of the State of New York and having its principal office and place of business at 27 Park Place, New York, N. Y.; Henry Wolf, an individual, having his principal office and place of business at 683 Broad Street, Newark, N. J.; William Wolf, William Goldstein, and David Cohen, individuals, having their principal office and place of business at 164 Halsey Street, Newark, N. J.

The individuals Henry Wolf, William Wolf, William Goldstein, and David Cohen own all, or virtually all, of the capital stock of the several corporations named herein and during the entire existence of such corporations have directed and dictated the sales policies and business activities of the same.

The corporate respondents are now and for more than two years last past have been engaged under their own names and under various trade names in the sale, distribution and transportation into and through the various States of the United States and the District of Columbia of certain medicinal products.

There is now, and has been for such period, a constant current of trade and commerce in said products so sold, distributed, and transported by the respondents and each of them between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business respondents are now and have been in substantial competition with other individuals, firms, copartnerships, and corporations likewise engaged in the business of selling and distributing medicinal products intended and sold for the same purposes for which respondents' products are sold in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. As a part of the general advertising and sales promotion plans of respondents they have caused to be registered with the United States Patent Office a trade name, to wit, "Health Institute, Battle Creek, Michigan" and have thus represented that they conduct a place of business in the city of Battle Creek, Mich.

In the course and conduct of their business respondents for the purpose of inducing the purchase of the commodities offered for sale by them have printed and circulated throughout the several States to customers and prospective customers through the United States mails and otherwise by newspaper advertisements, advertising folders, pamphlets, circulars, letters, and other literature and have

made use of radio broadcasts over stations with sufficient power to convey programs emanating therefrom into the various States of the United States to advertise the products sold by them; in all of which advertisements respondents have caused the trade name "Health Institute, Battle Creek, Michigan" to be prominently and conspicuously displayed, together with the following statements or statements similar thereto:

Take Bio-Tabs after meals for one month. W. J. Jones, M. D.

For years doctors have been prescribing it (Bio-Tabs) for overweight patients with astonishing results.

Many cases have been reported in which patients have lost from 10 to 20 lbs. a month.

Bio-Tabs now on the market only after a long process of painstaking research, checking and rechecking.

Chemists' analysis shows Bio-Tabs are absolutely free from drugs ordinarily used in reducing preparations.

Bio-Tabs were tested and analyzed in long careful laboratory research by the Health Institute at Battle Creek, Michigan.

Dr. Kenyon's Malt Extract with Cod Liver Oil—This preparation is very beneficial in the treatment of certain types of malnutrition, valuable as an aid to increase the appetite and the digestion of starches in certain types of dyspepsia.

Dr. Kenyon's Ephedrine Cough Syrup—A valuable remedy for the relief of coughs due to colds and minor throat irritations.

Dr. Kenyon's Magnesia and Oil—as an antacid: as a laxative: as an intestinal lubricant.

PAR. 4. Among the commodities so advertised and sold are those known as "Bio-Tabs" which are represented by respondents to be an effective cure and remedy for obesity.

In truth and in fact the said commodity is not an effective remedy or cure for obesity.

PAR. 5. Respondents likewise in their advertising, as aforesaid, represent one "W. J. Jones, M. D." to be the originator or author of the formula with which "Bio-Tabs" are made. Among the commodities likewise so advertised, as aforesaid, are various commodities vended under the brand name "Dr. Kenyon's" represented by the respondents as being effective in the cure and treatment of variously named diseases or disorders, among which are run-down bodily conditions, malnutrition, constipation, low vitality, and others.

In truth and in fact none of such commodities so sold or offered for sale by the respondents are prepared or have been prepared according to any formula discovered or prescribed by any "Dr. Kenyon" or any "W. J. Jones, M. D." nor is there any accredited physician bearing such name or names connected with respondents in any capacity. The commodities so sold are not prepared according to the prescription or formula of any physician or physicians.

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PAR. 6. By the use of the trade name "Health Institute, Battle Creek, Michigan" respondents represent themselves to be "an institute." No clinic, research work, experiments or analyses are maintained or carried on by the respondents or any of them. They do not have any laboratories wherein research work, experiments, or analyses are conducted. There are no chemists or other persons trained in the conduct of analyses employed by respondents or any of them. No analyses, experiments, or researches are undertaken or carried out by the respondents.

PAR. 7. The name "Battle Creek" has a particular significance to the medical profession and to the general public as well, referring as it does to a locality where are conducted institutes, asylums, sanatoriums, and hospitals believed by the general public to be thoroughly efficient, reliable and successful and the respondents adopted the term "Health Institute, Battle Creek, Michigan" for the purpose of capitalizing upon such reputation.

No establishment is maintained by the respondents in or about the city of Battle Creek, Mich., where clinics, research work, experiments, or analyses are conducted by chemists or other trained and skilled persons. In fact respondents merely have a mailing address in such city and all mail received at such address is forwarded to respondents at their afore-named place of business.

PAR. 8. There are among the competitors of the respondents various other individuals, copartnerships, and corporations likewise engaged in the manufacture, sale and distribution in commerce as herein described of commodities represented to be effective remedies or cures for similar diseases for which such commodities are sold, but who do not falsely represent the curative value of the same, and who do not falsely represent that they maintain an "Institute," laboratories or other establishments at Battle Creek, Mich., or at any other place and who do not falsely represent that the commodities to be purchased from them have been prepared and manufactured according to a prescription of an accredited physician or physicians or tested by accredited chemists.

PAR. 9. Each and all of the false and misleading statements and representations made by the respondents designating or describing the effectiveness of said products for curing, treating, or relieving the diseases, ailments, afflictions, and conditions of the human body herein named, in offering for sale and selling their said commodities were, and are, calculated to, 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 said products will in truth accomplish the results

claimed. Further, as a direct consequence of the mistaken and erroneous belief induced by the acts and representations of the respondents, as hereinabove detailed, a number of the consuming public have purchased a substantial volume of respondents' commodities with the result that trade has been unfairly diverted to the respondents from competitors likewise engaged in the business of distributing and selling similar products or other products designed, intended, and sold for use in the cure, relief or treatment of the various diseases, ailments, afflictions, and conditions named herein and who truthfully represent the effectiveness of their respective commodities. As a result thereof injury has been done and is now being done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 10. The above methods, acts, practices, and representations of the respondents have been and are all to the prejudice of the public and respondents' 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 6th day of May 1937, issued and served its complaint in this proceeding upon respondents Wolf Drug Company, Henry Wolf Wholesale Druggist, Inc., Charmley Drug Shop, William Wolf Sales Company, Inc., corporations, and Henry Wolf, William Wolf, and William Goldstein, individuals, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. One David Cohen was likewise named respondent in the complaint but service thereof was not effected upon him. On June 2, 1937, the respondent William Goldstein filed in his own behalf an answer admitting in part and denying in part the material allegations of the complaint. Thereafter, the respondent, William Goldstein, filed with the Commission a motion for leave to withdraw such separate answer. Annexed to such motion was a joint answer tendered on behalf of each of the respondents except David Cohen. This motion was granted. The answer so tendered was filed. It admitted all of the material

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allegations of the complaint to be true, waived hearing on the charges set forth therein and stated that, without further evidence or intervening procedure, the Commission might issue and serve upon them findings as to the facts and conclusion drawn therefrom and an order to cease and desist from the violations of law charged in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Wolf Drug Company and Henry Wolf Wholesale Druggist, Inc., are corporations existing and doing business under and by virtue of the laws of the State of New Jersey, having their principal offices and places of business at 683 Broad Street, Newark, N. J. Charmley Drug Shop is a corporation existing under the laws of the State of New Jersey, having its principal office and place of business at 164 Halsey Street, Newark, N. J. William Wolf Sales Company, Inc., is a corporation existing under the laws of the State of New York and having its principal office and place of business at 27 Park Place, New York, N. Y. Henry Wolf is an individual having his principal office and place of business at 683 Broad Street, Newark, N. J. William Wolf and William Goldstein are each individuals having their principal offices and places of business at 164 Halsey Street, Newark, N. J. The individual respondents last above named own all, or virtually all of the capital stock of the several respondent corporations herein named and have during the entire existence of such corporations directed and controlled their sales policies and business activities.

The corporate respondents in their own names and under various trade names now are, and for more than two years last past have been, engaged in the, sale, distribution, and transportation under the direction and control of the individual respondents aforesaid of products of a purported medicinal character into and through the various States of the United States and the District of Columbia and have maintained throughout such period a constant current of trade and commerce in such products among and between the various States of the United States and the District of Columbia.

PAR. 2. The respondents now are, and have been during the entire period mentioned herein, in substantial competition with other individuals, firms, and corporations engaged in the business of selling, distributing, and transporting into and through the various States of the United States and the District of Columbia medicinal products sold and intended to be sold and used for the said purposes for which respondents' products are sold and intended to be sold and used.

PAR. 3. Respondents have, for the purpose of effecting the sale of the commodities above described, printed and circulated or caused to be printed and circulated throughout the several States of the United States and in the District of Columbia to customers and prospective customers through the United States mails, and otherwise, newspaper advertisements, advertising folders, pamphlets, circulars, letters, and other literature, and have caused to be conducted radio broadcasts over stations with sufficient power to convey the programs emanating therefrom into the various States of the United States. In all of said advertisements and broadcasts respondents have caused the trade name "Health Institute, Battle Creek, Michigan," to be prominently and conspicuously displayed and featured, together with the following statement or statements similar thereto:

Take Bio-Tabs after meals for one month. W. J. Jones, M. D.

For years doctors have been prescribing it (Bio-Tabs) for overweight patients with astonishing results.

Many cases have been reported in which patients have lost from 10 to 20 lbs. a month.

Bio-Tabs now on the market only after a long process of painstaking research, checking and rechecking.

Chemists' analysis shows Bio-Tabs are absolutely free from drugs ordinarily used in reducing preparations.

Bio-Tabs were tested and analyzed in long careful laboratory research by the Health Institute at Battle Creek, Michigan.

Dr. Kenyon's Malt Extract with Cod Liver Oil—This preparation is very beneficial in the treatment of certain types of malnutrition, valuable as an aid to increase the appetite and the digestion of starches in certain types of dyspepsia.

Dr. Kenyon's Ephedrine Cough Syrup—A valuable remedy for the relief of coughs due to colds and minor throat irritations.

Dr. Kenyon's Magnesia and Oil—as an antiacid: as a laxative: as an intestinal lubricant:

PAR. 4. In using the trade name, "Health Institute, Battle Creek, Michigan," respondents represent and imply that they maintain an institute where clinical research work, experiments and analyses are maintained and carried on at Battle Creek, Mich. Respondents do not maintain any laboratories or clinics at Battle Creek, Mich., or

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at any other place. There are no chemists or other persons who are trained in the conduct of analyses employed by the respondents nor are any researches, experiments, or analyses undertaken or carried on by them.

PAR. 5. Both the medical profession and the general public have attributed to the name "Battle Creek" a particular significance, referring as it does to a locality where are conducted institutions, asylums, sanatoriums, and hospitals generally believed to be efficient, reliable, and successful, and the respondents adopted the term "Health Institute, Battle Creek, Michigan," for the purpose of capitalizing upon such representation. The sole connection which respondents have with the city of Battle Creek, Mich., is the maintenance of a mailing address where mail is received and forwarded to their various places of business.

PAR. 6. The product known as "Bio-Tabs" is represented by respondent to be an effective cure and remedy for obesity when in truth and in fact it is not.

PAR. 7. Respondents likewise in their advertising, as aforesaid, represent one "W. J. Jones, M. D." to be the originator or author of the formula with which "Bio-Tabs" are made. Among the commodities likewise so advertised, as aforesaid, are various commodities vended under the brand name "Dr. Kenyon's" represented by the respondents as being effective in the cure and treatment of variously named diseases or disorders.

None of such commodities so sold or offered for sale by the respondents are prepared or have been prepared according to any formula discovered or prescribed by any "Dr. Kenyon" or any "W. J. Jones, M. D." There is no accredited physician bearing such name or names connected with respondents in any capacity. The commodities so sold are not prepared according to the prescription or formula of any physician or physicians.

PAR. 8. There are among the competitors of the respondents various other individuals, copartnerships, and corporations likewise engaged in the manufacture, sale, and distribution in commerce as herein described of commodities represented to be effective remedies or cures for similar diseases for which such commodities are sold, but who do not falsely represent the curative value of the same, and who do not falsely represent that they maintain an "Institute," laboratories or other establishments at Battle Creek, Mich., or at any other place and who do not falsely represent that the commodities to be purchased from them have been prepared and manufactured according to a prescription of an accredited physician or physicians or tested by accredited chemists.

PAR. 9. The circulation of the false and misleading statements and representations made by the respondents as herein set forth, in connection with the sale and offering for sale of their aforementioned products, were and are calculated to have and have had a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the false belief that the statements so made are true. A number of the members of the purchasing public have, believing such representations to be true, purchased substantial quantities of the commodities so advertised and sold by the respondents with the result that trade has been unfairly diverted to respondents from competitors as above described engaged in the sale and distribution of products designed, intended, and sold for the cure, relief, and treatment of the various diseases, afflictions, and ailments, and who do not falsely represent the effectiveness of the commodities vended by them. As a result thereof, substantial injury has been done, and is now being done, by respondents to competitors 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 respondents, Wolf Drug Company, Henry Wolf Wholesale Druggist, Inc., Charmley Drug Shop, William Wolf Sales Company, Inc., corporations and Henry Wolf, William Wolf and William Goldstein, individuals, have been and are all 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 answer filed herein by respondents Wolf Drug Company, Henry Wolf Wholesale Druggist, Inc., Charmley Drug Shop, William Wolf Sales Company, Inc., corporations, and Henry Wolf, William Wolf and William Goldstein, individuals, 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 conclusion that said respondents have violated the provisions of an Act of Congress, ap-

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proved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

Now therefore it is ordered, That the respondents Wolf Drug Company, Henry Wolf Wholesale Druggist, Inc., Charmley Drug Shop, William Wolf Sales Company, Inc., corporations, their officers, representatives, agents, and employees, and Henry Wolf, William Wolf, and William Goldstein, their agents, servants and employees in connection with the sale and offering for sale of products of a purported medicinal character in interstate commerce and in the District of Columbia forthwith cease and desist from representing, directly or by implication:

1. Through the use of the words "Health Institute, Battle Creek, Michigan," or "Health Institute" or "Battle Creek, Michigan," that they own or operate a health institute at Battle Creek, Mich., or at any other place until and unless they do so actually own and operate the same;

2. Through the use of the words "W. J. Jones, M. D.," "Dr. Kenyon," or any other name preceded by the title "Dr." or suffixed by the initials "M. D." that said commodities manufactured and sold by them were manufactured according to a formula of, or under the supervision of, a doctor of medicine or any other person skilled in the practice of medicine until and unless such products are so manufactured;

3. That a preparation now known as "Bio-Tabs" or any other preparation having substantially the same ingredients or the same effect sold under that name or any other name is a cure or remedy for obesity or that it will reduce excess fat.

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

It is further ordered, That the complaint be, and the same hereby is, dismissed as to the respondent David Cohen individually because of the lack of service of complaint upon said individual respondent, but is not dismissed as to him as an officer, representative or agent of the corporate respondents.

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IN THE MATTER OF

MUTUAL ROSENBLUM CORPORATION

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

Docket 3153. Complaint, June 15, 1937—Decision, Sept. 4, 1937

Where a corporation engaged in manufacture of garments, including ladies' dresses, and in sale and distribution thereof in commerce among the various States and in the District of Columbia, in substantial competition with others similarly engaged—

Made use of terms "Silk Jersey," "Satin Jersey," and "Silk Jersanese," in describing certain dresses offered and sold by it in advertising and circular matter furnished and distributed to its various customers and prospective customers, notwithstanding fact dresses thus advertised and represented by it were not, in fact, made from material composed of silk, product of the cocoon of the silk worm, as understood from terms aforesaid by trade and purchasing public;

With effect of misleading and deceiving purchasers, and of causing them erroneously to believe that its said dresses were made from materials composed of silk, product of cocoon of silk worm, and, because of said erroneous belief, to purchase same, thereby unfairly diverting substantial trade in said commerce to it from its competitors who truthfully represent their products; to their injury and that of public:

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

Mr. William L. Pencke for the Commission.

Watterson & Whyman, of New York City, 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 Mutual Rosenbloom Corporation, a corporation, hereinafter referred to as the respondent, has been, and is, using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Mutual Rosenbloom Corporation, is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business at 498 Seventh Avenue, in the city of New York, State of New