

IN THE MATTER OF

WILLARD F. MAIN, DOING BUSINESS UNDER THE TRADE
NAME AND STYLE OF W. F. MAIN COMPANY, THE
MACHEN COMPANY, ETC.

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

Docket 2892. Complaint, Aug. 8, 1936—Decision, Feb. 14, 1938

Where an individual engaged in distribution and sale of coin operated vending machines and candy, confectionery, peanuts, and other commodities usually sold or vended through such machines; in selling his aforesaid machines through salesmen instructed by him in, and supplied with, examples of high-pressure salesmanship and with suggested forms of contact advertisements for their use in newspapers in communities in which they were canvassing—

- (a) Falsely represented, through such contact advertisements under such headings as "Help Wanted," "Male Help Wanted," "Employment," "Local Manager Wanted," "Position Open," "Manager Wanted," "County Manager Wanted," or headings of similar import and effect, in classified advertising pages of newspapers or periodicals and through such statements therein as "Manufacturer, well-rated, wants RELIABLE MAN in (name of town) TO HANDLE BUSINESS PROVEN TO BE PROFITABLE," etc., "Field Superintendent will be in ——— for a few days to select through personal interviews, a local Manager for ——— and vicinity. We want a man of integrity and average ability to look after business here. \$1,500 cash investment required. Investment protected. We are a national organization rated up to half million dollars. References required," etc., and others of similar tenor, that it had such positions or jobs at its disposal and was offering employment to persons who answered said advertisements;
- (b) Represented through his said agents, to prospective purchasers or "operators" of his said machines, thus contacted, that prospect's investment was fully protected and that cash return of 120 percent was guaranteed thereon and that if machines operating over a period of time varying from 18 months downward did not make such return, said individual would repurchase same at full purchase price, plus 6 percent interest, and less specified deductions, and that such undertaking was fully protected by guarantee bond and by his credit rating (operating under any one of various trade names employed by him) by Dun & Bradstreet, in claimed amounts ranging from \$300,000 to \$500,000;

Facts being contract employed by him in dealing with operators thus secured embodied large number of conditions precedent to such undertaking, or pretended undertaking, and it was his practice in case of operators failing to realize 120 percent on their investment and, after seeking diligently to comply with numerous terms and conditions imposed as aforesaid, to take advantage of such supposed repurchase agreement, to keep putting off such operators and finally refuse outright to repurchase machines in question, so that many of them, lacking funds, were unable successfully to prosecute suits instituted or were forced to settle for trivial amounts;

- (c) Represented, as aforesaid, to prospects to whom his salesmen sold as many machines as prospect's cash on hand or to be raised would purchase, that he wanted a reliable operator in that particular community or territory to operate a chain of his machines and that he was a manufacturer and distributor of candies, confectionery, peanuts, and other commodities usually sold in such machines, with his primary interest in the sale of the commodities, and that machines which operator was obtaining for cash were only beginning of a chain, which he would sell on terms of one-third credit or note, and two-thirds to be paid from one-third of profits derived from operation of machines purchased for cash over specified period of time, and that average minimum monthly net return from operation was \$2 from each, with much higher maximum, and prepared and forwarded to operators letters or testimonials grossly exaggerating results obtained from operation of his said machines;

Facts being separate contract which prospective credit purchaser was required to sign made such credit expansion plan contingent upon prospect's furnishing to company, credit information or security satisfactory to his credit department, or payment of initial one-third by check or draft, it was known that prospective purchaser had no available credit recommendations or references and was raising all of his available cash for initial purchases, and purchasers, after consummation of initial transaction and signing of contract, almost uniformly found that said individual would not accept their note for one-third of machines to be purchased on credit, and that their credit was not satisfactory to his credit department, and misleading testimonials aforesaid were secured by him through gifts of one or two of his machines to operators for their signatures to such testimonials or letters, which did not represent average experience of operator; and

- (d) Represented, as aforesaid, that exclusive territory would be allotted to prospective purchaser for operation of machines to be purchased and no other would be sold or allowed to operate therein during continuance of operator's contract, and that competitors, and particularly those distributing cheaper machines, would not grant any such exclusive arrangement, but even sold machines to a number of people within same particular territory, and that contracts for locations of the machines had been obtained from operators of various business establishments, agreeing in some instances personally to locate and place machines for prospects and in many instances exhibiting separate location contracts, and in many instances stating to purchasers regardless of wording of the two contracts, that said individual would not accept cash contract without also accepting credit one, and in one or two instances that latter contract had already been approved;

Facts being said individual, operating under his various trade names, in many instances sold his machines to different purchasers within supposedly exclusive territory and thereby unfairly appropriated territory of other operators, granted to many purchasers identical territory already allotted under operator's term of contract, neither contract contained any provision for the locating or placing of machines which salesmen in almost every instance falsely agreed to, location contracts furnished operators were unauthorized by owners and in some instances at fictitious locations, and salesmen, after the signing of the contract and agreements, in many cases, to supervise or place machines for the operator, immediately left locality;

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With effect of confusing, misleading, and deceiving substantial portion of purchasing public into erroneous beliefs as to actual or usual profits to be derived from operation of said individual's vending machines and into belief that their investment guaranteed them return of 120 percent, as aforesaid, and that, failing such, they were entitled to refund of their money, as above stated, and were entitled to benefit of additional machines on credit, as aforesaid, by giving their personal notes for one-third of purchase price, with remainder to be paid out of earnings, and with exclusive territory for operation of machines, and with result, as consequence of mistaken and erroneous beliefs induced by such false and misleading representations, that such public purchased substantial volume of his said machines and confectionery products and trade was diverted to him from competitors likewise engaged in sale and distribution of coin operated vending machines and candies, confectionery, peanuts, and commodities for resale therein, and who truthfully represent the possible or usual earnings of the operators of their machines and the terms and conditions of sale; 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 in commerce.

Before *Mr. William C. Reeves*, trial examiner.

Mr. Morton Nesmith for the Commission.

Mr. Elmer A. Johnson, of Cedar Rapids, Iowa, *Mr. Alfred Holman*, of Cincinnati, Ohio, *Rowan & Tesch*, of Milwaukee, Wis., and *Byington & Rate*, of Iowa City, Iowa, 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 Willard F. Main, an individual doing business under the trade name and style of W. F. Main Company, The Machen Company, Standard Mercantile Company, Appleton Novelty Company and New Specialty Company, being 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 said Commission that a proceeding by it in respect thereof would be in the interest of the public, issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Willard F. Main, is an individual doing business under the trade name and style of W. F. Main Company, The Machen Company, Standard Mercantile Company, Appleton Novelty Company and New Specialty Company, with his principal place of business at Cedar Rapids, Iowa. The principal office and place of business of all the aforesaid companies are located in Cedar Rapids, Iowa, in the same building which houses the W. F.

Main Company. The respondent is now and for more than 1 year last past has been engaged in the business of distributing and selling in commerce, as hereinafter set out, coin-operated vending machines and candy, confectionery, peanuts, and other commodities for use in said vending machines, and causes said vending machines, candy, confectionery, peanuts, and other commodities, when sold, to be shipped and transported from his place of business in Cedar Rapids, Iowa, to operators and purchasers thereof located in States of the United States other than the State of Iowa. The vending machines sold by the respondent are those that are placed in public business places where members of the public may secure therefrom candy, confectionery, peanuts, and other commodities by inserting a coin in the machine.

PAR. 2. In the course and conduct of his business, the respondent, Willard F. Main, doing business under the trade name and style of W. F. Main Company, The Machen Company, Standard Mercantile Company, Appleton Novelty Company, and New Specialty Company, is in direct and substantial competition with individuals, partnerships and corporations engaged in offering for sale and selling in interstate commerce among the several States of the United States, similar coin-operated vending machines.

PAR. 3. In the course and conduct of his business as described in paragraphs 1 and 2 hereof, said Willard F. Main sells his vending machines through salesmen whom he employs on a commission basis; each of the purchasers of such machines, termed by him in his advertising literature "Operators," is required to purchase enough machines to equip and operate a "chain"; and a contract is executed and entered into between said Willard F. Main, doing business under all the aforesaid trade names, which contract, among other things, contains the following provision:

* * * The W. F. Main Company (or other trade name of respondent as is the case) guarantees that if a cash return of 120% is not realized on the investment in the machines ordered above, from the operation of a vending machine route for a period of 18 months after the receipt thereof, it will repurchase the same, provided—

Then follow many conditions to be performed by the purchaser, which may be summarized as follows:

- (1) Machines put in prompt operation;
- (2) Buy all products (for use in the machine) from respondent;
- (3) Keep machines in good order and clean;
- (4) Set machine to vend at 70 cents to 85 cents per pound;
- (5) Rotate the products;
- (6) Notify company of all locations and changes thereof;

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- (7) Make changes of location to keep same in most profitable places;
- (8) Furnish report each six weeks, showing location and kind of products sold and amount, date serviced and the amount taken in by each machine;
- (9) Operate the machine with skill, care and diligence;
- (10) Notify company if machine is out of order and obtain repair parts immediately.

Thereupon, in said contract it is stated that—

It is agreed that the sole and only remedy shall be that the company will repurchase all the machines ordered above, if in good condition, and any remaining confection, at the full purchase price paid therefor, plus 6 percent interest per annum, less the retail price of products vended, after deducting 20% thereof to cover location rental.

* * * * *

In consideration for the above liberal guarantee provision, purchaser agrees that he will not rescind this agreement for any reason inhering in and inducing the contract.

Then follows an exclusive territory provision in the contract, as follows:

The W. F. Main Company (or other trade name of respondent as is the case) agrees from this date to sell the "Magina" model vending machines (or other machines of the style and type of other trade names) to purchaser herein exclusively for operation in ——— (City), ——— (State), so long as purchaser complies with the foregoing conditions and buys additional machines for ——— days until ——— machines are in operation, and continues to actively operate all of his machines.

Respondent furnishes to his salesmen much literature picturing the glowing success of vending machine operators, representing that each machine makes a minimum of \$2 per month, emphasizing the fact that the more machines each operator has in use the more the profits to him depicting his guaranteed protection of investment against loss—some of which are as follows:

Regardless of where you start, you can develop a large route if you want to, as our credit plan enables the operator to go ahead without investing additional capital. It enables the operator to add machines and still make money for himself from their operation while the machines are paying for themselves. Our credit plan is very fair and wonderfully attractive, because it shows the faith we ourselves have in the earning power of these penny confection shops.

You can succeed with us. Our plan provides a history of 120% return, the first eighteen months, and we provide for this plainly in our sales agreement.

You are guarded against loss by our guarantee.

In this last paragraph it is stated, in small print, that—

We will repurchase your machines, plus 6% interest, just as provided in the order.

In said literature, under the heading "Earnings," it is stated that the average is over \$4 per month per machine.

Another paragraph in said literature to be furnished proposed purchasers is entitled "The Liberal Credit Expansion Plan," in which it is stated that the initial one-third of the purchase price of additional machines may be paid by an acceptable 12-months' note, without interest, and the balance payable only from one-third of the net profits from the operation of said machines over a period of 30 months, and that after the initial purchase, the operator can have the right of expanding under this credit plan until a route of approximately 400 machines is formed.

At the time the proposed purchaser or "operator" signs the contract for the purchase of the first of the chain of machines, he is required also to execute another contract for a number of other machines, varying in number, according to the prospective purchaser's or "operator's" cash on hand. This contract for the purchase of additional machines plainly provides that the company will accept his personal note, payable in 12 months from date, for one-third of the purchase price, and the company will accept in full payment of the balance of the two-thirds of the price, a sum equal to one-third of the cash return from the merchandise sold through the machines purchased over a period of 30 months, provided the prospective purchaser, or "operator," furnishes to the company, at Cedar Rapids, Iowa, credit information or security satisfactory to the company's credit department. If this note is not accepted by the company's credit department, the prospective purchaser or "operator" agrees to pay for this initial one-third by check or draft.

Although the wording in this last-named contract is clear, nevertheless, the respondent supplies to his salesmen literature and sales talk which said salesmen use to an unfair advantage upon the prospective purchaser or "operator," in that the salesmen know, in most instances, that the prospective purchaser or "operator" has no available credit recommendations or references except his initial cash outlay which they obtain; but they represent to him that his note will be acceptable, and in some cases go to the extent that they then and there approve the same.

The respondent, W. F. Main, trading and doing business under the various trade names hereinbefore enumerated, has granted in his contracts, and still does grant, to two or more different "operators" the same exclusive territory. This he accomplishes by using a different trade name in his sale to the respective operators.

Respondent prepares testimonial letters, not truthfully stating the facts, which he sends to operators and offers them one or two free machines if they will sign the same and return to him. Respondent further sends his check for \$2, to local banks, with the request that they obtain a testimonial from the local operator.

PAR. 4. In truth and in fact, the use by the respondent, operating under his various trade names, of his advertising literature and representations made by salesmen duly authorized to make such statements, has the tendency and capacity to confuse, mislead, and deceive purchasers or "operators" as to the real or usual profits to be derived from the operation of respondent's vending machines; also to confuse, mislead and deceive prospective purchasers or "operators" into the belief that their investment guarantees them a return of 120 percent and that the failure to earn such a percentage will entitle them to a refund of their money plus 6 percent interest; also to confuse, mislead and deceive purchasers and prospective purchasers, or "operators" into the belief that they can purchase additional machines, as provided in said contracts, by giving their personal note for one-third of the purchase price, the remaining two-thirds to be paid out of one-third of the earnings from the sale of products in said vending machines; also to confuse, mislead, and deceive purchasers and prospective purchasers or "operators" into the belief that they are obtaining an exclusive territory for the operation of said machines; also to confuse, mislead, and deceive prospective purchasers or operators as to the real value and earning capacity of said machines by the use of false and misleading testimonials, as aforesaid, when as a matter of fact, the earnings from respondent's machines do not average \$4 or even \$2 per month each, and respondent attaches so many conditions precedent on the part of the purchasers or "operators" in their contracts as to make it impossible for them to fully and substantially comply therewith and obtain the benefit of the repurchase agreement, and the 120 percent profit guarantee is a mere snare and subterfuge; also respondent uniformly refuses to accept the notes of the purchasers or operators for the third down payment on the additional machines and refuses them credit, and in the majority of cases, respondent's salesmen know that the credit of the prospective purchasers or "operators" will not be accepted, but misrepresent the true facts and say that said credit will be honored; also, the respondent, operating under his various trade names, in several instances did sell his machines to different purchasers within supposedly exclusive territory, using a different trade name in each of the purchaser's contracts, thereby unfairly appropriating the other "operator's" territory; also, the aforesaid testimonials do not represent the average experience of an operator, but in certain instances contain untrue statements and are procured through gifts or other inducements by the respondent to certain operators.

PAR. 5. There are many persons, firms, and corporations who manufacture, sell and distribute in interstate commerce coin-operated vend-

ing machines and coin-operated vending machines supplied with candy, confections, or other commodities similar to those of respondent, who truthfully represent the usual earning capacity of their products and their terms and conditions of sale, and who are in substantial competition with respondent.

PAR. 6. The foregoing false and misleading statements and representations of the respondent described and set forth herein have the capacity and tendency unfairly to divert trade to the respondent, Willard F. Main, trading as W. F. Main Company, The Machen Company, Standard Mercantile Company, Appleton Novelty Company and New Specialty Company, from competitors who sell similar products in interstate commerce, and to disrupt, demoralize, and otherwise injure the entire trade in coin-operated vending machines and in coin-operated vending machines supplied with the commodity for which such machines are to be used. The acts and practices of the respondent aforesaid have the tendency and capacity to and do mislead and deceive a substantial number of prospective purchasers of coin-operated vending machines into the erroneous belief that said representations are true, and cause a substantial number of said prospective purchasers, because of such erroneous belief, to purchase the coin-operated vending machines of the respondent to the injury of said purchasers and to the injury of said competitors.

PAR. 7. The above acts and practices of the respondent are to the injury of the public and of respondent's competitors in interstate commerce within the meaning and intent of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on August 8, 1936, issued, and on August 12, 1936, served its complaint in this proceeding upon respondent Willard F. Main, an individual doing business under the trade names and styles of W. F. Main Company, The Machen Company, Standard Mercantile Company, Appleton Novelty Company, and New Specialty Company, 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 said complaint were introduced by Morton Nesmith, attorney for the Com-

mission, and in opposition to the allegations of the complaint by Elmer A. Johnson and Charles Rowan, attorneys for the respondent, before William C. Reeves, an examiner of the Commission theretofore duly designated by it; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Subsequently, the Commission closed its case and the respondent, through his counsel, waived the taking of further testimony on his behalf. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, the filing of briefs having been waived and oral argument of counsel for respondent not having been requested; 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, Willard F. Main, is an individual doing business under the trade names and styles of W. F. Main Company, The Machen Company, Standard Mercantile Company, Appleton Novelty Company, and New Specialty Company, with his principal place of business at Cedar Rapids, Iowa. The respondent, Willard F. Main, is now, and for several years last past has been, engaged under the aforesaid trade names in the business of distributing and selling coin-operated vending machines, and also candy, confectionery, peanuts, and other commodities usually sold or vended through said machines, and has caused, and still causes, such vending machines, candy, confectionery, peanuts, and other commodities, when sold, to be shipped and transported from his place of business in Cedar Rapids, Iowa, to purchasers or "operators" thereof located in States of the United States other than the State of Iowa. Respondent has sold and distributed, and still sells and distributes, a substantial portion of the coin-operated vending machines, and the confectionery products generally vended therein, which are sold and distributed throughout the United States. The respondent styles or designates a purchaser of his machines as an "operator," and, in the majority of cases, sells a number or chain of such machines to one purchaser or "operator." These machines are placed or located in public business establishments by the purchaser or "operator" or by respondent's salesmen, and the members of the public may, and do, secure candy, confectionery, peanuts, and other commodities therefrom by inserting a coin and turning a knob or handle, pulling a lever, or other mechanical process.

PAR. 2. In the course and conduct of his business, the respondent, Willard F. Main, doing business under the trade name and style of W. F. Main Company, The Machen Company, Standard Mercantile Company, Appleton Novelty Company, and New Specialty Company, is now, and has been, in direct and substantial competition with persons, firms, and corporations engaged in offering for sale and selling in commerce among and between the several States of the United States, coin-operated vending machines, candy, confectionery, peanuts, and other commodities similar to those usually vended through respondent's machines.

PAR. 3. In connection with the offering for sale, sale, and distribution of respondent's products, respondent employs salesmen on a commission basis. Before these salesmen are permitted to handle respondent's products they are given a correspondence course of instructions of eight or more lessons. The lessons comprising this correspondence course of instructions, together with the correspondence from respondent's sales managers, are replete with instructions and examples of "high pressure salesmanship."

The respondent also furnishes to his salesmen suggested forms of advertisements which he recommends that they run in newspapers of the local communities which they are canvassing, and a number of salesmen have inserted said advertisements to contact or "pull in" prospective purchasers. A few of such advertisements are as follows:

LOCAL MANAGER WANTED

Manufacturer, Well Rated, Wants

RELIABLE MAN

In (name of town)

To handle BUSINESS PROVEN TO BE PROFITABLE

No selling or canvassing. Good for \$25.00 a week to right man to start. Cash investment of \$750.00 required which is secured and returnable. References given and demanded. Address X, Box ——— care of (name of paper) giving address.

LOCAL MANAGER WANTED

Field Superintendent will be in ——— for a few days to select through personal interviews, a local Manager for ——— and vicinity. We want a man of integrity and average ability to look after business here. \$1,500 cash investment required (in certain cases less). Investment protected. We are a national organization rated up to half million dollars. References required. Write, giving name, address, phone number. X-724, Journal.

Large Manufacturer, Well Rated Wants

RELIABLE MAN

To Handle Established

Business in ———

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No Selling or Canvassing. Good income to start. Investment of \$750.00 required, which is secured and returnable. References given and demanded. Write Box ———. Daily Citizen.

UNUSUAL business opportunity. Many merchants and others engaged in a business which is keeping them confined closely would welcome an opportunity for a business that will take them outdoors and yield an attractive income. Old established, highly rated national firm offers such an opening to industrious man. Cash investment of \$750. required. Investment protected and returnable. This should pay \$35. to \$50. weekly with rapid increase of earnings for right man. No selling. Car an asset. Address A. H. Care Tribune.

LOCAL MANAGER WANTED—National firm rated \$300,000 to \$500,000 wants a man of average ability to look after business in (city). Other openings also in nearby cities. Should be good for \$50. per week to right man. \$750.-\$1500. cash investment required, which is protected and returnable. No selling. References exchanged. Write Box ———, this paper, giving address and telephone number.

LOCAL MANAGER WANTED

Manufacturer, well rated, wants a reliable man to handle established business in ———. No selling or experience necessary. Income about \$100. monthly to start. Cash investment of \$750. required, which is secured and returnable. Larger investment pays proportionately larger income. References given and demanded. Address Box ——— (paper), giving address and telephone number.

COUNTY MANAGER WANTED

One industrious man of integrity and average ability to care for our business in every county in Kansas or ———.

No selling or experience necessary. Should pay up to \$50.00 weekly with rapid increase of earnings. Man selected will have permanent business of his own. Cash investment of \$1500. required, which is protected. Liberal credit plan. Over 45 years successful experience, rated up to half million, back of this business. References given and demanded.

These advertisements are intended to be, and have been, run under such headings as "Help Wanted," "Male Help Wanted," "Employment," and similar headings.

In response to the above advertisements and other solicitations by respondent's salesmen, prospective purchasers or "operators" have contacted and called upon respondent's salesmen. At this interview or subsequent ones, the salesmen have ascertained how much cash the prospective purchaser or "operator" has on hand, or can possibly raise, and have thereupon proceeded to sell the prospect as many coin-operated vending machines as the cash on hand, or to be raised, will purchase. The salesmen have then represented to the prospective purchaser that his investment is fully protected, that a cash return of 120 percent is guaranteed upon the investment, and, if the machines operating over a period of time varying from 18 months downward do not make this return, that the respondent will repurchase the machines at the full purchase price thereof, plus 6 percent interest, less

specified deductions; and further that all of this is fully protected by guaranty bond in the amount of \$10,000, and also by a credit rating of respondent, operating under any one of his trade names, by Dun & Bradstreet, in amounts ranging from \$300,000 to \$500,000. The salesmen have also represented that the respondent wanted a reliable man or "operator" in that particular community or territory to operate a chain of his machines, that respondent was a manufacturer and distributor of candies, confections, peanuts, and other commodities usually sold through these machines, and was interested primarily in the sale of these commodities and not in the sale of vending machines, and, further, that the machines which the prospective purchaser or "operator" was obtaining for cash were only the beginning of a chain of machines which respondent would sell to the prospective purchaser or "operator" on terms of one-third credit or note, and two-thirds from one-third of the profits derived from the operation of the machines purchased for cash over a specified period of time. The salesmen then represented that an exclusive territory would be allotted to the prospective purchaser or "operator" for the operation of the machines to be purchased, and that no other purchaser or "operator" would be sold or allowed to operate respondent's machines within that territory during the continuance of the "operator's" contract. The salesmen also represented that respondent's competitors, and particularly those distributing cheaper machines, do not grant any such exclusive territory arrangement and even sold a number of machines to a number of people within the same particular territory. The salesmen also represented that respondent's machines were the best money making vendors on the market, and that the average minimum net return from the operation of each of these machines for 1 month was \$2, and the maximum net return varied up to much higher figures. The salesmen then represented and elaborated upon the flexible credit expansion plan of the respondent which would enable the "operator" to develop a large route or chain of these machines without the investment of additional capital and without interest on the loan. A few of these representations are as follows:

Regardless of where you start, you can develop a large route if you want to, as our credit plan enables the operator to go ahead without investing additional capital. It enables the operator to add machines and still make money for himself from their operation while the machines are paying for themselves. Our credit plan is very fair and wonderfully attractive, because it shows the faith we ourselves have in the earning power of these penny confection shops.

You can succeed with us. Our plan provides a history of 120% return, the first 18 months, and we provide for this plainly in our Sales Agreement.

You are guarded against loss by our guarantee.

Please understand that this estimate of \$2 net per machine per month is an arbitrary estimate. Some machines earn much more and some much less. The

actual income will depend upon the skill, ability, and diligence with which the operator does the work.

The salesmen have also represented that contracts for locations for the machines have been obtained from the operators of various business establishments, and, in some instances, have agreed personally to locate and place the machines for the prospective purchaser or "operator" at these locations. In many instances, the salesmen have shown and exhibited separate location contracts.

All of the above representations made by respondent's salesmen have been, and are, actually or impliedly authorized by the respondent. The salesmen are directly authorized by respondent to make many of the misrepresentations above set out and respondent furnishes such salesmen with sales promotion lessons, instructions, and other literature incorporating such representations and recommending the use thereof in the sale of his machines. Respondent thus places in the hands of such salesmen a means to further said misrepresentations on apparent authority from him.

PAR. 4. After the respondent's salesmen have led the prospect to believe that all of the foregoing representations are true and have pictured the glowing success of other "operators," they have then informed the prospect of the price of these machines which have ranged per machine with 20 pounds of confections, from \$28.50 upward. If the prospective purchaser is sold on the idea, a contract is produced which, among other things, contains the following:

The company (which may be any of respondent's trade names) agrees that if a cash return of 120% is not realized on the investment in the machines ordered above from the operation of same on a vending machine route for a period of 18 months after receipt thereof, it will repurchase same provided: (Explanation in parenthesis supplied.)

Then follow many conditions to be performed by the "operator," which may be summarized as follows:

- (1) Machines put in prompt operation.
- (2) Buy all products (for use in machines) from respondent.
- (3) Keep machines in good working order, clean, and attractive appearance and well filled with respondent's products.
- (4) Keep machine adjusted to vend products at an average of 65 cents to 85 cents per pound.
- (5) Rotate the different kinds of products.
- (6) Notify the company of all locations and changes thereof giving dates, names and addresses.
- (7) Keep machines located in the most profitable places.
- (8) Furnish a report to company every 30 days (6 weeks in some cases) giving name and business address of person with whom each machine is then located, the date serviced, the amount and kind of

products vended, and the amount of money taken in by each machine, so that the company will know what the machines are doing.

(9) Continuously operate the machines with skill, care, and diligence.

(10) Pay all obligations entered into with the company incurred under the contract or any other contract, promptly when due.

(11) Notify company by registered mail if machine is out of order and obtain repair parts immediately.

Then follows a provision that:

In the event all the provisions herein to be performed by the operator, which are conditions precedent, are complied with by him, and if the above named cash return resulting from the operation of the above machines for the 18 months period is less than 120%, it is agreed that the sole and only remedy shall be that the company will repurchase all machines ordered above if in good condition with the exception of the usual wear from ordinary operation and any remaining confection at the full price paid therefor, plus 6% interest per annum, less the retail price of the products vended after deducting 20% thereof to cover location rental * * *

At the conclusion of said contract, and immediately above the places for the signature, there appears the following:

The company (name of one of respondent's trade names) agrees from this date to sell the above described (type) of Vending Machine to operator herein exclusive for operation in-----

so long as operator complies with the foregoing conditions and buys additional machines every 30 days until ----- machines are in operation, and continues to actively operate all his machines. (Explanation in parentheses supplied.)

PAR. 5. If the purchaser or "operator" has been sold on the idea of purchasing a chain of machines and has not the cash available but wants to take advantage of the flexible credit expansion plan of respondent, he is then required to execute another contract providing for the purchase of additional machines. This contract, known as a credit order blank, among other things, contains the following:

This purchase is made with the understanding that the company will accept in full payment of $\frac{2}{3}$ of the price of above units a sum equal to $\frac{1}{3}$ the cash return from the merchandise sold through the above machines during the period of 30 months * * *

I am to have the privilege of giving my note without interest until due, payable in 12 months from the date hereof for my initial one-third of the purchase price of the units purchased hereunder, upon furnishing to the company at Cedar Rapids, Iowa, credit information or security satisfactory to the company's Credit Department; or, I will pay for this initial one-third of the purchase price by check or draft, payable to the order of the company, all before shipment is made; * * *

Although the wording of the foregoing contracts is as above set out, nevertheless, the respondent supplies to his salesmen literature and sales instructions as hereinbefore referred to which contain representations different from the provisions of these contracts, which said salesmen use to unfair advantage upon prospective purchasers or "operators" and which can be and have been used by respondent's salesmen in mulcting from a gullible and unsuspecting public many thousands of dollars. There is no provision in either contract for the location or placing of machines, yet salesmen have agreed, in almost every instance in the record, to furnish locations and have furnished to "operators" separate location contracts a number of which were unauthorized by the owner of the location and in some instances the locations were fictitious. The record shows also that, in many instances, respondent's salesmen have agreed to either supervise or actually have the machines placed for the operator, and, in a great number of instances, have skipped town immediately after the sale. There is evidence that respondent's salesmen have known in most instances that the prospective purchaser or "operator" has no available credit recommendations or references, and is raising all of his available cash for the initial purchase. This initial cash outlay is almost always obtained by the salesmen in the purchase under the first contract, but the salesmen have, in many instances, stated to the purchasers that regardless of the wording of the contracts the respondent will not accept the cash contract without accepting the credit contract. In one or two instances, salesmen have stated to prospective purchasers that the company had approved the credit contract by wire to them.

PAR. 6. After the deal has been consummated and the contract signed, the purchasers or "operators" almost uniformly find that the respondent will not accept their note for the one-third of the machines to be purchased on credit; that their credit is not satisfactory to the credit department in Cedar Rapids. In many instances, purchasers or "operators" executed only the cash contract. At the expiration of the time provided for in the contract, and after failing to realize 120 percent on their investment, and after having sought diligently to comply with all the terms and conditions imposed upon them, many purchasers or "operators" have sought to obtain a repurchase of the machines, as provided for in the contract. The evidence discloses that respondent has almost uniformly stalled them along, and finally has refused outright to repurchase the machines. Many operators have instituted suit at great expense to them, and because of their lack of funds have been unable to prosecute successfully these suits, or have been forced to settle for trivial amounts.

Many purchasers or "operators" have been granted exclusive territory for certain localities wherein the respondent has previously, or subsequently and during said "operator's" term of contract, granted the identical territory to other purchasers or "operators." Respondent also has prepared and forwarded to "operators" letters or testimonials, grossly exaggerating the results obtained from the operations of his machines, and has offered and given one or two of his machines free to them for their signatures to such testimonials or letters. He has also sent his check to local banks together with a copy of such letters, asking that the bank obtain the signature of one of his "operators," and said letters have been signed, returned to, and used by respondent in the sale of other machines.

PAR. 7. The respondent attaches so many conditions precedent on the part of the purchasers or "operators" in their contracts as to make it impossible for them fully and substantially to comply therewith and obtain the benefit of the repurchase agreement, and the 120 percent profit guarantee is mere snare and subterfuge. Respondent almost uniformly refuses to accept the notes of the purchasers or "operators" for the third down payment on the additional machines, and refuses them credit, and, in the majority of cases, respondent's salesmen know that the credit of the prospective purchasers or "operators" will not be accepted, but misrepresent the true facts and represent that said credit will be honored. The respondent, operating under his various trade names, in many instances, has sold his machines to different purchasers within supposedly exclusive territory, thereby unfairly appropriating the other "operator's" territory. The aforesaid testimonials do not represent the average experience of an "operator," but in certain instances contain untrue statements, and are obtained by respondent through gifts or other inducements to certain "operators," and these facts are not disclosed to prospective "operators"; also, respondent has no jobs or positions to offer or give as might be inferred from his advertisements "Local Manager Wanted," "County Manager Wanted," and "Help Wanted," but the same are in reality contact advertisements used in connection with the sale of respondent's products; and also, respondent does not furnish or agree to furnish locations for the machines sold by him.

PAR. 8. Many of respondent's competitors who sell and distribute, or manufacture, sell and distribute coin-operated vending machines and candy, peanuts, confectionery, and commodities for sale therein, do not, in any way, misrepresent the terms and conditions of sale or earnings of said machines and commodities.

PAR. 9. The use by the respondent of the representations set forth herein has had, and now has, the capacity and tendency to confuse, mislead, and deceive and has confused, misled, and deceived a substantial portion of the purchasing public into erroneous beliefs as to the actual or usual profits to be derived from the operation of respondent's vending machines; that their investment guarantees them a return of 120 percent, and that failure to earn such a percentage will entitle them to a refund of their money plus 6 percent interest; that they can purchase additional machines as provided in said contract, by giving their personal notes for one-third of the purchase price, the remaining two-thirds to be paid out of one-third of the earnings from the sale of products in said vending machines, and that they are obtaining an exclusive territory for the operation of said machines. As a consequence of the mistaken and erroneous beliefs induced by the false and misleading statements and representations above referred to the purchasing public has purchased a substantial volume of respondent's machines and confectionery products with a result that trade has been unfairly diverted to the respondent from his competitors likewise engaged in the business of selling and distributing coin-operated vending machines, candies, confections, peanuts, and commodities for resale therein, who truthfully represent the possible or actual earnings of the operators of their machines and the terms and conditions of sale. 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.

CONCLUSION

The aforesaid acts and practices of the respondent, Willard F. Main, an individual, doing business under the trade names and style of W. F. Main Company, The Machen Company, Standard Mercantile Company, Appleton Novelty Company, and New Specialty 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, the answer of re-

spondent, testimony and other evidence taken before William C. Reeves, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, the respondent having waived the taking of further testimony and the filing of briefs on his behalf and not having requested oral argument 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 Willard F. Main, individually, or doing business under the trade name and style of W. F. Main Company, The Machen Company, Standard Mercantile Company, Appleton Novelty Company, or New Specialty Company, or under any other name or through any corporate or other device, his servants, employees, and representatives, in connection with the offering for sale, sale, and distribution in interstate commerce or in the District of Columbia of coin-operated vending machines, candies, confectionery, peanuts, and other commodities for use in said vending machines, forthwith cease and desist:

1. From representing directly or indirectly, that a cash return of 120 percent on the investment is guaranteed from the operation of his machines for a period of 12 or 18 months, or for any other stated period of time.

2. From representing directly or indirectly that unless a specified percentage is realized by the purchaser from the operation of his machines over a specified period of time under stated conditions precedent he will repurchase the same at the purchaser's cost plus interest, unless and until he does so repurchase said machines, when the conditions precedent have been complied with or performed and said percentage is not realized from the operation of said machines over said specified period of time.

3. From representing directly or indirectly, that a profit of 120 percent, or any other sum, will be or is guaranteed from the operation of respondent's vending machines when in truth and in fact respondent's contracts do not so specify, and no guarantee is, or is intended to be, carried out.

4. From representing directly or indirectly, to purchasers or operators or prospective purchasers or operators, that they obtain an exclusive territory for the operation of said machines unless the territory described in their contracts is in truth and in fact exclusive and unless during the life of said contracts the respondent refrains from selling or offering for sale his vending machines in such terri-

tory to any person, firm, or corporation other than the holders of such contracts.

5. From representing directly or indirectly, that each machine nets a minimum average of \$2 per month or any other amount, when such is not the fact.

6. From representing directly or indirectly, through the use of such statements or expressions as "at least" or "as much as," or any other statements or expressions of similar import and effect or through any other means or devices or in any other manner, that his machine's minimum, usual and customary, or maximum earnings for any fixed period of time, are any net amount in excess of amounts actually earned during said fixed period of time by the average operators of respondent's machines under normal conditions in due course of business.

7. From representing directly or indirectly, that additional machines can be purchased on a flexible credit expansion plan, when in truth and in fact the respondent or his servants, employees, or representatives have knowledge that the purchasers thereof have not sufficient credit rating to obtain the benefits of this plan.

8. From representing directly or indirectly, to prospective purchasers that when and if said purchasers buy or contract to buy any of respondent's machines for cash, that simultaneously therewith or because of this cash purchase respondent will grant them the privilege of buying additional machines on credit, unless and until respondent is prepared to and does grant them such credit privilege.

9. From representing directly or indirectly, through advertisements inserted by respondent's salesmen in classified advertising pages of newspapers, magazines, or other advertising literature, under such headings as "Help Wanted," "Male Help Wanted," "Employment," "Local Manager Wanted," "Position Open," "Manager Wanted," "County Manager Wanted," or headings of similar import and effect or through the use of any other means, that respondent has such positions or jobs at his disposal or that such employment is being, or will be, offered to persons who answer said advertisements, when said advertisements are in reality contact advertisements used in connection with the sale of respondent's vending machines and confections.

10. From representing directly or indirectly, that contracts for the location of machines to be sold to the prospective purchaser or operator have been obtained unless and until such is the fact.

11. From representing directly or indirectly that respondent is primarily engaged in the manufacture and sale of candies and similar commodities and that the sale by him of coin-operated vending ma-

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Order

chines is only incidental thereto or an outlet for the sale of such products.

It is further ordered, That the respondent shall, within 90 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
PASCAL COMPANY, INC.

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

Docket 2945. Complaint, Oct. 15, 1936—Decision, Feb. 16, 1938

Where a corporation engaged in manufacture of "Breatheasy," preparation, and atomizer or "nebulizer" for treatment of asthma, hay fever and kindred diseases, and in the sale and distribution thereof through distributors and drug stores in the various States, in substantial competition with those engaged in interstate sale and distribution of other preparations recommended for, and useful in, treatment of such diseases, and of atomizers for use in connection therewith; in extensively advertising its said product through various newspapers of interstate circulation and through radio broadcasts having interstate transmission, and through booklets and circulars issued and distributed by it—

Represented that said preparation was a cure or remedy for asthma, hay fever and kindred diseases, which could be used successfully without following any particular form of diet, and constituted a harmless remedy which would return the user to vigorous, buoyant health, had therapeutic value also in chronic bronchitis and numerous other specified ailments and conditions, including heart disease and cardiac distress, various skin diseases, and inflammations of the nose and throat, etc., and in neuralgia and neuritis, and was the one sure relief available for treatment of asthma, and a new medicament for such treatment, through such statements, among others, as "FOR ASTHMA * * * THE GREATEST DISCOVERY. Created by a physician to successfully cure his own asthma * * *." " * * * only one Remedy for ASTHMA And that Remedy is Breatheasy," " * * * beneficial, according to authorities, in asthma and chronic bronchitis, in heart disease and cardiac distress, in gastric ulcer, * * *," " * * * the one, sure asthmatic relief available today * * * gives a sense of well-being, a return to vigorous, buoyant health * * *," " * * * no diet is necessary. You may eat anything you may desire," "Introduces a new medicament of scientific formula which applies synthetic adrenal gland extract vaporized * * *," etc.;

Facts being asthma, as classified by medical profession, may result from many varying causes, no specific cure for asthma is recognized by said profession, and such preparation is not cure therefor nor for hay fever, and, while preparation in question, as well as many other remedies, containing adrenalin, may in some cases temporarily relieve asthma, it does not constitute treatment therefor, and use thereof will not bring about or restore vigorous, buoyant health or give absolute and instant relief to sufferers therefrom, should not be taken at all in many cases in which diet is essential, and is no less dangerous to user because taken through "nebulizer" than if taken through hypodermic injection, and is not beneficial in treatment of chronic bronchitis, heart disease and various other ailments and conditions specified, and, as equivalent, through epinephrin content, of synthetic adrenalin, is not new medicament;

Complaint

With capacity and tendency to mislead and deceive public into erroneous belief that said "Breatheasy" was in truth and in fact a remedy and cure for asthma, hay fever and kindred diseases, and that in use thereof it was not necessary to follow any particular diet, and to induce such purchasing public to buy said "Breatheasy" in preference to other preparations designed for treatment of aforesaid diseases and offered for sale by manufacturers, retailers and distributors, and with result of unfairly diverting trade to it from such manufacturers, retailers and distributors of such other preparations who do not misrepresent the character and quality of their respective products or the results to be obtained in the use thereof: *Held*, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Henry M. White*, trial examiner.

Mr. Reuben J. Martin for the Commission.

Mr. Clarence L. Gere, of Seattle, Wash., 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 Pascal Company, Inc., 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. The respondent, Pascal Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 1014 American Bank Building, Second Street at Madison, in the city of Seattle, within the State of Washington. Said respondent is now and for more than 1 year last past has been engaged in the manufacture and sale of a product known as "Breatheasy" for the treatment of asthma, hay fever, and kindred diseases, and of an atomizer or so-called "nebulizer" for administering the preparation "Breatheasy," and in the distribution thereof in commerce between and among the various States of the United States. It causes said "Breatheasy" and the nebulizer, when sold by it, to be transported to purchasers thereof located in the State of Washington and in various States of the United States other than the State of Washington. There is now and has been for a long time, to wit, for more than 1 year last past, a constant current of trade and commerce by respondent in said "Breatheasy" and said nebulizer, between and among the various States of the United States.

Complaint

26 F. T. C.

In the course and conduct of its said business, said respondent is now and for a long time, to wit, for more than 1 year last past, has been in substantial competition in commerce between and among the various States of the United States with sundry other corporations, partnerships, firms, and individuals engaged in the interstate sale and distribution of other preparations recommended for the treatment of asthma, hay fever, and kindred diseases, and of atomizers or nebulizers for use in connection therewith.

PAR. 2. The preparation "Breatheasy" and the atomizer or nebulizer used in connection therewith are manufactured by said respondent and are sold and distributed by said respondent through distributors and drug stores located in the various States of the United States.

PAR. 3. Said respondent, in the course and conduct of its said business as hereinbefore set out in paragraphs 1 and 2, has been and now is engaged in extensive advertisement of its said products as a means of furthering and aiding in the interstate sale and distribution of "Breatheasy" and the atomizer or nebulizer for use in connection therewith, and as media of such advertising it has been and now is using various newspapers of interstate circulation, and broadcasts over radio stations having interstate reception. Said respondent also issues booklets and circulars describing the said product "Breatheasy."

Said respondent in its said advertisements of the preparation "Breatheasy" and the atomizer or nebulizer used in connection therewith, manufactured and distributed by it, has made and is now making various false, deceptive, and misleading statements concerning said products. Among the statements which said respondent has used and is now using in its advertisements in newspapers and over the radio and in its booklets and circulars distributed with its said products, are the following:

WANTED: A distributor for a nationally known remedy for asthma. Would rather have somebody that has had experience in similar lines, or who is an asthmatic. This does not require a great deal of capital and is a money maker.

FOR ASTHMA

"Breatheasy"

(trade mark)

THE GREATEST DISCOVERY

Created by a physician to successfully cure his own asthma, "Breatheasy" is now sold on money-back guarantee

REMEMBER

There is only one

Remedy for

ASTHMA

And that Remedy is

Breatheasy

Breatheasy is a creation of a physician, who himself suffered from asthma, and was developed until now it gives absolute, instant and complete relief. For asthmatics who seek relief, they will find this remedy their "doctor" ever ready to relieve them.

BREATHEASY means exactly what the name implies. It is the one, sure asthmatic relief available today. In working its wonders, BREATHEASY gives a sense of well-being, a return to vigorous, buoyant health. BREATHEASY was developed by a physician who suffered from asthma, and, in striving for relief, he evolved this marvelous remedy. If YOU suffer from asthma or if any of your friends are afflicted with the symptoms stop in at the West End Drug Store, First and Monroe, and ask to have this thoroughly marvelous treatment demonstrated. Remember, there is no charge.

Asthmatics everywhere hail the BREATHEASY method as the one remedy that can be relied upon.

During the use of "Breatheasy," no diet is necessary. You may eat anything you may desire.

In truth and in fact, "Breatheasy" is not a remedy for and it does not cure asthma. In any treatment for asthma the proper diet is essential, as mucus-forming foods are injurious in cases of asthma.

Respondent in its said advertising has created and is now creating upon the public the false impression and erroneous belief that "Breatheasy" is a reliable and dependable remedy and cure for asthma, hay fever, and kindred diseases, and that in the use of the same it is not necessary to follow any particular diet. In fact, "Breatheasy" is not a reliable and dependable cure for asthma, hay fever, or kindred diseases.

PAR. 4. The use by the said respondent, Pascal Company, Inc., of the foregoing false, deceptive, and misleading representations has had and does now have the capacity and tendency to and does mislead and deceive the public into the erroneous and untrue belief that "Breatheasy" is in truth and in fact a remedy for and will cure asthma, hay fever, and kindred diseases, and that in using the same it is not necessary to follow any particular diet. Acting in such erroneous belief, the consuming public, and especially that portion of the public suffering from asthma, hay fever, or kindred diseases, have been induced and are now induced to purchase "Breatheasy" in preference to other preparations designed for the treatment of asthma, hay fever, and kindred diseases, and offered for sale by manufacturers, retail dealers, and distributors. As a result of such false, deceptive, and misleading representations on the part of said respondent, trade is unfairly diverted to respondent from such manufacturers, retail dealers, or distributors of other preparations for treating asthma, hay fever, and kindred diseases, who do not misrepresent the character and quality of their respective products or the results obtained from the use thereof.

PAR. 5. Said false, deceptive, and misleading representations of said respondent, contained in its advertisements, have resulted in injury to respondent's competitors and to retail dealers, and in prejudice to the buying public, 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."

REPORT, MODIFIED 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 15th day of October 1936, issued and on October 20, 1936, served its complaint in this proceeding upon the respondent, Pascal Company, Inc., charging said respondent 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 the respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Reuben J. Martin, attorney for the Commission, before Henry M. White, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Clarence L. Gere, attorney for the respondent; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, and briefs in support of the complaint and in opposition thereto, no oral argument having been heard, 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, Pascal Company, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 1014 American Bank Building, Second Street at Madison, in the city of Seattle, within the State of Washington. Said respondent is now, and has been since July 19, 1936, engaged

in the manufacture and sale of a preparation known as "Breatheasy" for the treatment of asthma, hay fever, and kindred diseases, and of an atomizer or so-called "nebulizer" for administering the preparation "Breatheasy," and in the distribution thereof in commerce between and among the various States of the United States. It causes said "Breatheasy" and the "nebulizer" when sold by it to be transported to purchasers thereof located in the State of Washington and in various States of the United States other than the State of Washington. There is now, and has been for more than 1 year last past, a constant current of trade and commerce by respondent in said "Breatheasy" and said "nebulizer" between and among the various States of the United States. In the course and conduct of its said business, respondent is now, and since July 19, 1936, has been, in substantial competition in commerce between and among the various States of the United States with sundry other corporations, and with partnerships, firms, and individuals engaged in the interstate sale and distribution of other preparations recommended for the treatment of asthma, hay fever, and kindred diseases, and of atomizers or "nebulizers" for use in connection therewith, which said preparations are useful in the treatment of said diseases.

PAR. 2. The preparation "Breatheasy" and the atomizer or "nebulizer," used in connection therewith, are manufactured by said respondent and are sold and distributed by said respondent through distributors and drug stores located in the various States of the United States.

PAR. 3. The respondent, in the course and conduct of its said business has been, and now is, engaged in extensive advertising of its said products as a means of furthering and aiding in the interstate sale and distribution of "Breatheasy" and the atomizer or "nebulizer" for use in connection therewith, and as media of such advertising it has been, and now is, using various newspapers of interstate circulation and broadcasts over radio stations having interstate transmission. Said respondent also issues and distributes booklets and circulars describing the said preparation "Breatheasy."

PAR. 4. The respondent, in its said advertisements of the preparation "Breatheasy" and the atomizer or "nebulizer" used in connection therewith manufactured and distributed by it, has made, and is now making, various statements regarding the efficacy of said preparation known as "Breatheasy" in the treatment of asthma, hay fever, and kindred diseases. Among the statements which said respondent has used, and is now using, in its advertisements in news-

papers and over the radio, and in its booklets and circulars distributed with its said products are the following:

For ASTHMA

"Breatheasy"

(trademark)

THE GREATEST DISCOVERY

Created by a physician to successfully cure his own asthma, "Breatheasy" is now sold on money-back guarantee

REMEMBER

There is only one

Remedy for

ASTHMA

And that Remedy is

Breatheasy

Breatheasy is a creation of a physician who himself suffered from asthma, and was developed until now it gives absolute, instant and complete relief. For asthmatics who seek relief, they will find this remedy their "doctor," ever ready to relieve them.

BREATHEASY is beneficial, according to authorities, in asthma and chronic bronchitis, in heart disease and cardiac distress, in gastric ulcer, in serum rashes, urticaris (hives) and other skin diseases of the erythematous and eczematous types, in hay fever, in inflammation of the nose, throat, tonsils, larynx, and lungs, and in neuralgia and neuritis. This by no means completes the list, but it suffices to show the enormous value of this substance elaborated by the adrenal glands and what may happen if they are deficient.

BREATHEASY means exactly what the name implies. It is the one, sure asthmatic relief available today. In working its wonders BREATHEASY gives a sense of well-being, a return to vigorous, buoyant health. BREATHEASY was developed by a physician who suffered from asthma, and in striving for relief, he evolved this marvelous remedy. If YOU suffer from asthma or if any of your friends are afflicted with the symptoms, stop in at the West End Drug Store, First and Monroe, and ask to have this thoroughly marvelous treatment demonstrated. Remember, there is no charge.

Asthmatics everywhere hail the BREATHEASY method as the one remedy that can be relied upon.

During the use of "Breatheasy," no diet is necessary. You may eat anything you may desire.

Doctors had the only relief

for

ASTHMA

thirty years ago * * * but they did not know how to use it. Finally a physician who was an asthmatic, took the remedy and discovered how it could be used to give absolute, instant and complete relief. He called it BREATHEASY—Write today for complete information.

STOP

Suffering from

ASTHMA

"Breatheasy"

(Trade Mark)

740

Findings

Introduces a new medicament of scientific formula which applies synthetic adrenal gland extract vaporized thru the

"Breatheasy"

NEBULIZER

"Vapor, not a spray"

Now available, with money-back guarantee.

ASTHMA

"Breatheasy"

(Trade Mark)

with

SPECIAL NEBULIZER

is your best answer

for

ASTHMA

Supplies adrenal deficiency which is the prime cause of Asthma, thru special Nebulizer that delivers 10 times the vapor (not spray) possible with ordinary means. Not habit forming, not a drug.

All asthmatics will find BREATHEASY the one, sure relief available on the market today. Write for full complete details. There is no obligation.

Of course you know that epinephrin is the only specific remedy for asthma and hay fever, and that it has been in the hands of the medical profession for the past twenty years. Only two things prevented its coming into popular use for all sufferers at all times. They were, its high cost and the difficulty of its administration, we have overcome both of these obstacles in BREATHEASY.

The use of BREATHEASY in the treatment of asthma will conclusively prove to you that at last asthmatic sufferers have found the one, sure relief for this painful affliction.

That no other person, firm or corporation has any right to manufacture or in any manner deal in this vaporizer or any imitation thereof.

BREATHEASY

Gives you swift, sure relief

for

ASTHMA

All asthmatics will find BREATHEASY the one, sure relief on the market today. Write for full, complete details. There is no obligation.

PAR. 5. The respondent corporation is owned by Dr. Benjamin S. Paschall and other members of his family. Dr. Paschall is a physician and chief chemist of the respondent corporation. The respondent is engaged in the business of making pharmaceuticals and its principal product is epinephrin. The product epinephrin, together with the "nebulizer," an apparatus for administering the epinephrin, constitutes the commodity sold to the public in interstate commerce by the respondent under the trade name of "Breatheasy." The respondent maintains a laboratory in which the product epinephrin is manufactured. The product epinephrin is a solution of epinephrin hydrochlorides, at least 2½ percent, put up in physio-

logical salt solution containing traces of carminatives and preservatives of chemically pure grade. Its structure is racemic.

PAR. 6. Epinephrin may be obtained in two ways, namely, by synthetically building it up in the laboratory, and also by extracting it from the glands of animals. The epinephrin sold by the respondent is obtained synthetically. The epinephrin is put into the "nebulizer" and by means of the "nebulizer" is breathed into the lungs of the user. The epinephrin is not injected into the user by means of a hypodermic needle. The "nebulizer" sold and distributed by the respondent is an instrument which turns liquid into vapor and is the means by which the user takes the medicine into the body. The "nebulizer" is manufactured by the respondent for use in connection with its product epinephrin and the epinephrin, together with the "nebulizer," constitutes the commodity sold as "Breatheasy." The chemical ingredients used by respondent in manufacturing its epinephrin are purchased by the respondent in the open market for use in respondent's laboratory. Epinephrin contains the same properties as adrenaline and is synthetic adrenaline. The preparation "Breatheasy" is sold by the respondent for the purpose of treatment of asthma, hay fever, and kindred diseases. Adrenaline has been constantly used by the medical profession in the treatment of asthma for 30 years and has been customarily administered to the patient hypodermically.

PAR. 7. True asthma is defined as "A condition of shortness of breath caused by the constriction of the bronchial muscles and by the exudation of mucous into the narrow bronchial passages, the reason for which is a reflex due to the ingestion or inhalation of substances to which the patient is hypersensitive." There are many various forms of asthma or physical conditions which are generally classified by the medical profession as asthma. The basic causes of the ailments classified by the medical profession as asthma are not yet known to the medical profession, and asthma may result from many varying causes.

PAR. 8. There is no specific cure for asthma generally recognized by the medical profession. "Breatheasy" is not a cure for asthma nor is it a cure for hay fever. Asthma may be, and often is, cured when the cause of the asthma is known and eliminated. The elimination of the cause of asthma may sometimes be produced by surgery and by other methods, but it cannot be eliminated by "Breatheasy." "Breatheasy" as well as many other remedies containing adrenaline, may in some cases temporarily relieve asthma. "Breatheasy" does not constitute a treatment for asthma, and its use will not bring about or restore vigorous, buoyant health.

PAR. 9. "Breatheasy" will not give "absolute, instant, and complete relief" to sufferers from asthma and is not a sure relief for persons suffering with asthma. The use of "Breatheasy" is not harmless in all cases, and there are cases where its use would be distinctly dangerous. The use of "Breatheasy" is not beneficial in the treatment of chronic bronchitis, heart disease, cardiac distress, gastric ulcer, inflammation of the nose, throat, tonsils, larynx, lungs, neuralgia, or neuritis, and of urticaris (hives) except in very rare instances.

PAR. 10. In many cases of asthma, proper diet is very important and may become the means of effecting a cure. Many persons suffer from asthma due to being allergic to certain foods. In such cases diet is essential as only by refraining from using the particular food to which the sufferer is allergic may a cure be effected. In such cases diet is essential and "Breatheasy" will not give relief in these cases independent of the proper diet. In many of such cases "Breatheasy" should not be used at all. Epinephrin is no less dangerous to the user because it is taken by means of a "nebulizer" than it would be if taken by means of a hypodermic injection.

PAR. 11. The advertisements and representations made to the purchasing public by the respondent, as hereinbefore set out in paragraph 4, are false and misleading. They have had, and do now have, the capacity and tendency to mislead and deceive the public into the erroneous and untrue belief that "Breatheasy" is in truth and in fact a remedy for, and will cure, asthma, hay fever, and kindred diseases, and that in the use of the same it is not necessary to follow any particular diet, and to induce such purchasing public to purchase "Breatheasy" in preference to other preparations designed for the treatment of asthma, hay fever, and kindred diseases and offered for sale by manufacturers, retail dealers, and distributors. The result of such false, deceptive, and misleading representations on the part of said respondent is to unfairly divert trade to said respondent from such manufacturers, retailers, or distributors of other preparations for treating asthma, hay fever, and kindred diseases, who do not misrepresent the character and quality of their respective products or the results to be obtained from the use thereof.

CONCLUSION

The aforesaid acts and practices of the respondent, Pascal Company, Inc., are to the prejudice of the public and competitors of the respondent and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of

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

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the motion of Clarence L. Gere, counsel for respondent, to modify the order to cease and desist issued in this proceeding on September 8, 1937, or in the alternative to reopen the case for further hearing on question of fact, and the Commission having considered said motion and the record herein and being now fully advised in the premises.

It is ordered, That the motion to modify the order to cease and desist issued herein on September 8, 1937, be, and the same is hereby granted, and the said order is hereby modified to read:

It is ordered, That, the respondent, Pascal Company, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of the preparation now known as, and sold under the name "Breatheasy," or any preparation, under whatever name sold, composed of the same or similar ingredients and possessing similar therapeutic properties, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing that—

(a) Said preparation is a cure or remedy for asthma, hay fever, or kindred diseases;

(b) Said preparation can be successfully used without following any particular form of diet;

(c) Said preparation is a harmless remedy which will return the user to vigorous, buoyant health;

(d) Said preparation has a therapeutic or beneficial value in the treatment of chronic bronchitis, heart diseases, cardiac distress, gastric ulcer, serum rashes, and other skin diseases of the erythematous and eczematous types, inflammation of the nose, throat, tonsils, larynx, and lungs, and in neuralgia and neuritis; or that said preparation has any therapeutic or beneficial value in the treatment of urticaria (hives), except in very rare instances; or that said preparation has any beneficial value in the treatment of asthma other than to afford temporary relief in certain cases;

(e) Said preparation is the one sure relief available for the treatment of asthma;

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(f) Said preparation is a "doctor" ever ready to relieve asthmatics;
(g) and from making any other similar representations of like import or effect as to the therapeutic or medicinal value of said preparation unless and until said representations are true in fact.

It is further ordered, That the respondent, Pascal Company, Inc., 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 the order to cease and desist hereinabove set forth.

IN THE MATTER OF
GOLDEN PEACOCK, INC.

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

Docket 3156. Complaint, June 18, 1937—Decision, Feb. 16, 1938

Where a corporation engaged in sale and distribution of its "Golden Peacock Bleach Cream" and "Miracream" facial preparations for bleaching and removing, as asserted, blemishes and disorders of the skin, to purchasers in other States and in District of Columbia, in substantial competition with those engaged in offering and selling in commerce, as aforesaid, compounds or preparations for use in treatment of some ailments, disorders, and conditions of the skin for which it recommended its aforesaid preparations, and including many who sell and distribute in commerce similar preparations without misrepresenting the properties or therapeutic efficacy thereof—

- (a) Represented, in radio broadcasts and advertisements in newspapers and periodicals of interstate circulation, that its said "Peacock" cream constituted an amazing new discovery, in the perfection of which 10 years was spent and in the development of which 30 eminent doctors and skin specialists worked, and that it contained costly refined ingredients from Spain and France which acted in a peculiar way on the outside layer of the skin and completely revitalized it and changed it in color and texture, and that no ordinary cream or lotion could bleach skin white and keep it white; and
- (b) Represented, as aforesaid, that said creams, as the case might be, were new and different, and would remove freckles, blotches, tan, and blackheads, and every slight blotch, and result in the coming, in place thereof, of alluring alabaster clearness and a skin like ivory, flawless and soft, and bring out the clear look of youth;

Facts being said products did not contain refined ingredients which would revitalize the skin and change its color and texture as above set forth, were not new discoveries or developed as aforesaid, would not produce an ivory or soft and flawless skin or remove, under all conditions and in all cases, blotches, freckles, tan, deep-seated discolorations, etc., over night, or in any period of time, irrespective of the cause of the imperfections or conditions, and would not nourish, revitalize or rejuvenate the skin, and had not been indorsed by leading medical authorities;

With capacity and tendency to confuse, mislead, and deceive members of the public into the mistaken and erroneous belief that its aforesaid preparations were different from other creams or ointments offered in commerce, and were perfected by eminent doctors and skin specialists during a period of years, and that they had been indorsed by leading medical authorities and beauty specialists, and had the property to nourish and rejuvenate the skin and were active, effective treatments for all discolorations, blotches, and disorders and skin blemishes, no matter from what cause, and to induce members of the purchasing public to buy and use said preparations because of the erroneous and mistaken beliefs engendered as aforesaid, and unfairly to divert trade to it from its competitors, to their substantial injury:

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